

## **MINUTES OF THE 2017-2018 INTERIM NEVADA SENTENCING COMMISSION**

**April 27, 2018**

The meeting of the Nevada Sentencing Commission was called to order by Chair Hardesty at 9:02 a.m. at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via videoconference at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada.

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

### **COMMITTEE MEMBERS PRESENT (CARSON CITY):**

Justice James W. Hardesty, Nevada Supreme Court; Chair  
Connie Bisbee, Chairman, Board of Parole Commissioners; Vice Chair  
Senator Ben Kieckhefer, Senatorial District No. 16  
Assemblywoman Jill Tolles, Assembly District No. 25  
Dennis Cameron, Representative, State Bar of Nevada  
Judge Scott Freeman, Second Judicial District Court  
Chris Hicks, Washoe County District Attorney  
Karin Kreizenbeck, State Public Defender  
Adam Laxalt, Attorney General  
Keith Logan, Sheriff, Eureka County  
John McCormick, Assistant Court Administrator, Administrative Office of the Courts  
Stefanie O'Rourke, Major, Parole and Probation  
Holly Welborn, Policy Director, ACLU of Nevada, Inmate Advocate

### **COMMITTEE MEMBERS PRESENT (LAS VEGAS):**

Senator Nicole Cannizzaro, Senatorial District No. 6  
Scott Burton, Professor of Criminal Justice, CSN  
Chuck Callaway, Police Director, Las Vegas Metro  
Christy Craig, Chief Deputy Public Defender (Alternate for Tegan Machnich)  
Magann Jordan, Victims' Rights Advocate  
Jeff Segal, Bureau Chief, Attorney General's Office  
Donald Soderberg, Director, Employment, Training and Rehabilitation

### **COMMITTEE MEMBERS EXCUSED:**

James Dzurenda, Director, Department of Corrections  
Elizabeth Neighbors, Ph.D., Statewide Forensic Mental Health Program Director, Division  
of Public and Behavioral Health

Jon Ponder, Representative, Offender Reentry  
Judge Jennifer Togliatti, Eighth Judicial District Court  
Assemblyman Ozzie Fumo, Assembly District No. 21

**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:**

Ross Caldwell, Justice Reinvestment Liaison, Oregon Criminal Justice Commission  
Judge Robert J. Devlin, Jr., Chair, Connecticut Sentencing Commission  
Marshall Thompson, Director, Utah Sentencing Commission  
Franny A. Forsman, Esq., Federal Public Defender for the District of Nevada (Retired)  
Tonja Brown, Advocate for the Inmates, Advocate for the Innocent  
Garrit Pruyt, Deputy District Attorney, Carson City

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

I will now open the second meeting of the Nevada Sentencing Commission. I know it is important to begin our meetings with public comment, but we have some scheduled presenters and they are time certain. One in particular is at 9 a.m. It's the presentation from Oregon. I am going to defer public comment until the completion of that presentation, and then we'll take up public comment then. We also have some pretty tight presentations on the schedule here, so we'll need to move through this as quickly as we can, then I'll return to some introductory remarks about the Commission. I apologize for postponing the last meeting, but based on the snowstorm, it seems like it was a good idea.

Let's proceed with item VI on the agenda, and that is a presentation by the Oregon Criminal Justice Commission. Mr. Caldwell is on the phone. Thank you again for being available to do some follow-up information on Oregon's Justice Reinvestment program.

**Ross Caldwell (Justice Reinvestment Liaison, Oregon Criminal Justice Commission):**

I work mainly on our Justice Reinvestment program. I work on some other things, kind of side projects, but that's the main thing. My background prior to this, I was a Deputy District Attorney in Multnomah County, which is essentially Portland, Oregon, so that's my lens or my understanding of the system was from the prosecution side. I've been at the Criminal Justice Commission (CJC) for 3 years, and a big part of my job is working with

all of the different counties to see what they are doing with their Justice Reinvestment programs, how they're spending the money, and if those plans are effective that they're getting the collaboration they need, and then how it shows up in the data. We have a little research team that helps track data in a number of different ways. I'll show you a couple examples here in a minute. But that's kind of what I do. I mostly work with the counties to try to figure out what's working there, what's going on, and then also kind of report back to the Legislature and do a lot of presentations. We try to be as data informed as possible with our program, so lots of charts and graphs and things like that.

Going to slide two ([Agenda Item VI](#)), just a little bit of background about how our Justice Reinvestment program got started. Obviously, Justice Reinvestment has been done in a lot of states. We had a significant increase in our prison population, especially from 2000 to 2010 as a lot of states did, and we eventually got to around 14,000 inmates. We were at a point where we were going to have to build a new prison facility. For our female population, we have an additional—we only use one facility for our female population right now. We have a second one that's built that hasn't been used, so it's kind of mothballed. There was the danger of having to open that, but the main thing was having to build a new prison facility for our male population. That was going to cost somewhere in the neighborhood of \$200,000,000, and it was going to take 5 years to build it. The Legislature was coming up against some other budgetary issues as they always are, so they decided they didn't want to build the prison. They started looking around for other options. That was around 2010, 2011, before I worked at CJC, but I've heard a lot about that whole process.

On slide three, after a few years of negotiating, we passed in 2013 House Bill 3194, and that was our Justice Reinvestment legislation. The goal of Justice Reinvestment is to reduce recidivism, use less prison, and at the same time, don't let your public safety fall apart and continue to hold offenders accountable. This should be accomplished in two different ways. One is the Justice Reinvestment grant program, which I work on, and the other ones were some pretty minor sentencing changes. They were sentencing changes mainly to property crimes, made the sentences a little bit shorter, gave some more optional probation for certain drug offenses. The big one was that we extended a program called short-term transitional leave, which is where offenders if they have good behavior in the institution, have a good address to release to in the community, the county's ready to take them and supervise them when they get out and they completed any programming in the Department of Corrections while they were incarcerated, they can get out 90 days early. Previously it was 30 days, so the bill expanded it from 30 to 90. That's a significant amount of prison savings if that continues to work. That actually has had a big effect, the short-term transitional leave program. It lets people out a little bit earlier. The other sentencing changes really haven't done a whole lot, and in my opinion, that's because they're fairly easy to wire around. Some of the changes were to things like identity theft. I'm sure a lot of you know and have the same experience, identity theft kind of comes in packs, so with our sentencing scheme in Oregon, you can sort of stack them up, and if you're a prosecutor, you can kind of get whatever sentence you're trying to get when you negotiate that out in plea bargaining. Even though they made some changes to what the

sentence for identity theft was supposed to be, it didn't really bare much fruit and save the state much money. The big savers have been that short-term transitional leave program and then the Justice Reinvestment grant program.

On slide four, it's called Justice Reinvestment. It probably should be called Justice Preinvestment, because we need the Legislature to actually find the money up front and distribute that to the counties, and then the counties build local programs, beef up their local public safety systems so that they're able to hold more offenders in the property and drug crime world, and that's the important part of our grant program is that it's only property and drug, no violent crimes, no sex crimes, none of that. But counties can get this money and they can beef up their local system and then use that to keep more offenders local on probation instead of sending them to prison. Here, a day in prison costs now it's estimated, I think, at over \$100. I think it's around \$108 is the last figure I saw. Probation, even expensive probation, is usually around 20-something dollars, and some probations are cheaper than that, so obviously it's a big saver for the state. When we first passed this bill back in 2013, the initial funding was only \$15,000,000. There was a little bit of other money that went to the sheriffs and some other folks, but the main chunk of money was only \$15,000,000, and there was really no application process for counties. They just said, do they want the money, yes or no. They all surprisingly said yes. They all got the money. There was no application process for that first biennium. It was kind of viewed as just startup costs to sort of get your program underway, think about what you want to do and start trying to build those programs. We also weren't very really good at tracking prison use and any of that kind of stuff on a county-by-county, crime-by-crime-basis. It was before I worked at CJC, but we really had a long ways to go in order to be able to track this stuff. In the 2015-2017 Biennium, it was funded at \$38,700,000, and there was an application process there. The counties had to apply. The money goes through our little agency. They send an application to us. We as staff work with them on their application and say, "You know, this looks like it's good on recidivism, but it doesn't really address prison use," or "It's not really paying attention to public safety enough, so maybe have another look at it," or "Here are some suggestions that other counties are doing," things like that. That happened in the 2015-2017 Biennium. Every county, and we have 36 counties in Oregon, they were all fully funded. In 2017-2019, it was funded at \$40,100,000 after a pretty serious lobbying effort by the counties, and then there was an additional \$7,000,000 in supplemental funds, which is kind of a weird separate grant. We call it the Justice Reinvestment Supplemental Grant, and it's only aimed at prison use. It's aimed at counties that want to do downward departure programs. They're departing down from a presumptive prison sentence on a property or drug crime to a probationary sentence. It is kind of weird to have one program that does prison use and recidivism and maintain your public safety and then have a smaller grant sitting on top of that that only goes to prison use, but that is what our Legislature has passed, so that's kind of where we're at, and we do our best with it. In this biennium right now that we are in, that had obviously an application process. The result of that application process was that 32 counties were fully funded and 4 counties got provisional funding. Our Grant Review Committee and our commissioners who make the ultimate funding decision, they didn't think that the counties' plans for the biennium were adequate, so they wanted them to

kind of readjust and take a look at them a few months down the road for year two. We just had that meeting on Wednesday, and all those four counties are getting their second year of funding. So, everybody's getting their full funding for this biennium as well, but it just took a little while. We are really kind of getting the message from the Legislature that these dollars, this is incentive funding. It's incentive to do things a little bit differently. So, if you're a county that is taking this money, which they all are, you need to be really taking a look at what you're doing and trying to reduce your prison use in property and drug crimes, but also take a look at what you think is driving your recidivism and try to work on that as well.

Does anybody have any questions at this part before I keep going ahead?

**Chair Hardesty:**

I think we're good to go. Mr. Caldwell, you can keep on charging, if you would.

**Mr. Caldwell:**

Okay, thank you. Just one other thing I wanted to say, we use the same formula to disburse this grant funding that the Department of Corrections uses to fund the county parole and probation offices. The Department of Corrections is obviously a statewide agency, and then all the counties have their own community corrections that handle all parole and probations. But they get a lot of state money in this biennium. It's a little under \$300,000,000, and there's a formula that is used for that. So, although the county Portland is in is by far our biggest county, they get almost 20 percent, and then we have some small counties that are to the east and to the south in Oregon that get a minimum. For Justice Reinvestment, the minimum is \$100,000, which really isn't very much money. It's a significant amount for those counties because they're very small, but you're not going to be able to put together too many things program-wise with \$100,000. A lot of people hire an additional parole/probation officer (PO) or they buy some more treatment. It's obviously a smaller amount of money.

Jumping ahead to slide five ([Agenda Item VI](#)), the next few slides are just some examples of the data that we have on our website now, and we require the counties to look at this in their application process and we require that their application is responsive to what they're seeing. The first one is recidivism. We have a triple definition of recidivism now in Oregon, so it's new arrests, new conviction for a misdemeanor or a felony, or new incarceration within 3 years. We track all three of those. This is just an example of one of our counties on the right compared to the statewide average, and we ask counties to take a look at their recidivism rates and see if they've had something go up, something go down, what they're doing to try to reduce recidivism in the future, because that's one of the goals of the program.

Moving onto slide six, this is an example of a way that we track prison usage. We have a million different slides that we track prison usage with. This is just one example. This is a

way to measure change. We kind of put together a 3-year average of counties' property and drug crime prison use, and then we measure are you above that average, are you below that average? It's important for us always to say when we show this that this doesn't say why your prison use is going up or going down. You could have more law enforcement, you could have less law enforcement, you could have more or fewer cases coming through, and that's obviously going to influence how many cases you have, how much prison you use. This is just a way for us to measure change. If we do see a significant change in a particular county, we can try to dive deeper with some of the other ways that we track their prison use to try to understand what's happening and why. The three or four counties on the left that you can see on that bottom graph that are all the green lines going down, those are counties that have most dramatically reduced their prison use, and they've made really significant reductions. That's been because they have a very collaborative Justice Reinvestment program that they've got everybody on board with. Everyone from their judiciary to their prosecutors, defense attorneys, law enforcement, sheriffs, community corrections, obviously. We are really at a point now with this program where we can see kind of who's on board and who is not, and that allows us to focus on the counties that either don't have the collaboration in their county, don't have the buy-in, because this is a controversial thing, obviously. Any time you want to reduce prison use, it's going to be controversial. We can kind of really focus on those counties and see who is doing what and what's being effective, and we can take what's effective in some counties and try to spread the word to other counties and say, "Hey, look, these guys are doing this. They're a similar size county to you, they get around the same amount of money. If you're having trouble figuring out what you want to do or having trouble finding something effective, this might be a good use of your funds."

Moving onto slide seven, this is an individual prison use tracking for Klamath County, just as an example of something we have the counties look at. The blue kind of jagged line is Klamath County's prison use over time, and then that horizontal gray line is their 3-year average from 2012 to 2015. The red line is just their average plus 10 percent. We're able to look and see when were you above the line, when were you below the line, when did your prison use go up, when did it go down? That's useful because counties make certain decisions. We've seen counties close down a wing of their jail and then they can't sanction people that they need to sanction on probation, so the judge ends up revoking them and sending them to prison because that's the only way they feel they can hold them accountable. This is a way for us to kind of look at the counties and say, "Hey, something happened in March of 2015. What was going on in your county? Did you make any different decisions at that time? Did any funding fall through? Did anything come apart?" They can look at this, and sometimes actually they can kind of tell what's driving their prison use up or down. It's just to help with local decision making.

Moving to slide eight, the next chart is uniform crime reporting (UCR) data. Obviously, this lags a lot. There are a lot of issues with crime data, as I'm sure you're all familiar with. It's not a great way for us to track public safety, but it's kind of the best data we have on public safety at this time. We're kind of always looking for ways to track public safety better, but one of the goals of our program is to maintain public safety. We're not just

going to let everybody out of prison, save the state a lot of money and then let public safety suffer. That's obviously not the plan. This is just one of the ways that we track crime data. One of the issues we've had is that you can see kind of some artificial drops on there. Statewide, we've got our law enforcement agencies switching over to a different reporting system, so there are some gaps in the reporting which makes things look artificially low. Hopefully your state isn't dealing with the same thing, but I know a lot of folks are.

Moving onto slide nine, these are just different types of programs that we are seeing funded with Justice Reinvestment money. Lately, we've been seeing some pretrial programs and counties really trying to map their local system and see what they're using, what's happening up front, do they have room in their jail to hold people, how much of their jail are they using on pretrial? That's one of the programs. Prison diversion programs with enhanced local supervision, that's a big one. A lot of counties are beefing up their drug courts and their specialty courts and trying to give departure sentences from prison to probation and put more of their offenders into their specialty courts. We've also seen a lot of in-jail treatment. We've seen counties say, "Yeah, we think we want to create kind of an intermediate step between probation and prison, and we want to hold people in our jail. We want to get them intensive treatment and then we want to try to give them a shot to get out. If that doesn't work, we might put them back in the jail." They're usually on some kind of a jail and probation sentence. We're seeing those pop up a fair amount, and then a lot of focus on reentry, and again, that short-term transitional leave so offenders can get out 90 days early, giving them additional services around housing, job training, things like that, and obviously treatment so they can have a better chance of being successful.

Moving onto slide 10, this slide is an absolute nightmare when you first look at it. It looks terrible. It looks terrible on our website. It's a scary thing, but it actually is a fairly useful tool. If you hover on a county on the left, you can see on the right all the things that they're spending their Justice Reinvestment money on. If you hover on one of those circles or on one of those rectangles on the right, which is a way that you can spend your Justice Reinvestment money, you can see which counties are spending money on that. We were getting lots and lots of questions about that, and this is kind of the best way we've been able to show it. Slide 11 and slide 12 are just examples of how to filter that. On slide 11, if you were to hover over Deschutes County on the left-hand side on our website, you can see what they're putting their money into. So, funding, some additional services, supervision, things like that. It gives you kind of a general overview of what they're spending their money on in that county. Just to look at it in the other direction, if you were to hover on the services circle on the right-hand side of the website, it would show you all the different breakdowns within services and then which counties are spending money on that. You can hover on one of those rectangles and it would show you more specifically which counties are doing what. As Justice Reinvestment has progressed, our audience has widened a little bit. We've got a lot of county commissioners that are now interested in what's going on in their counties, what additional services are being paid for and just kind of what bang they're getting for their buck with that, so this is a good way for people

in the Legislature, the county commissioners and lots of other folks to kind of see how money is being spent in different counties, kind of just a crude overview.

Slide 13 is just a little bit about what we as staff of the CJC are seeing working in the counties and what counties actually need to have a successful Justice Reinvestment program and to use less prison in a way that seems safe, and send less people to prison without just then turning around and revoking them all for probation, because when you do that, you use your local probation resources and then you send them to prison anyway, so you're also using the state resources, so it's kind of the most expensive thing you can do. What we found is that each county has a local public safety coordinating council. In the past, some of those have met regularly, some of them are just supposed to meet and actually don't. You have to have a functional group. You have to have a functional public safety coordinating council that's actually putting their heads together and having often hard conversations about what you're going to do with this money in order for it to be successful. Where we are seeing this not work is when the money just goes to parole and probation. They have more services, but nobody really does anything differently. The district attorney or the judges aren't bought in, so they're not sentencing people differently. Parole and probation has more money, but nothing's working. Nothing's really changing in their numbers about prison use and recidivism. It takes a while to see that, but we don't know that that will be effective down the road either. We've been told very, very clearly by the people in the Legislature that find the money for this program that if that happens, this program will not be funded for long and it will collapse, so we need to make sure that counties are working together and putting their heads together and coming up with a plan that they will support kind of as a group. That doesn't mean they'll agree on every single case. That's obviously never going to happen, but hopefully we can get them to agree on what the program is kind of as a whole and what the goals that they're working together to meet are. The second bullet point is kind of the same, collaboration and trust within counties, and this really kind of requires people to break out of their silos and work together, often in ways that they haven't in a really long time. Some counties already had good working relationships between different public safety partners and some really didn't. The third bullet point, adequate jail space, kind of what I mentioned before, we found that if you don't have room in your jail to hold people pretrial—say you've got somebody who steals a car, comes in on an ID theft or a felony theft or fraud or something like that. If they are kind of in the throes of meth action and you don't have room in your jail to hold them so you just let them out, chances are when you pick them up again to deal with their case, they might have picked up another crime because you haven't really changed anything. You arrested them once and then let them back out because you don't have room in your jail. We saw with a lot of counties, initially they were arresting these people for property crimes or drug crimes, releasing them because they didn't have jail space, and then by the time they actually got around to resolving their case, they had two or three cases, and then those people were definitely going to prison because they had two or three cases and they were not going to get a shot at probation. If you can actually hold them long enough to deal with their case when they only have one case, you've got a much better shot of them actually getting a probation sentence and getting the benefit of this program. Also, you need to make sure you have room in your jail to sanction



people, because if they're on probation, most people aren't going to make it through probation without any kind of screw up, so you need to have room in your jail to sanction them. If you don't have that, faith in probation quickly breaks down and judges aren't willing to give probationary sentences and district attorneys aren't willing to offer them. Those are really important things that we found, that your jail really gives you flexibility. The other part is just remembering that these offenders come back to your county. We've looked into it in our county and we found that overwhelmingly, offenders release to the same counties they were sentenced in, so our property crime offenders and a lot of our drug offenders, they were going to prison for a couple years and then they're coming back, and they often have the same problems that they had when they went to prison, and sometimes they're a little bit worse because they were in prison, sometimes they're just the same. But you are going to be dealing with these people on and on and on. We're not sending them away until they age out often. We are sending them away for short periods. Part of the buy-in for this program comes from realizing that we're going to be dealing with these guys again in 1 1/2 years or 2 years anyway, and we can't afford to just increase sentences and lock them up for decades, so we might as well try to actually fix the problems on the ones that we can. Certainly, some people we're not able to do anything with, and those people are going to continue to be sentenced to prison, but just trying to find that low hanging fruit and try to bend the curve of prison use down a little bit, that keeps the program working.

Our next slide is just our prison forecast. I'll just go through this really quickly. The black line is our prison use, where it's actually gone so far. The green line is where we were projected to go back in 2013 when we passed our Justice Reinvestment legislation. We were projected to just keep going on up and up and up, and this is on the male side. That red line is when we were going to need that additional prison built, so that additional couple hundred million dollars would have been spent. That was just to build it. There would have been additional money to maintain it every year, staff it and everything like that. The blue line is where we are now projected to go. We're not a state that's going to be closing prisons with our Justice Reinvestment program, but we have kind of flattened out. It looks like we're still going to creep up some over time, but we really pushed the need for that prison back a long, long time on the male side. On the female side, we only have one facility and it's a much smaller population. It's only about 10 percent. The black line is our prison use so far. The green line is where we were projected to go back in 2013. The blue line is where we are now projected to go with our Justice Reinvestment program. The red line there is the actual capacity of the female facility, so you could see that we've gone over that and we're projected to come back down. The Department of Corrections has been reluctant to open that second female facility, in part because it would hurt the Justice Reinvestment program. They've been really flexible partners with us and they've been getting by on temporary beds and emergency beds and adding those so it would increase their capacity in the female facility. The female facility is very small. If you look at those numbers on the side, we're around 1,200 or 1,300 people. It's not very much. So really, a few people coming or going makes a big, big difference. We are projected to kind of drop back down on the female side. We had another sentencing change bill passed in 2017 that is now being challenged in court by some of our district

attorneys, and our prison forecast reflects that sentencing change. It's mainly to property crimes, which disproportionately impact our female population. That blue line dropping down in the future, I think, is partially dependent on whether or not that challenge to the new statute, the new sentencing changes, which way that lawsuit goes. I can talk about that more if you're interested in it. It's kind of long and boring, but essentially we passed a bill to shorten sentences for property crime, which would really impact our female prison population, and it's being challenged in court by some of our district attorneys. We will see what happens with that. We might not have that projected drop on the Blue Line going forward if that law is tossed out by the Supreme Court, so we'll see.

Just a couple more things here. We have a number of different dashboards online. We share recidivism, prison use, a whole bunch of other stuff. That's the link to our dashboard right there in blue, if any of you are interested in looking at those. One other thing we put together online is called the Oregon Knowledge Bank. There is a link to that there in blue on slide 17. Those are different programs, law enforcement, parole and probation, a lot of our Justice Reinvestment programs for the last biennium are up on that website. You can kind of click through and see what counties are doing with the funding. It's a short description as well as how much it costs, where the funding comes from, who to contact if you want to hear more about the program, things like that. We try to put that together so the counties can see what each other are doing. We've kind of got it broken down into parole and probation programs and then policing programs, so there are a couple different things on there if any of you are interested and want to take a look at it at any point.

I think that's about all I have. The last slide has my contact information, and I'm happy to try to answer any questions you have.

**Chair Hardesty:**

Thank you, Mr. Caldwell. I want to thank you for being available and providing the overview. I wanted to clarify one thing. This program and its development for Oregon occurred as a result of the national Justice Reinvestment assistance?

**Mr. Caldwell:**

Yeah. The folks from Pew came out and took a look at our system, so we did have national assistance from them. Then, we had the Vera Institute provide our technical assistance once we actually got the legislation passed.

**Chair Hardesty:**

I noticed you're tracking, of course, the prison population, but are you tracking the jail population? The program would imply that there is a transference of defendants from prison to jail, so certainly a state that might consider this kind of approach may have some serious concerns, especially a state that has very limited jail population capability or capacity. Could you comment on that, please?

**Mr. Caldwell:**

Unfortunately, we don't get good jail data. All our jails are on different data systems. They're all run independently by the sheriffs in the counties, and that's something that we're really working on. We do know some counties are kind of blessed with a big jail and have a lot of space. Some counties aren't, and if you're doing a Justice Reinvestment program, you do need to have that flexibility in your jail. Often, you do use more jail beds. Some of that upfront money went to sheriffs to help with opening more jail beds, and some counties are using some of their Justice Reinvestment money to supply more jail beds, but I don't think it's ever—there's never enough funding for something like that, so we see some counties have real difficulties when they closed down a pod in their jail or a wing in their jail or something like that. So yes, it's a real issue and something that is a big blind spot for us data-wise. We do talk to the counties a lot, and they tell us what they are seeing. We have got data from them at different times for different counties, but we don't have a statewide way to track our jail use, unfortunately, because they're all independent and they all use different systems. But it's something that we're working on, especially with some work we're doing around pretrial. Counties do have issues and they do need to use some of their Justice Reinvestment money and sometimes other funds to help beef up their jail capacity in order to do these programs successfully.

**Chair Hardesty:**

Thank you, Mr. Caldwell.

**Chuck Callaway (Police Director, Las Vegas Metro):**

First, I do share the concern that was just raised by Justice Hardesty. I was recently at a Major County Sheriffs' meeting with my Sheriff, Sheriff Lombardo, and during a roundtable discussion, there were a number of sheriffs from different jurisdictions across the country where Justice Reinvestment programs of various types have been implemented, raising concern about the impact to their local jails. I know our jail in particular is always at maximum capacity. Somebody comes in, somebody's got to go out. If we talk about decreasing prison space or diverting people away from prisons but then potentially having them spend more time in a jail environment, I do think that's a significant increase to the local jurisdictions, and I do have the concern that it's diverting the problem away. It's kind of like kicking crime across the border from Las Vegas into North Las Vegas and saying we handled crime in Las Vegas and now North Las Vegas has a bunch of crime. We didn't really handle crime, we just diverted it somewhere else. To my question after making that comment, I would be curious to see—I recently read the United States Sentencing Commission Report that was put out regarding recidivism among federal offenders ([Agenda Item XIV A](#)), and that study showed that there was no difference in recidivism rates among offenders who spent their full time in prison versus inmates who were part of a retroactive program to be released early, that the recidivism rates among those two groups were virtually identical. The question is, are we looking at the folks that are reoffending, and how many of those folks would not have been able to

reoffend had they not been part of these programs and were in custody in prison versus being out?

**Mr. Caldwell:**

I'll try to take that in reverse. Because recidivism data lags 3 years by our definition—you can look on our dashboards. I don't have a slide on it here today. Everybody in Oregon that gets out of prison is on post-prison supervision, so we start measuring whether or not they reoffend the moment they hit the street and they're on post-prison supervision. If they get probation instead of prison, we start measuring the moment they're put on probation. That's when the 3 years start for each of those different cohorts. We do track those. We do see better numbers in Oregon for probation than for prison, but it's not as drastic as you would hope, and it varies a lot county to county. Right now what we're trying to do is take a deep dive, and we're trying to do it one county at a time, which is very time intensive for our research folks, to see in arrest data specifically, not even looking at convictions, but looking at who's getting arrested for new property crimes, and were they incarcerated in the last few years or were they put on probation? We're trying to take program participants and figure out how many of those are recidivators and how many of those are not and trying to measure the program from another way. We've got to try to keep this program funded if it's going to survive, and our Legislature is not patient enough to fund a recidivism program, I guess. We need to be decreasing prison usage or controlling prison usage, or at least stopping it from growing if we're going to keep the program around, and that begs the question, is the program even a good idea? Is it working? Because if you're just keeping people out of prison but you're not reducing crime, you're not reducing recidivism. All you're doing is saving the state money, and like you said, you could be pushing some of those costs to the counties. We're taking a deep look into that. What we've seen so far is that if you take all of the, for instance, property crime arrests within a county, we are seeing that there are a chunk of those people that are engaged in some kind of program, but the majority of them are not. The percentages are a little higher. I'd be happy to come back and give a presentation on this once our researchers are done with it. It's pretty complex, and I think they could explain it a lot better than I could. We have the same concerns from our law enforcement saying, "You've got all these people on probation and our stolen car rates, for instance, are going up," and we can see that in the data. We can see that in some parts of Oregon, we're seeing more stolen cars. We're seeing more and stronger meth than we did before coming in from Mexico. At the same time, we are seeing the crime rate going down for lots of other crime types. I think that there are quite a few things happening. It's not quite as simple as all the people on the Justice Reinvestment program are stealing things or continuing to offend. Some of them I think are, and what we have been telling the counties is that we need to make sure that you're looking at that arrest data and that those people are being revoked and that they are getting a prison sentence, because that will kill this program for sure as anything if the offenders that are getting shots at probation are all committing new crimes. Obviously, it's not a successful program in that case. I could show you some better data on that if you wanted to talk more about it, and I could also show you when

we get our—this new study that we're doing, once we get that done, we should have something to show in the next few months. I'd be happy to share that with you as well.

On the jail piece, all the counties that are doing the in-jail treatment that are taking some people that would have been prison-bound and putting them in their jail, they are all spending significant chunks of their Justice Reinvestment money to expand their jail capacity. So, they are getting money for that and that's what they're using a lot of their Justice Reinvestment money for. They're using other parts of it to provide the treatment and also some of their grant and aid baseline formulas that they get through the Department of Corrections. They're using a lot of that money for that. We've seen several counties initially say, "We are having some more strain on our jail because of this," and they use that to look at who is in their jail, and in some cases that has led to kind of a full-fledged pretrial program. Those counties have actually been able to reduce their jail population for other things, usually pretrial, and they're seeing better failure to appear rates. They've lowered their failure to appear rate by kind of looking more carefully and often using risk assessment tools to see who they should hold pretrial and who they should release. They're also setting up things like robo-calls and robo-texts to remind people to come to court, and those have proven effective at both reducing their pretrial jail population for the people that are safe to let out and making sure that they do come back to court, and having that flexibility in your jail to be able to sanction people that are on probation. We've seen some good things in that, but I'm not going to lie, it has been something that local officials have had to contend with and figure out how to best use those resources.

**Mr. Callaway:**

Thank you. Can I ask for clarification on one thing? When you said they're using their Justice Reinvestment money, are you talking about money that's being saved from the reduction of prison space being allocated to the local jurisdictions by the state, or are you talking about some grant funding that's coming in? What is this money you're talking about and how is it allocated to local jurisdictions?

**Mr. Caldwell:**

That's the grant money that is from the Justice Reinvestment program. It's on slide 13 by biennium. It's been around \$40,000,000 from 2015 to 2017 and around \$47,000,000 in 2017 to 2019. That is the Justice Reinvestment grant money that goes out to the counties, and then the counties decide how they want to use it. In those counties that are doing more of a jail treatment-based model, the county is allocating that money to their sheriff and they're putting it into their jail to open up another pod in their jail or treatment dorm or something like that.

**Mr. Callaway:**

So, in essence, Justice Reinvestment grant money is being used to expand local jails with this program?

**Mr. Caldwell:**

Yeah. In some cases it is, yeah. There are several counties that are doing that. And counties can decide. They can kind of do whatever they want to do. They can decide whatever approach they want to take. Different counties certainly have different challenges, so some of them have been—before Justice Reinvestment ever came along, they didn't have enough money to keep their jail open to the capacity that they needed, so they're using Justice Reinvestment grant money to open their jail just for things they needed it for before, and then additionally to be able to handle having some additional people on probation. It's certainly not that none of your property or drug offenders go to prison. If you can bend the curve a little bit, and there is no magic number or magic percentage, but it's about taking often a fairly small percentage and diverting them away. The people that are maybe ready to age out or the people that are not quite in too deep yet and aren't kind of as hardened criminals as they were before. A lot of counties are using risk assessment tools and they have kind of sentencing committees to try to figure out who those people are. But in a smaller county, we're not talking about dozens and dozens of offenders. In a smaller county, often we're talking about in a year, maybe 10, maybe 15. But it really depends on the size of the county.

**Chair Hardesty:**

Mr. Caldwell, to be clear though, the money that is allocated here is coming from Oregon's state general fund, is that right?

**Mr. Caldwell:**

That's right. Yes, it is.

**Chris Hicks (Washoe County District Attorney):**

I had a quick question based on what you said. It seems like there's a little bit of an incongruence there when you're using one pretrial risk assessment to perhaps release people on bail that are low risk to reoffend and a low risk to not appear, but at the same time, you're also saying those very people should be kept in custody so they are not reoffending and sent to prison. Has that been a problem, kind of balancing those two?

**Mr. Caldwell:**

Yes. It can certainly be different people. What I meant to say, and maybe I didn't say it very well, is that when counties—there are a lot of counties in Oregon that have had

issues with their jail long before Justice Reinvestment, so when this came along and they started doing Justice Reinvestment programs, they were at risk of having increased issues with jail capacity. Some of them have responded to that by taking a look at who they're holding pretrial. Using risk assessment, if you've got a property offender with a serious meth addiction who is going to be out stealing cars if you let him out, that is absolutely somebody you need to hold. Risk assessment tools as well as the discretion of the judge and the prosecutor and the defense attorney and all the folks that get to have a say in this, that is a good way to figure that out. Risk assessment tools can be helpful, they can be more information, and we've seen a lot of counties letting out more low-risk people that they think are not going to be a danger to the community in the pretrial interim time and are going to show up to court. But at the same time, you need to figure out who in the Justice Reinvestment world, which is aimed at property and drug offenders, a lot of those folks do need to be held. What we're seeing increasingly is that counties are trying to hold those people more often and they're looking at who do we have that's low level, often misdemeanor crimes or other less scary stuff, who can we release on those and actually make sure they show up to court and they're not picking up a new crime in that interim time? It's kind of multiple things going on. Because Justice Reinvestment programs are aimed at property and drug offenders, some of them are very, very, very high risk and those people absolutely need to be held until they resolve their case, and then you determine are they safe to take a shot with probation? Are they safe and do you think they can be safely managed in the community? If so, they maybe need to go from jail to residential inpatient treatment to something else and kind of step down into probation. Or are they too high risk and we're not willing to take a risk on them and they need to go to prison just like they would have before any Justice Reinvestment. There are kind of two different things going on that do sort of overlap and touch each other, because I think the pretrial program touches everything, obviously.

**Mr. Hicks:**

Yeah. In Washoe County, we're doing a pilot program on pretrial risk assessment tools. I would say that a large amount of people that are being released are those very low level crimes, moderate risk-type people that in fact might be the ones we need to keep in. It's just something I was curious about. The other question I wanted to move onto is, you mentioned modest sentencing reductions in your earlier slides. My first question is, what qualifies as a property crime? Is that like a burglary that qualifies as a property crime and they receive some of those shortened sentences, vehicle theft? What exactly fits within there?

**Mr. Caldwell:**

Burglaries, first-degree and second-degree. We have two different types in Oregon, whether it's residential or not residential. Stolen cars, ID theft, theft in the first degree, which here is theft of over \$1,000 or theft by selling. Those are kind of the main ones. Any type of fraud. The sentence reductions were to identity theft, and the change was that the presumptive sentence for an identity theft went from 22 months to 18 months, so it was

not a huge change and it was the same for a couple of other property crimes. They also shortened the sentence a little bit back in 2013 for robbery in the third degree, which was the most serious crime that they changed the sentence for. They were all fairly short. They lowered the sentences by I think generally around 4 months. Like I said, we didn't really see much savings for them. Those changes didn't really do anything because they're so easy to wire around at the plea-bargaining level. The other thing they did was for some drug crimes, there were some that were previously presumptive prison and they made those optional probation. So, instead of a presumptive prison sentence, you could have a prison or a probation sentence. We saw a little bit of a change with that, but that was more around what you're doing with your Justice Reinvestment program and are you deciding that a portion of those drug offenders are able to be supervised in the community or not?

**Mr. Hicks:**

The reductions in these prison sentences and the changes to potential sentencing options, how has that been received by the citizens in general in Oregon? My second question is, you said property crime rates have gone up in certain counties. I wonder, are those the counties that—your previous slide where you said the county breakdown kind of shows who's in and who's out in the Justice Reinvestment philosophy. Are the counties that are in and not sending as many people to prison the ones where the property crimes are going up?

**Mr. Caldwell:**

For example, we've seen car theft go up in a number of counties. Some of those counties are counties that are doing Justice Reinvestment. They have pretty robust Justice Reinvestment programs. Some of them are counties that definitely are not in that direction. They were some of the counties that got the provisional funding that I mentioned earlier that are sort of on the verge of losing their funding and are now getting funded for the next year, but we'll see how that goes in the future. It's really been across the board. At the same time, we've also seen burglaries go down significantly in those same counties. As far as I can tell and based on my experience, I think there are a number of things going on at the same time that are driving up car theft. We had some real problematic cases out of our court of appeals on car theft that make it very difficult to prosecute stolen car cases right now, so I think there are a lot of people who are getting arrested for a stolen car and that are getting released because the district attorney's office is not able to file on those cases. We need a legislative fix to that. So far, it's been deemed too expensive by the Legislature. That's one issue. I think we also have a serious issue with more meth in Oregon right now. We've always been a meth state. We don't have as much of an issue with heroin or some of the other things. We pretty much effectively closed down all the meth labs several years ago, and now we're getting really strong stuff coming into the state from Mexico that's stronger than we've had before and it's creating a lot of problems. I think there are a lot of things going on. There are some people, I'm sure, in the counties that are doing robust Justice Reinvestment programs that are



stealing cars, and the counties are trying to track them down and make sure they get revoked if they get arrested for that. Even if these court of appeals cases make it difficult to prosecute the stolen car case the way that they did before, that they prosecuted it as a probation violation and sent them to prison. It's kind of a lot of different things going on, and we've had some people that have been quick to blame it on Justice Reinvestment. But our program isn't really big enough and doesn't affect enough offenders, I don't think, to drive crime rates up that much. At the same time, we are seeing crime rates go down in other property crimes. I think it's more of a mixed bag and multiple factors influencing this.

**Chair Hardesty:**

I need to interrupt your response and give some other Commissioners a chance to pose a question. We'll be bumping up against another time-certain presentation, but I don't want to cut people off too quickly.

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

Thank you for your presentation. Just to preface this by saying I have no doubt that the program, the reforms that you've implemented in Oregon, that the intentions are good and it may be too early to draw any definitive conclusion about the results, but I am concerned about the impact on public safety, which I think is the most important consideration that we ought to address. I do see based on the statistics you have provided about crime in Oregon, I do see a very strong correlation, and I understand there's a difference between correlation and causation, but I do see prior to your reforms a strong correlation between increasing the prison population and a decrease in the crime rate in Oregon. After the reforms had been put in place in 2013, I don't see that same positive correlation with respect to public safety. In fact, if anything, it appears that the recidivism rate is ticking up and that the crime rate is certainly no longer going down. If anything, it appears to be starting to tick up as well. With the understanding that it may be too early to draw any conclusions, what can we say about whether or not this program so far is making the people of your state any safer?

**Mr. Caldwell:**

I think every county needs to find kind of the sweet spot of who you are able to successfully divert from prison and maintain public safety. Like I said, there is no magic number for that. Some states have had Justice Reinvestment, and I believe Illinois did this, I might be mistaken, but they said, "If you're going to take the grant money, counties, you need to reduce your nonviolent prison use by 20 percent. If not, you don't get the money anymore." We don't have a hard line like that. Our legislation is a lot more squishy. I think that there are various—I've read a lot about this—there are a lot of different opinions on what brought Oregon's crime rate down. Some people think it's incarceration in part. A lot of people don't agree with that at all. I think that's a pretty difficult conclusion to draw from the data we have available. I don't think that you can give all the credit to

incarceration. I think that's probably part of it. This is really complicated stuff, so like a lot of things, I think there are multiple things going on at the same time. We've had a lot of other changes across Oregon in that time other than just more incarceration. We've also had our population increase pretty significantly. That continues to be an issue. I think it is a little bit early to say. I think some of our counties that have made 25, 30 percent swings in who they send to prison for property and drug crimes, I think that they need to be cautious and make sure they don't go too far. But I think there is some low hanging fruit that can be safely supervised. We hear a lot of success stories, and what we're starting to see in the data is that there are a portion of these folks that are in these programs that do reoffend, which is probably going to be true with anybody who is on supervision, but it does look like it's a lower percentage than the people that were sent to prison for the same offense. We think we're seeing good results, but again, it's early days. A lot of these programs, even though the money started going out in 2013, have only been up and fully functioning for a couple of years. It took them a long time to actually make any changes and actually get the money invested in what they wanted to. So, I think it is a little early to say, but yeah, we are seeing some promising things up front, but it is certainly not night and day. It's very much county by county.

**Assemblywoman Jill Tolles (Assembly District No. 25):**

Thank you for the information, it's very helpful. I just had a clarification question to help me understand a number in the context of the total. I'm looking at the slide that breaks out the 2017 to 2019 Justice Reinvestment grant funding by county. That's the mechanism by which you can hover over investments. It's slide 12. It states that in that 2-year period, the total money of \$38,000,000 there was \$142,000 for restitution, and I was just curious to know if you could put that into context for me, maybe help explain a little bit better what that number reflects.

**Mr. Caldwell:**

I think a lot of that is job programs. We have a lot of counties that will set up something where they help offenders get work, and then a significant percentage of the money they earn goes to pay their restitution on their individual cases. Part of it, I think once restitution is paid, they make sure that some of that money goes to paying off their fines and fees and court costs, and then after that, once they're kind of back to zero, money can go into the offender's pockets and to whatever they want to spend it on. We have a number of job programs, and some of that stuff is connected up to some of the in-jail treatment and stuff that kind of becomes a little bit similar to like a work release program. But yeah, they really tried to focus that money on restitution up front.

**Chair Hardesty:**

Seeing no further questions from the Commissioners, I have one final question for you. It goes to the same slide that Assemblywoman Tolles was speaking about. That deals with the sort of yellow segment that shows roughly \$8,400,000, 21.6 percent having been

devoted to treatment. Is that the money that is principally allocated toward Oregon's specialty courts?

**Mr. Caldwell:**

Some of that goes to specialty courts. We have a whole bunch of grants. I think we have around 70 specialty courts in Oregon, and about half of them are funded by pass-through grants that go through our agency, and the other half are independently funded by the counties. So, they get their own grant money, but some of that is to go on top of that and kind of help beef up their specialty courts and hire additional treatment service providers to provide additional treatment beds and be able to handle a larger capacity of offenders that way. It's kind of supplemental.

**Chair Hardesty:**

Has Oregon developed an independent tracking system or accountability system for monitoring those who go through their specialty court programs and their recidivism and their success rates?

**Mr. Caldwell:**

Yeah. We do measure recidivism for specialty courts, but we just purchased—this has been a several-year effort—a 5-point program that is going to track all specialty courts, the ones that we fund through grants and then the other 35 or so that are funded independently. We're going to send that out to all the specialty courts in the state and they'll be able to enter all the offender information, sanction information, and that will give us better and more immediate data on how people are doing and how they are doing once they complete specialty courts or whatever treatment they're in. We are in the early days of that as well.

**Chair Hardesty:**

One of those issues, I assume, was an increase in the availability of specialty courts to that population that would qualify. Is that what you saw?

**Mr. Caldwell:**

Yeah, exactly.

**Chair Hardesty:**

In Nevada, our Legislature provided \$3,000,000 a year in general fund funding directed exclusively to our specialty courts. That was renewed again this last session as a result of how our specialty courts are using those dollars. We've had some presentation to the Advisory Commission, but perhaps this Commission would like to see that same

presentation on the utilization of those funds and how it has impacted those who have gone through our programs here. Is that something that folks would have an interest in? Okay, we'll call on one of our members, Mr. McCormick, to update and renew and we'll put that on our future agenda. Mr. Caldwell, I don't think there are any other questions of Commissioners. I want to thank you again for being available to make your presentation. I don't think there's anything else for today, and thank you for being available to help us out.

**Mr. Caldwell:**

Thank you very much. If anybody has got any more specific questions, some of these take a lot more to answer than I have been able to do today, but please contact me.

**Chair Hardesty:**

Okay, thank you. Commissioners, if I could just mention one thing before we move onto Judge Devlin from Connecticut, the purpose principally of the previous presentation, this next presentation and the one from Utah is to share with the Commission what other states have been doing, some with the support of Justice Reinvestment, others independently of that. Utah, you'll see, is a completely different approach. I'm trying to share with the Commission some of what we've learned about other Justice Reinvestments, and they all targeted each state directly with what that state principally thinks is its best approach.

For those who wish to make public comment, I'm not forgetting you. I'm just trying to deal with these time-certain presentations and the availability of our presenters. Judge Devlin is available to us for half an hour.

**Judge Robert J. Devlin, Jr. (Chair, Connecticut Sentencing Commission):**

Actually, my schedule opened up, so I'm good. Whatever you need. Yesterday I talked to Mr. Anthony and I was sort of constricted, but I'm okay today.

**Chair Hardesty:**

Okay. We'll proceed with your presentation. Thank you for being available to us, and maybe you can give us a real quick background of your role with the Connecticut Sentencing Commission and then move through your presentation under agenda item VII.

**Judge Devlin:**

I'm a Superior Court Judge in the State of Connecticut. The Superior Court is our trial level court in Connecticut. I've been a judge for over 20 years here in Connecticut. I'm principally assigned to criminal cases. From 2010 to 2017, I was the Chief Criminal Judge

in our state, and in 2011, when our Sentencing Commission was first organized and went into effect by statute, I was appointed by our Chief Justice to be a member of the Sentencing Commission. Last year, I was appointed to be chair of our Sentencing Commission.

Let me just go through the slides ([Agenda Item VII](#)), and then I'd be happy to answer any questions or try to field any comments that you might have. If you go to the slide that says "About Us," we are an independent state criminal justice agency. As I said, we were established in 2011 pursuant to an act of our Legislature. Basically, as we'll see as I go through these other slides, it's sort of a group of stakeholders in the criminal justice world in Connecticut who bring a lot of different perspectives to the issues that come in front of the commission. Our enabling statute has a very broad statutory mandate. It's not just sentencing, it's other policies that affect people going through the criminal justice process.

Looking at slide three, our job is to review existing criminal sentencing structure and make changes that may seem appropriate, changes to existing statutes, proposed legislation, policies, practices, and these are to be through recommendations both to the Governor and our General Assembly and appropriate criminal justice agencies. In Connecticut, we are not a sentencing commission that enacts sentencing guidelines. It's not like the United States Sentencing Commission or sentencing commissions around the country that create guideline sentences depending upon offense conduct and offender history. There is really no appetite for that in Connecticut by anyone, so it was clear right from the beginning that our role would be to look at sentencing policies, not try to engage in codification or enactment of sentencing guidelines of any kind.

On slide 4, we have 23 voting members. We have several judges in addition to myself who are on our commission. We have our Chief State Attorney, who is the highest prosecutor in our state, is an ex-officio member, as are other prosecutors on there, but also criminal defense counsel. Our Chief Public Defender is on there, as well as other defense counsel. The Commissioner of Corrections is a member. The Department of Emergency Services and Public Protection (DESPP) is our state police, so the Commissioner of the State Police is on our commission. The Department of Mental Health and Addiction Services, our State Victim Advocate and then our Court Support Services is the head of adult probation in Connecticut. We have two chiefs of police that serve on the commission, the chair of the Board of Pardons and Parole, the person in the Governor's Office who is sort of head of the criminal justice policy matters, and then members are appointed by the Governor and leaders of our State Legislature. These are citizen members, but they're almost all involved in nonprofit groups that are interested in criminal justice policy and work in the field in criminal justice matters.

On the next slide ([Agenda Item VII](#)), we make recommendations for legislation, a variety of things. One of the features of the enabling statute is that our recommendations are to be made to the judiciary committee of our State Legislature, and they're required to hold a hearing on anything we propose. Presumably, what we propose has gone through a pretty good vetting process and the Legislature felt that something that is proposed by

the Sentencing Commission should be given a hearing by the—they don't always enact everything or they don't enact it in the form that we suggest, but they at least give us a public hearing to discuss the proposals with them.

On the next slide, we sort of use the same process in all of the questions that come before us. We frame the question, and then reach out to experts in these areas, whatever it might be. We try to see if we can listen to a variety of research people on all sides of these issues, and also people who are stakeholders in the event that they may be directly affected by these laws. The commission usually forms a committee process that looks at the stuff fairly carefully, and they will make recommendations for the full commission, and then if the commission adopts those recommendations, they are forwarded to either our State Legislature or a state agency for some kind of action.

**Chair Hardesty:**

I'd like to go to this same slide, and particularly the beginning of the process. One of the challenges in our state is resources to develop evidence, to develop data on which competent decisions can be based. Do you have available to you staff? What is the source of the process for evidence based research? I'm not talking about risk assessment tools, I'm talking about digging into the data, digging into the weeds and actually understanding what we've got.

**Judge Devlin:**

There are a couple things in that regard. One is that we have an Executive Director. He is the only paid employee of our commission. Everyone else serves without compensation of any kind. But our Executive Director, Alex Tsarkov—and we also have developed relationships with the major universities and law schools in our state. There are three major law schools in our state, Yale Law School, the University of Connecticut Law School and Quinnipiac University Law School. They've been actually very helpful in terms of providing us with access to some of their scholarship. In addition to that, there are a lot of resources around the country that are more than happy to provide you with their evaluation of these things. There are think tanks, like when we were looking at bail and we were looking at this sex offender project which I'll talk about in a couple of minutes, they don't charge money. They're willing to come and share their knowledge and scholarship and expertise on these questions. We have not asked and had to work a bit to sometimes work through this, but I think through our relationships with the academic institutions in Connecticut, and now some of our relationships with these national organizations, we've been able to access, I think, some good research on a lot of these questions, like bail. There's a lot of work on bail around the country. There's a lot of work on these different issues. That's been it. It hasn't been like a big budget thing. Our budget is small. We have a tiny staff, and we have a relationship with one of our state universities that has provided us with some staff support, but it's not a big budget situation by any stretch. Does that answer your question?

**Chair Hardesty:**

Yes, thank you.

**Judge Devlin:**

Some of the projects that we've worked on over the past few years—Connecticut, as have all states, has had to deal with this trilogy of cases that came out of the U.S. Supreme Court starting with Roper v. Simmons and Graham v. Florida and Miller v. Alabama, which essentially precluded persons who commit offenses as minors from getting sentences of life without release. We had statutes in Connecticut that would provide for that which needed to be amended to bring them into conformance with federal law, but we took that as an opportunity to kind of take a look at this whole idea of juvenile sentencing and what seems to make sense, and we came up with a proposal that ultimately was adopted by our Legislature that's worked out actually quite well in terms of trying to create an opportunity for young people who commit very serious offenses when they're under 18 a path for them to get a parole hearing after sometimes a fairly long period of time, but not a lifetime of incarceration before a chance to get in front of parole. In Connecticut, our criminal law is 99 percent based on the Model Penal Code, but we have sprinkled through our statutes a bunch of unclassified criminal charges of varying types. We made an effort to look through our law to try to classify as many of those either as a classification of a felony or a misdemeanor, and I think that was sort of a technical project, but I think it went well. We looked at this whole idea of drug-free zones. That is, in Connecticut, if you sell drugs within 1,500 feet of a school or a public housing project or a variety of other sensitive places, there is an enhanced penalty that can be applied in that circumstance. We looked at that 1,500 feet. The idea, I think, behind this statute is that we don't want drug dealers selling to schoolkids, which is admirable and a proper thing to seek, but the idea is whether 1,500 feet was the right number, and we took a look at that, took a look at some experts on that and took a look at whether in our cities, which are densely populated in Connecticut, that 1,500 feet essentially made the whole city a drug-free zone and whether that was really what the Legislature had in mind. Then, we had things like a case come out of the Supreme Court that rendered a portion of our weapon in a motor vehicle statute unconstitutional, so we created a group that took a look at that and suggested a fix to bring that statute within that case. That was passed by the Legislature and went well. We've got a number of technical things. We've looked at some of our drug statutes which are somewhat densely written and revised them, not to change anything substantively, but just to make them more readable and basically stronger laws, because they're easier to understand by judges and lawyers and jurors and things like that.

Some of our current projects that we're working on now are things like certificates of employability evaluations. So, if someone has a criminal record, they may seek a license. Their criminal record might otherwise disqualify them from seeking that license. But the question would be whether that particular conviction should bar them from seeking that particular license. Sometimes it will, and sometimes it won't, but we have a process in place to see if someone might be eligible to get a certificate that would say, despite the

fact that they have this conviction, they are still eligible to become a barber or an electrician or whatever the particular license is in the person's situation. We are evaluating bail in Connecticut. We've looked at that, and we continue to look at that. We're looking at ideas about should someone after, say, 10 or 15 years of law-abiding life, should they be able to, with a fair amount of efficiency, have prior misdemeanor convictions purged from the record? That's controversial. We certainly haven't reached any kind of consensus on that. I think there are a variety of views on that on the commission, but that's something we're looking at. We're looking at this sex offender study, which I'm going to talk about in just a moment.

I think the pretrial release and the sex offender study are examples of how our work is done in our commission in Connecticut. In November of 2015, the Governor made a request of the Sentencing Commission to examine Connecticut's bail system, and we agreed to do that. Then, we entered into a partnership with the National Institute of Corrections to—this is a source of great research and great scholarship that costs us nothing—really take a look at that, and we had experts from around the country give us presentations about pretrial release, the effectiveness of money bail. We also heard from the American Bail Association, which is a consortium of insurance companies that support bail bonds in our country, and heard from them. Then, we took all that information and we basically came up with some recommendations in the form of a statute which was presented to our Legislature in the 2017 Legislative Session. A statute came out of that which adopted some of our recommendations, not all of them, so that statute's been on the books now since October 1 of 2017, and we're monitoring it to see if it's really trying to effect some of the changes that we were hoping to effect. What we see in Connecticut, and I don't know if Nevada has this issue or not, but we see some people who are held in jail pretrial on a relatively low amount of bond. These bonds are \$500 or \$1,000 or \$2,000, where really if someone could cobble together a couple hundred dollars, they would secure their release to a bail bondsman. We have—really whether we can do something to sort of affect those people to either see if there are other conditions of release that might be suitable to protect public safety and make sure they come to court, or other ways to maybe move their cases through the court system quickly. It was an effort to do that. I think there's more work to be done on that, so we're continuing to keep that on our agenda.

The next side talks about our study on sex offenders ([Agenda Item VII](#)). The Legislature enacted a statute in 2015 which directed our commission to take a comprehensive look at the sex offender registration and management and sentencing. We formed a committee consisting of commission members and others, other people who were interested in this issue, people who were homeless advocates and people who are a variety, the victims and groups who are interested in this topic, and we conducted a 2-year study which culminated in this report that we filed with the Legislature at the end of December of last year which has some recommendations to our Legislature looking at whether Connecticut should join the surrounding states in New England. Basically, Connecticut is an offense-based system for sex offender registry. Depending upon your offense of conviction, you go onto the registry either for 10 years or for life depending upon the categorization of



your offense. We thought most of our surrounding states are risk-based states. If you get on the registry based on what you're convicted of, but then there is a further evaluation of your risk levels which may determine where on the registry you fall or how long you're on the registry. Most of the states around us have a path off the registry for people who may no longer present any sort of a danger to public safety. We don't have any sort of exit off the sex offender registry. If you're on there, you're on there for the full term, either the full 10 years or the person's full life. We made some recommendations about that which the Legislature conducted a hearing on, but they did not choose to enact our law. But I think it's an idea that works. With further consideration, we'll probably refine it and present it to a future legislative session.

Let me stop there and just open it up for any questions you might have for me. I'd be happy to answer anything. We're a relatively young commission. We've only been in existence since 2011, and we sort of worked our way through these different issues. We're still sort of finding our way a little bit on this whole thing.

**Judge Scott Freeman (Second Judicial District Court):**

Thank you for your presentation. I wanted to go backwards, because you caught my attention at your initial introductory presentation. You indicated, and one of the things our Commission is looking at candidly is different frameworks related to sentencing guidelines. You had mentioned that Connecticut has no appetite for sentencing guidelines, and I was curious if, in your vast experience on the bench, 20 years-plus, you said so matter-of-factly, I'm curious why Connecticut has no appetite to entertain sentencing guidelines in any form.

**Judge Devlin:**

I think that certainly the judges in the judicial branch have no appetite for them, because we see them as infringing on judicial independence. They see that our statutes, as all statutes, have a wide range of sentencing options and that each case has to be assessed individually and we should trust judges to make good, sound judgments about what the proper sentence should be in an individual's case. In fact, one of the things I'm hoping to do in the future with the Sentencing Commission is to see if we can sort of get around some of these mandatory minimums that we have in our law where if there is a legitimate good reason and a judge can state reasons on the record to support it, the judge could go below the mandatory minimum. I think the judges see it as an issue of judicial independence. I think defense counsel, they see the guidelines—they're afraid of guidelines, as are the prosecutors, in terms of the line-drawing part of it. Where do you draw lines in terms of certain offenses? They feel the guidelines might not be really—and I was a federal prosecutor before I became a judge. I worked in a guideline era. I understand how they work, and I realize the guidelines themselves built into the system our ability for good reasons to deviate up or down from the guidelines, but I also think this whole idea, like in the federal guidelines, you can take appeals from decisions of judges on sentencing if the sentences seem to be unreasonably harsh or unreasonably light. So,

it's a combination of things I think that our practice in Connecticut has never been guideline driven, even when we had federal guideline sentencing in our federal courts in Connecticut. We just didn't see it as something that would enhance the administration of justice in our state. That may seem not very scientific, but I think that's the truth of it.

**Judge Freeman:**

Thank you. That's one of the main criticisms. I'm just curious since we have the opportunity to speak with someone from Connecticut what was happening in Connecticut, and that certainly is a common response, so thank you for that. You answered my question.

**Judge Devlin:**

Great.

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

I'm wondering if you have any data on the reduction in your prison rates and jail rates and other data available that you can share with this Commission. I had a conversation with the sentencing project based in Washington, D.C., and their feedback to me was that Connecticut and the structure and approach that you all are taking has led to a drastic reduction in the prison populations. I'm very curious to see exactly what that looks like. I also just want to comment that this approach, to me, the makeup of this sounds very similar to the makeup of the Commission that we are currently on and the Advisory Commission on the Administration of Justice (ACAJ) with the difference that every proposal will receive a hearing. It's not just a recommendation to the Legislature, so it's something that the Legislature will actually look at and deliberate and consider, so I'm wondering if maybe that's part of what the sentencing project views as the success of your commission.

**Judge Devlin:**

To go to your last point first, we very much strive for consensus, so there's a lot of, I think, evaluation of these issues through a consensus-building process. If you've got prosecutors, defense counsel, police officials, people who work in our judicial branch, if they all feel that this is a good idea, there is a certain amount of credibility that goes along with that. I think the Legislature likes that, which is why before I was the chair, the commission occasionally would have matters that came forward and it would be a vote, and the thing might pass. I don't like situations where issues pass because people who seem to be maybe on one particular sort of segment of the criminal justice stakeholders want it and others don't. I'm speaking for Connecticut now, we try hard to see if we can maybe work harder on those issues to come up with a proposal that would gain the agreement of everyone involved, so I think that's part of it. In Connecticut, our prison population, it's gone from probably upwards of 18,000 or so, and we're down around, I

think, 14,000 people in jail in Connecticut today. I don't know those numbers off the top of my head, I can get them for you, but that's rough, ballpark figures. Like most of the country, we've seen a reduction in our crime rates, particularly our murder rate is down in Connecticut, but it's also been a systematic thing over probably 10 or 15 years to try and evaluate the suitability of non-jail dispositions of different types. They aren't proper in every case, but they are proper in some cases, and we've had some pretty good success in terms of that. What seems to me to be the tough nut to crack is that as our prison population in general has gone down, we have about 3,000 people that are locked up pretrial and that needle, we can't seem to move it very well. Even though this overall prison population is going down, the number of people that are held for inability to make bond pretrial seems to be stubbornly sticking there, so that's why we're really looking at this bail reform stuff to see if there is a way we can kind of reconcile getting people who are dangerous and people who are flat risk, then they should be held in jail, and see if there are other alternatives for other folks. But I'd be happy to—I'm sure Mr. Tsarkov through our Office of Policy Management can get you some more detailed information about the prison reduction and things like that.

**Chair Hardesty:**

We'll have Mr. Anthony reach out to Mr. Tsarkov for that data and share it with our Commission. Again, I apologize to the Commissioners and to Judge Devlin. We have another presenter who is on a very short time frame. Are there any other questions from Commissioners of Judge Devlin before we move onto Utah?

**Mr. Hicks:**

Thank you for your presentation. You said that you guys are still in your relative infancy. You've been around for 7 years. It sounds like you've been heavily involved in your commission, and yours is made up very much like ours is here in Nevada. This is only our third meeting. This is the first time. This Commission was just created. I'm just curious, having lived it for 7 years, what advice if any would you give us as to how we should start this process? Anything that you think would be valuable for us as to where is the best starting point for us to have a meaningful impact on our state based on your experience?

**Judge Devlin:**

What we did is we spent probably the first several months—basically we would solicit from our Commission members the issues they thought were of some importance to them in their own sphere of the criminal justice world, and then out of that emerged probably four or five things that seem to cut across different disciplines that people were interested in, so we sort of looked at that as sort of a starting point to look at some of these issues. I think within the expertise—if your Commission is like ours, you have a tremendous reservoir of expertise on criminal justice policy just among your members and the things that they're interested in. We had these little sort of sessions where people would just kind of brainstorm about what issues they were interested in, and it cut across the whole

spectrum. People were interested in questions about conditions of confinement. People were interested in mandatory minimum stuff. People were interested in basically creating treatment modalities for people who were addicted to drugs. People were interested in racial disparity in our criminal justice system, and across-the-board things. We used that as sort of an initial building block. And then what happened, and I think it will happen with your group as well, is we would get these things from our Legislature or Governor unbidden. We'd just get these letters or these statutes saying, "Commission, look at this." I thought we had some good success particularly with that Miller v. Alabama thing with the juvenile statute, which everyone bought into it, everyone agreed to it and that became—I think the Legislature thought that was a good piece of work and they adopted it, so I think it's right there in front of you, the way in which to start identifying the key things to look at.

**Chair Hardesty:**

Thank you.

**Mr. Segal:**

Just following up on District Attorney Hicks' request for some advice about how we should go about our business here, what I see in reading the report that your commission presented regarding sex offender recommendations is that somehow your Sentencing Commission ended up concluding that one of the real problems in Connecticut is that you're being too hard on sex offenders, and that somehow it would be in the interest of public safety to go softer on them. So, how can we avoid going down that sort of path?

**Judge Devlin:**

I think we concluded in Connecticut was that we have 5,600 people on our sex offender registry, and that of that 5,600 people, there probably were a percentage of them that were of a high risk to reoffend, and what the public really needed to know was who those people were. When they clicked on their computers, they needed to find out who those people were, because those are the people that you're going to watch out for. There were a fair percentage of the people on our sex offender registry whose convictions were 10, 15, 20 years old who had never gotten into trouble beyond their initial thing, and which we thought that if we could create a two-tiered system, one a public registry for high and moderate risk offenders, and then another registry for law enforcement. So, if someone came on the radar based on a police investigation, the police could immediately get that person, monitor their address for law enforcement purposes. But we felt that it would be a better system. It's not so much going easy on sex offenders, it's about identifying the sex offenders that really are a risk to reoffend. We had a lot of expert presentations on this in terms of these sorts—risk instruments now are not perfect, but they're not bad in terms of trying to identify the characteristics of people who really are likely to reoffend in the future. Our objective, which has not been adopted by the Legislature, by the way—and sex offenders are not exactly the most popular constituency in Connecticut or

anyplace else, but there are people who are on that registry whose offenses are old, whose offenses were ones that are not likely to be repeated, and we just felt that focusing on the high-risk people or moderate and high-risk people was just better for our public safety here in our state.

**Chair Hardesty:**

Seeing no further questions for Judge Devlin, thank you Judge for your time today. We have a couple of follow-up questions for Mr. Tsarkov, which Mr. Anthony will follow up on for us, and I really appreciate you taking the time to present to us. Thank you very much and we look forward to visiting with you in the future.

**Judge Devlin:**

My pleasure. Thank you.

**Chair Hardesty:**

We have Marshall Thompson on the phone. Thank you for being here. I really appreciate it. I apologize for the delay, and I know that you're under a little bit of a restricted time also, so we'll get right into it. This presentation is under agenda item VIII.

**Marshall Thompson (Director, Utah Sentencing Commission):**

Thank you very much for letting me speak to you. I am sorry about the inconvenience. We ran into problems here and some statutory deadlines that couldn't be avoided, so I appreciate you accommodating that.

To begin with, I thought I could just give you maybe a little bit of the historical background of our Sentencing Commission, talk about some of the reforms that we've done and then talk about some of our current projects that we're working on. In 1983, we moved to indeterminate sentencing, and with that we started publishing guidelines, which was originally done by our Commission on Criminal Juvenile Justice ([Agenda Item VIII](#)). About 10 years later, we decided to break that up and have it specifically redone by the Sentencing Commission. That's how it's been done ever since 1993 in Utah. Our commission is made up of 27 different members. Some of those are statutorily appointed, some of those are appointed by the Governor and some of those are appointed by the different stakeholder groups. They include basically a cross-section of everybody who works in the criminal justice system in Utah. We meet about six or seven times a year to update the guidelines, and we also provide advice to all three branches of the government on criminal sentencing and policy issues, which includes taking positions on legislation as well as developing legislation with our subcommittee groups, finding sponsors for them within our Legislature and then supporting those as they go through the process to become law. I imagine your setup is somewhat similar as far as representation. Is that correct?

**Chair Hardesty:**

Yes, that's right.

**Mr. Thompson:**

Okay, great. In 2014, we started to look at some really hard numbers about our criminal justice system, and we asked the Pew Charitable Trust Foundation to come in and look at what was going on with some support from the Criminal Justice Institute at Harvard, I believe. They came in and they did some analysis by the numbers, and it really ran contrary to what the prevailing wisdom was at the time or the prevailing perception of how things were working. Most people you talked to before 2014 would swear that a nonviolent first-time offender wouldn't be imprisoned, and that that has never happened. If it did, it was super rare and you wouldn't worry about it. But we had a significant portion of our population that were either nonviolent or first-time drug offenses where almost 50 percent were either nonviolent or first-time offenders are maybe just there on drug possession. It kind of blew everyone's mind. It was way worse than we thought it was, so we implemented some reforms based roughly on the national model, the Justice Reinvestment Initiative that had been passed in several states. It was pretty sweeping reform. We reduced a lot of sentences for drug offenses, especially drug possession, and started trying to sentence people based on their risk to public safety, not so much based on what crime they committed necessarily. As a result of that, if you look on the second slide, you can see that we reduced the nonviolent prison population significantly. There's always more room to improve, and the possession-only people who are in prison have gone down. That doesn't mean that we do have an increased amount of violence offenders in person. Our prison population and the population on supervision has become higher risk and needs more resources in some ways. If you look at the first slide, this is data from about a year ago, and this is what our prison population has done so far. We dropped down to about 6,276 in 2017, and that's put us on a new trajectory. The reforms are actually a little bit better than what we had expected. The dark blue line is what was projected with our reforms, and then the light blue line is what actually happened. We're going up a little bit more rapidly than we had hoped, and that's one of the main issues that we're facing right now with our post-reform is we're having an increased number of people returning to prison for parole and going to prison from probation. As we sort through the data on that, it appears to be not offender behavior-based, meaning that we don't have new crimes. We are not seeing decreased public safety, so we think it appears to be agent behavior, meaning that the probation or parole officers are recommending people return to prison much quicker and violating them much more assiduously than before. Which is good, in some ways, and it's more uniform across the state, which is good, but it is a problem area for us. I think the biggest problem for us is that it appears and it's quite certain at this point that the benefits of our reform have mostly benefited the white defendants. We've actually increased racial disparity in sentencing with our reforms. Nobody's worse off than they were before in our reforms, but the white defendants have disproportionately taken advantage of the benefits of the reforms, to the point where it's a little hard to estimate, but our initial numbers are that you are a 12 percent more likely

to be sentenced to prison if you are a person of color as opposed to getting a probation recommendation. That is probably our number one priority for this year is to identify exactly what's happening there and take some radical steps to fix it.

I think one of the really exciting things we're working on this year is we just passed a law last year that tasks us to create probation supervision length guidelines. In the past, our guidelines have a recommendation of prison or jail or probation and other things, but it doesn't say if someone gets probation how long they should be on probation, or if someone's put on parole, how long their parole should be. The result is that we just kind of default to 3 years, but that's not based on any evidence, not based on any results, just based on a rule of thumb that's developed, the normative standard. Sometimes it doesn't get applied evenly, so you could be in one county and you get 1 year of probation, and in another county you get 5 years of probation. There is really no difference. The other problem was if your probation was revoked and reinstated, you could technically be on probation for life, even if your prison sentence was from 0 to 5. That just seemed really unjust, and we have people that actually did 7 years on probation and then had a technical violation and went to prison, so they ended up doing like 10 years on supervision when their maximum sentence was 5 years in prison. So yes, we're doing supervision length guidelines that will go into place starting in January. They're different from our sentencing guidelines in that they are mandatory. We intend to put in a range, but if there are problems with the fidelity of the enforcement of the reforms, then we can make the mandatory or decrease the range if we see a problem with the fidelity of the application. That's kind of where the Utah Sentencing Commission is right now. Does anybody have any questions or any areas you'd like me to talk more about?

**Mr. Callaway:**

I guess I'm kind of confused. I'd like some clarification. You said that the data from the reforms so far are showing a disparate impact on minorities, and I'm trying to understand in my brain, like the judge from Connecticut said, one of the reasons why Connecticut was hesitant to do guidelines versus policy was because discretion for the judges. So, if Utah has implemented guidelines, and we see a sample of these guidelines here on one of your slides, I would assume the guidelines are applied across the board to anyone who's subject to the criminal justice system in Utah. So, what numbers are you looking at and how are you determining that there is a disparate impact to minorities versus Caucasians, for example? Are you saying that the guidelines are being applied to some folks and not for others? I think your exact words "were some folks are taking advantage of the reforms whereas others are not," so I'm trying to figure out with guidelines how that can happen.

**Mr. Thompson:**

First off, our guidelines are discretionary, so judges and probation officers and parole officers would make the recommendations. The judges can deviate from them and there's a range that they can deviate to, so that's one issue. We believe there may be some

implicit bias as far as when there is deviation and when there is not, so that's kind of the human element. The other element, though, is there may be a structural issue as well, and that is sometimes when you're dealing with algorithms, and our sentencing guidelines are essentially algorithms. It's done by hand for now. It's going to be automated soon, but it is basically a program that determines where someone should be recommended, and sometimes there can be a part that creates a proxy for race, even though it's not explicitly stated as race. One area we're looking at in particular is criminal history. We use criminal history in our scoring, and in some cases, that has been shown to disparately impact racial minorities. As far as the data, how we've measured it, we have looked at people with the same score and the same criminal history and the same crime category, and then compared that to how they were actually sentenced, and there is a 12 percent difference between white defendants and persons of color. Does that answer your question?

**Mr. Callaway:**

I believe so, thank you.

**Mr. Thompson:**

We are also currently looking into an independent review panel that will review all algorithms and artificial intelligence and machine-learning programs that are used in our criminal justice system, so we have a pretrial release tool that we're looking at. We have our sentencing guidelines. There are predictive policing programs, things like that, and this independent review panel would be computer scientists that would challenge those algorithms and make sure they weren't accidentally coming up with a racist result. If you're familiar with what happened with Wisconsin, that's kind of what we're trying to avoid.

**Chair Hardesty:**

Where is the independent review panel coming from? What's its makeup and where do they come from?

**Mr. Thompson:**

Well, we're just in the initial phases of developing the concept. We're intending to hopefully have it in the form of a bill by our next legislative session, but ideally, it would come from university professors, people who have no connection to any private software companies.

**Chair Hardesty:**

Okay. For clarification, the slide that we have in front of us regarding Utah sentencing guidelines, is that a slide that was initiated in 1993? I'm trying to cover two different periods. My understanding is that Utah made a number of reforms in your statute House



Bill 348 in the Legislature in 2015, I believe it was, and that those reforms are a different set of reforms or a different set of sentencing issues, criminal code issues than the guidelines that are discretionary as part of your sentencing process since 1993? Is that right?

**Mr. Thompson:**

That is correct. However, in the last 2 years, we've done significant updates to our sentencing guidelines. You'll see slide 3 is the 2017 version. That's the latest version. This is just one small part of our guidelines. You can get them online. If you search Utah sentencing guidelines, you'll get them. In 2016 and 2017, we made significant updates, particularly with the way we score criminal history—it's not shown here—to be more in line with the statutory reforms that we made in House Bill 348.

**Chair Hardesty:**

You may be running out of time, but I wondered if you could share with the Commission, is I understood it, the reforms that were initiated in 2015 was the work product of the Justice Reinvestment assistance, and maybe you could identify some of those reforms, or maybe if you're running short on time, we'll just get that bill and share that with our Commission. But I wanted to give you a chance to highlight that before you have to leave at 11 a.m.

**Mr. Thompson:**

Yes. I appreciate that, and I do apologize for the time crunch. Yes, House Bill 348 made a number of significant changes. It reduced the penalty of a lot of crimes, especially drug crimes. You saw a lot of class A misdemeanors moved to class C misdemeanors, sometimes big jumps, and we moved a lot of third-degree felonies down into the misdemeanor range, mainly dealing with drugs and drug possession. We did leave a way for those to be enhanced, so if you've got three possession charges, you could get up into the felony area. One of the criticisms of our reforms was people have said, "You've hampered drug courts because you took away the threat of a felony and then people are going to want to go into drug court voluntarily because they don't have that hanging over their heads." But the numbers don't bear that out. We've had increased participation in drug courts. There's been some slightly conflicting numbers, but on the whole, our drug courts are doing as good or better than before, so that's really heartening. Another aspect of it that we haven't really touched on is juvenile justice reforms, and we significantly limited when a juvenile can be automatically referred to an adult court, when a juvenile can be automatically referred to court from school. We thought that was very important, especially with truancy. We had kids going to jail because they missed school, and it was causing massive problems. When a juvenile gets on the wrong path or is treated incorrectly, it creates problems for decades to come, basically. That was a big part, and we just adjusted those reforms again this year, and we'll keep doing it as needed.

**Chair Hardesty:**

Okay. Are there any other questions for Mr. Thompson before he has to leave?

**Keith Logan (Sheriff, Eureka County):**

When there is a deviation from the guidelines by the judge, is it placed onto the record as a formal version, and who had requested that from probation or from prosecution or whatever, where that deviation was requested?

**Mr. Thompson:**

Yes, anybody can request a deviation in the system. The defense attorney can, probation and the prosecutor can request a deviation or the judge can do it on her own. That must be placed on the record with an explanation of it. The guidelines, because they are advisory, don't create any substantive liberty interests under Utah law, but if the explanation is arbitrary or otherwise informed, you could appeal and have it overturned on that basis. It has to be stated on the record and then the judge can deviate.

**Karin Kreizenbeck (State Public Defender):**

Since they're discretionary, is every judge's ruling recorded so that you can know each time the guidelines are followed or not followed?

**Mr. Thompson:**

All of our courts are courts of record and we can order a transcript when we see problem areas. Again, a big challenge of all this reform is getting the right data at the right time and being able to understand it. It's a little bit difficult right now to see exactly how the sentencing guidelines were filled out and given to the court and then how the court interpreted them. It seems like you wouldn't be able to interpret them the same way. The little things slip in and sometimes people understand the category slightly differently, so there are issues like that that we're currently trying to track better. For the most part, we can look at where someone fell on our matrix and then see what their actual sentence was and see what the reasoning was on the record. We can track that.

**Chair Hardesty:**

Seeing no further questions, Mr. Thompson, you can make a clean getaway. I really appreciate your time here today. I anticipate there will be some follow-up questions. We will reach out to you if that is okay with some additional information, and I thank you very much for being available and I know you fit us in and we appreciate you doing that. Thank you so much.

**Mr. Thompson:**

I appreciate it. Thank you for your time.

**Chair Hardesty:**

Before we take a brief break, there are two points I wanted to raise with you, because it kind of plays into the length of our meeting. The first is, and I'm glad Mr. Hicks posed the question to the judge in Connecticut, the conversation about our Commission's approach, now that we've been exposed to what a bunch of commissions have been doing is precisely why we have agenda item XII and XIII. This conversation is going to start today. I certainly don't want to suggest it ends today, but I want to canvass each of you for your observations and your thoughts and suggestions and concerns about where you think the Commission should begin to go from here now that we have received some background about various sentencing commissions around the country. The second point I wanted to mention to all of you is this: in 2015, Nevada made a request. Governor Sandoval, myself then as Chief Justice, and then the leadership of the Legislature to Justice Reinvestment requesting that our state be considered by the Justice Reinvestment Initiative (JRI) to provide support and assistance for our review of our criminal justice system. Unfortunately, that request couldn't be satisfied at the time. They selected a different state. Since that time, I have been asking them to revisit this and consider Nevada. I was very pleased about 2 months ago to learn that we are being considered and Justice Reinvestment has now put Nevada in the finalists with Tennessee, Colorado and New Mexico. Next week, they are sending teams to Carson City and to Las Vegas to meet with various stakeholders around the state on May 2, 3 and 4. They want to meet with the leadership. Ms. Tolles, I trust you may have heard from Mr. Wheeler about this because they want to meet with the Republican leadership in the Senate and in the Assembly. They are also meeting with the Democratic leadership. They're meeting with Ms. Bisbee. They've already met with Ms. Wood, Mr. Dzurenda and others. They made a presentation to the Advisory Commission about 3 weeks ago as to what they propose and what they urge. Without any preconceived notion about what they recommend or do, the principal advantage to Nevada is this: they send 5 to 7 staff members into our state at their expense. Pew is the primary financier. The Koch brothers as I understand it are a principal contributor to this effort. They provide a deep dive into Nevada's data to assist the Advisory Commission and this Commission on what kinds of things we want researched, what kind of information, what kind of data do we want answers to. As you can see under agenda item XII and that handout ([Agenda Item XII](#)), our own Commission has identified a number of areas where we have data requests. The point of all of this is that if Nevada is selected, we would have an opportunity to ask JRI to use their staff to test the data we are interested in, and then from that, we receive a report that enables the Advisory Commission and this Commission to make some data-driven decisions. It'd take some of the guesswork out of the speculative comments or the anecdotal stories out of your decision-making process. I think that would be very, very, very useful. They meet with Governor Sandoval and Mr. Willden next week and many of you folks. I just wanted to alert you to that. If there's anybody here—and by the way, Mr. Callaway, I've got a call in

to Sheriff Lombardo. They want to meet with him or you or both if you are available next week. If there are other members on the Commission who would have an interest in meeting with the team, please let me know when we get to agenda item XIII and I'll see if I can get you on that schedule so you can also be part of those conversations. Then from that, they make a recommendation to Pew as to which state to pick. I'm hoping that Nevada will have a chance to take advantage of this resource and that we would get selected.

THE CHAIR CALLED FOR A BRIEF RECESS.

If we could circle back to agenda item IV, you have the minutes of the meeting held on February 16. Are there any edits or requested changes to the minutes of the meeting of February 16?

**Connie Bisbee (Chairman, Board of Parole Commissioners; Vice Chair):**

I wasn't present, so I'm going to abstain on voting on the minutes. But I want to make a comment that they were excellent. Having missed the meeting, I was able to read those minutes and feel like I'd been there, so I absolutely appreciate the excellent job staff did on them.

**Chair Hardesty:**

Yes, we are very lucky that the staff does such a thorough job, and we do appreciate that. I too read the 115 pages and thought to myself, I should stop talking.

MR. MCCORMICK MOVED TO APPROVE THE MINUTES OF THE FEBRUARY 16, 2018 MEETING.

JUDGE FREEMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY (MS. BISBEE ABSTAINED).

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I want to circle back to public comment. We had to pass that at the beginning of the meeting because of the scheduled presentations.

**Franny A. Forsman, Esq. (Federal Public Defender for the District of Nevada (Retired)):**

I've been a criminal defense attorney for 41 years, and 22 of those years I was the Federal Public Defender for the District of Nevada. I've also served for the last 10 years on the Supreme Court's Indigent Defense Commission, and I'm going to focus my comments today on urging you to consider the impact on indigent defense resources if you choose to adopt a guidelines system. But first, I'd like to respond to a question that came up from Mr. Callaway of the Utah director. Interestingly, and sort of disturbingly, after 30 years of guideline sentencing in the federal system, a recent report of the Sentencing Commission reported that an African American male receives almost a 20 percent longer sentence than a white male similarly situated, controlling for all variables, in the US Sentencing Commission. I mentioned that because I think there is a sense that a guideline system would cure that, so why is this happening? Well, they're having to look at that at the federal level, and they've had mandatory guidelines for a long period of time. It's now more discretionary. But as you will see in a lot of the reports that you've already got, compliance is urged because you're looking to do away with that disparity, but this is not a cure-all for sure. But I chose to look at and read Utah's guidelines and the details in the guidelines, the matrix they use, there are a couple of fundamental differences between the Utah guideline system and the federal system, but there are also a number of similarities in things like the criminal history calculation is a point-based system. There are aggravating and mitigating factors. There are ways of calculating whether a sentence should be consecutive or concurrent. There is, in fact, identical language which looks like it's pulled directly from the federal sentencing guidelines which is used to calculate the score. The impact on indigent defense resources is often forgotten when you're looking at the system, but the requirement for investigation, examination and analysis of guidelines will add time to the defense function, and without that added time, we're going to have ineffective representation of a defendant, particularly if you're urging judges to follow the guidelines. Their departures, for instance, I talked also with three Utah attorneys, one of whom was involved in what was just discussed as the most recent modifications of the guidelines. Their feelings were that what is really critical in the success of their guideline system—if it's successful, I haven't really looked at an evaluation of it—but they felt it was critical that the data that Justice Hardesty mentioned, the collection of data, they use the Pew Charitable Trust in Utah, that having adequate data—and believe me, the biggest struggle of the Indigent Defense Commission has been the lack of data in Nevada. So, the data portion of this is critical before any kind of guideline system is created, as well as the sentencing reforms that went into the package, that all of those elements were absolutely necessary before any sort of guideline system could be successful. So, that's what I have to say and I'm certainly happy to answer any questions that anyone may have.

**Chair Hardesty:**

Are there any questions for Ms. Forsman? Seeing none, thank you for being present.

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

I just want to briefly touch on agenda items X, XI and XII, particularly agenda item XI, the grounds for correction of error by Appellate Division number 5A, insufficient basis for sentence. The sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing. I don't know what it is like now, but I can only speak of what I know to be true in the past and how it has over the years and decades continued to still be. Back in the day, the district attorney would go for as many charges as possible, particularly in one particular case, they added a charge of a robbery, and it should not have existed because a victim was not robbed. A store, a business, was robbed, but they were not the victim, a business is the victim. Hence, an additional sentence of approximately 15 years. Now, the person would file it in a post-conviction petition, 1 of 33 grounds. The district court would not and did not address that ground that was a conviction of a robbery and the sentence that was imposed. It was never addressed. It would be appealed to the Supreme Court and the Supreme Court would just, normally it did, uphold the lower court's decision, which there was no mention whatsoever in the order denying the grounds, 33 grounds were addressed, 23 grounds were unresolved. It went from the district court to the Supreme Court. The Supreme Court never addressed those issues. It went on to federal court, at which time that sentencing structure and that charge was there, was returned back to district court for the court to do and address those grounds. The court did not do that. This person then would go to the Parole Board and it would be in the presentencing reports, everything. That charge should never have existed. My concern is that this seemed to be a pattern back then. I do not know if it is today, but these inmates are serving time for sentences that they were never charged or convicted of committing, and based on the evidence, it never should have because a victim was a store employee. It wasn't their money, it was the store's, but there were two robbery charges. That should never have existed on the second. What does happen is that it goes to the Parole Board. They look at the presentence report, so now they'll see that they have two counts of robbery, which the second shouldn't even apply. So, what I think should happen is that the defendant, the inmate, has probably already expired that sentence, and perhaps he's on a life sentence now, and because I can only see maybe one other remedy to fix this is to have the inmate either get the time credited for the charge of that additional crime that under 5A should never have happened and be credited for that, either going to the Parole Board earlier or to be released to the streets. I would like to see it retroactively put into statute somewhere, because I am sure that 10, 20, 30 years ago, we have to this day inmates in prison on charges that shouldn't be. They have gone through the process and are procedurally barred, and yet they have already served that time for those sentences, and that's something that I think that maybe the Sentencing Commission might want to look at dealing with the parole and trying to fix that where they've served the time. Thank you.

**Chair Hardesty:**

Thank you, Ms. Brown. Seeing no one else, I will close public comment.

As you will recall during the initial meeting of the Commission and from the Advisory Commission discussions in prior years, an issue maybe for us to look at is the sentencing credit system that we use. I think other Advisory Commission members have shared with many of you perhaps it's—let's just say it's complicated, and maybe not understandable to victims, not understandable to defendants, perhaps not understandable to prosecutors, public defenders or judges. If that's true, then maybe it's something this Commission should look at as part of its work going forward. We reached out to Mr. Pruyt, who is one of the rare people in the state who might be able to successfully explain how it all works.

**Garrit Pruyt (Deputy District Attorney, Carson City):**

Thank you for that, Chair Hardesty. Hopefully I can explain it.

**Chair Hardesty:**

Whether it works or not is another question.

**Mr. Pruyt:**

That is indeed the question. I can tell a little bit about where the presentation came from. It came back a few years for just the question Justice Hardesty had outlined is when looking at the statutes, even when you read through them all, it just leaves you with questions on how does this work, and then you can contact the Nevada Department of Corrections and they can give you a really in-depth explanation on how it applies and all the formulas they use to calculate the sentences out, and you still sit there going, "Okay, what am I supposed to do with this?" When looking at the way we calculate credits, it can be seen from so many different ways ([Agenda Item IX](#)). You'll have one side saying, "Hey, there's a get out of jail free card because of all these credits," then you've got the other side saying, "Well, I'm still doing a ton of time," or however it plays out. There have been a lot of sentencing reforms that have come over the past 15 years to our judicial system. What we want to look at is really where it is that we're at now. The first thing that catches a victim or defendant off-guard, anyone who is in the courtroom, is the judge pronounces a sentence. He says, "Okay, you're sentenced anywhere from—" we'll take a burglary. "You're going to get a sentence of 2 to 6 years." Everyone in the room is listening and thinking, "Hey, that's what the sentence is. I got it." Then perhaps a victim sees that person on the street 6 months later, and we get a phone call, "What happened? That doesn't make any sense." We have this perception of what's stated in court is not always the reality, and it's not that the crediting system that we have is in any way wrong or disproportionately benefits one side or the other. I don't think that's the case. It's simply a matter of understanding what's there.

The other thing that comes up, we had aggregation come up many years ago, and I think a lot of the issues with aggregation started to pass us by with time. Aggregation started to come about strongly in 2014. We'll get a little bit into that into that further on, but it basically eliminates multiple Parole Board hearings that now don't need to happen nearly

as often. The big thing is, one of the first takeaways is, a 12-month sentence does not equal 365 days behind bars. That's probably the best starting point. The next thing to take into consideration, and this is especially a hard thing for victims to understand. They may say, "Hey, this person committed this crime. They're a bad person. How is it you're telling me they're going to get something called 'good time' credit? They are not good." It doesn't work that way. Credits are applied in a sense irrespective of and for the most part types of crimes. There are lots of credits that are applied. We're going to go into them and who gets them and when they can be applied based upon the type of crime, but a lot of it has to do with how the person behaves while they're in prison, which I think based on reading the legislative history is the point of the credit system. We want orderly prisons. We want persons not to get in fights in prison. We don't want gang issues in prison. We don't want all the other issues that can go on in prisons, so modern incentives like the credit system can alleviate a lot of those stresses that basically the Nevada Department of Corrections would otherwise confront if you have a person that says, "This is what I got. This is what it is. There's nothing you can do about it, so just deal with it," and then you may have more issues based on that.

First, we're going to start with abbreviations. Every industry's got them. The first one is OMD. You may find this on paperwork that comes across your desk depending on what you do. The OMD is simply the Offender Management Division. The best way to think of the Offender Management Division is they're kind of the ones who do all the calculations. They kind of determine who is going to end up where, all those kinds of things. They balance things out for the prison system statewide. They have an office here in Northern Nevada, and they can answer a lot of the questions you may have going forward on specific cases. Another thing to look at is parole eligibility date, which is referred to as a PED date. That is the frontend date. The last one we're going to look at is the PEX date, the projected expiration date on a sentence. These are the most important abbreviations. There are a lot more when you want to start talking about parole and sentences and everything that goes into it, but these are the ones that come up most often.

First, generally, with credits, you want to know when's that person first going to hit the Parole Board and when are they going to expire those sentences? Those are the dates that in the research I've done in talking with people end up becoming the most important for people. Those are the questions people want answered. First, taking a little look back, you have your application of basically your truth in sentencing laws. Within a few days of initial intake, a computer is able to calculate basically a projected date for the inmate when he comes in so that they have an idea, and this recalculation takes place throughout the person's stay within an incarceration location in the State of Nevada, and it takes into account all different types of credits. Here you have a parenthetical that says "flat, stat and work," which are different types of credits which I'll explain in detail throughout the presentation included here, so if you look back, you can know exactly what's included within that calculation. Now, this calculation date can move forward and back, so if an inmate arrives within the Nevada Department of Corrections, say he came in from Northern Nevada, so they did that intake right here in Carson City at the Northern Nevada Correctional Center. Within a little while he meets with his caseworker. He's classified,



and they give him basically a date when he is projected to get out based upon his good time, if he gets a job, all this kind of stuff. It's kind of a best-case scenario, like "Hey, if you do these things, this is when you can hope to be out." Now, if you don't do those things, that can affect the dates going forward. They'll recalculate it and they can be re-updated on where they're at. So, it's not in a sense that they're in the dark. It takes some work to recalculate these dates, so as I understand it, it's done on a periodic basis so that inmates can basically have that knowledge of where they're at in their sentence, what dates they're really looking at, because even for them, they've started to understand, "Just because the judge perhaps said 24 to 60 months doesn't mean 24 to 60 months depending on what I do in here."

One of the most important documents is always the judgment of conviction (JOC). The dates that are in that judgment of conviction are absolutely controlling. That is what the Nevada Department of Corrections will use. So, if the dates are off in the judgment of conviction, that's going to create issues that ripple effect throughout everything. Every so often, I know that the NDOC, specifically the Offender Management Division, will send back to the sentencing judge in the district court a judgment of conviction and say, "There's something wrong with this. This needs to be taken a look at. I'm getting information from perhaps the inmate that the credit listed in here is completely off. He says he did another 60, 70 days within the county," or anything like that, and that's why those come back to the district court for review, because that judgment of conviction is so incredibly important because it is the baseline. So, as with any mathematical problem, if it's going to be  $X + Y$ , and the judgment of conviction has the numbers of what  $X$  and  $Y$  are, if they come in wrong, any numbers that are calculated based upon that are going to have issues going forward.

**Chair Hardesty:**

Errors in the judgment of conviction are also a serious resource drain. The Supreme Court and the Court of Appeals get a number of cases filed, which oftentimes the district attorney has to respond to. These are pro per requests where there are obvious errors in the judgment of conviction, so this is a major question. If we could find a way to administratively sort out the accuracy or inaccuracy of a judgment of conviction, it would be a big step, I think, in working from an accurate document. I'm interested in having Judge Freeman and Mr. Hicks and others throughout the Commission comment on this, but this is really a critical piece. When you have literally hundreds of cases, but certainly let's just say 100 cases where the sole question that's presented by the inmate is, "My judgment of conviction has an error." It has such an important role in everything else that Mr. Pruyt's talking about. I'm sorry for the interruption, but a few of these things I want to highlight as we go through.

**Mr. Pruyt:**

Thank you for that. I think highlighting those points, I can certainly say, I'm not hugely excited when I get another pro per petition on something to correct. It is very labor-

intensive. It involves many agencies, and a lot of times the calculation of credit, for example, that may be included within the presentence investigation (PSI) is going to come from the Division of Parole and Probation. There are a lot of entities involved and it is very time-consuming, so something done upfront I would agree would certainly alleviate issues confronted by the Nevada Department of Corrections and friction that they experience from having errors in the judgments.

The next thing to look at, we're going to go over the main four types of credit here ([Agenda Item IX](#)). The first one is often called flat time. This is a misnomer. Flat time is day-for-day time. It's, in a sense, what you're doing when you're in jail. If you are in a day, it's your day. That's what the flat time determination is. That's what it refers to. It's not anything else special apart from that. The next one is stat time, or what's often referred to by most inmates, this is their good time. Statutory goodtime credits. Basically, it's up to 20 credits per month or per 30 days served, but what's important here, and we'll get to why later, you have to serve 30 days to get 20 days. A lot of times, an inmate will do math and think, "Hey, I'm in a month, so you get to add these days on," and they want to calculate those days before they're necessarily served, and you'll get kind of bad math. In about two slides, we'll get to where this math becomes a little more instructive. Another type of credit we have is work credits. We'll get into a little bit of all the different types of work that there are, but know that you can earn anywhere between 1 and 20 work credits per month based upon custody level and job, and these have huge ranges depending on types of offense, where you're housed, the opportunities available to you. The last set we have here are merit credits. It's outlined in few different sections of statute, but most of the time where you're going to find merit credits is for education. If someone earns a general equivalency diploma (GED), if someone earns their first associate of arts while they are incarcerated. You can get extra, I guess, large block chunks of credit based upon the type of educational achievement or program that you participated in within a facility.

**Chair Hardesty:**

I know you're going to go through each of these, but if you would share your understanding of the legislative history or rationale behind these credits as you're discussing them, because I think the policy reasons behind some of the credits is something that the Commission may want to debate.

**Mr. Pruyt:**

I will certainly do that. We'll get into those in three slides, and I will include policy in there. For statutory time rules, it's calculated from the sentence begin date. The sentence date is moved back, however, by the amount of jail days noted in the judgment of conviction. So, this is where the judgment of conviction comes into effect. You have a sentencing date, that's usually not in question. Everybody knows for the most part what day they were in court. The computer keeps track of that, the documents generate pretty well there. That's moved back based upon the amount of time to ensure that each and every person who is incarcerated gets the benefit of each and every day that they were incarcerated.

Now, they're also going to get retroactively good time days for the time that they were within the county jail. This is important just because they were in the county jail does not mean that they would be deprived of these under the statute the way it's written. For many types of offenses, especially severe offenses that have long prison sentences associated with them, they often take a long time to adjudicate, so you may have persons—if you have a murder offense, it may not be so uncommon that they were held in the local county jail for up to 18 months by the time they could finally get to trial. Even if the preliminary hearing happen within 14 days, or let's say it happened in 30 days, trial continuances happen, many things happen, and depending upon the bail constraints, they would have been there. Once that is added into the sentencing date, either by computer or you can manually recalculate it, for each 30 days that they were in, they would get the 20 days' credit added on to ensure that they receive that credit.

**Chair Hardesty:**

I would ask Mr. Callaway to comment. Mr. Callaway, in the Clark County Detention Center, you have pretrial defendants who have been awaiting the adjudication of their case—let's just take murder cases, but others where I recall that the stat time was in excess of 1,000 days.

**Mr. Callaway:**

That's correct. Our jail puts out a population summary once a month that lists who's there and how long they've been there, and there are a few folks who have been in our custody a significant amount of time.

**Chair Hardesty:**

Could you share with the Commission, obviously not today, but at some juncture that report as of a date you pick so that the Commission can get a sense of the burden on your jail, and we might be able to get the same thing, Mr. Hicks, from Washoe County as to the length of time that some of these folks have sat pretrial. Not that I'm urging they should been released, I just want everybody to be aware of the incarceration burden that jails have to deal with on some of these pretrial cases and the delays that are occurring.

**Mr. Callaway:**

Absolutely. I believe they come out at the beginning of the month, so the May summary should be out probably within the next week or so if it's not out already. I'll check, and I'll get a copy to the Committee.

**Chair Hardesty:**

Send that to Mr. Anthony and we'll circulate it, and then the report also, while I've got you, the report you referenced on recidivism, you sent that to Mr. Anthony, and I'm going to

have him circulate that to the whole Commission also ([Agenda Item XIV A](#)). That's the federal recidivism report that Mr. Callaway was asking about earlier. It's a very interesting document.

**Mr. Callaway:**

I should note also that that population summary also includes other areas where folks are in our custody, for example, folks waiting to go to Lake's Crossing for competency hearings, folks that are waiting that have been sentenced but they're waiting to be transferred to prison, so there are a number of factors in that report that might be of use to the Committee.

**Chair Hardesty:**

That would be great.

**Mr. Pruyt:**

The takeaway from where we're at on this is just to note that regardless of the time that they're in a county detention facility, wherever that may be, they will get their statutory good time credits once they arrive at the prison, so that will not be deprived to them under the current statutory scheme that is in place here in the state.

**Mr. Hicks:**

Can I just ask for clarification on that? As I understand it, stat time, as you're mentioning, is basically you just don't get in trouble. You're there, you could just sit in your cell breathing, effectively. As long as you're not getting in trouble, you get those credits, right? So, in the jail, is there analysis as to whether or not they were a model inmate in the jail, or do they just automatically get those stat time credits regardless of behavior?

**Mr. Pruyt:**

The information would have to be basically transmitted to the Nevada Department of Corrections. Now, the documentation that generally follows any person going to the Nevada Department of Corrections would be their PSI, it would be their JOC and anything attached thereto, so absent an attachment of that information, it wouldn't necessarily become readily apparent to the Nevada Department of Corrections that perhaps they may not be entitled to those good time credits. There is a method for, in a sense, removing good time credits for poor behavior, which we'll get into a little bit later, but absent a transfer of information, to quickly answer your question, there would be no way for the Department of Corrections to know about that.

**Chair Hardesty:**

Wouldn't that present an additional problem, though? When a judge is sentencing a defendant—and Judge Freeman, I'll defer to you. It's been several years since I did this—but the judge sentences a defendant 24 to 60 months, and in pronouncing the sentence, also pronounces the number of days of credit for time served. I don't want to conflate credit for time served with credit that might be lost for misbehavior in the jail. The judge would have no way of knowing that. I think those are two separate things, aren't they? Maybe Judge Freeman can comment, and Mr. Pruyt, you can address that.

**Judge Freeman:**

When I do my judgment of conviction, I'll sentence someone and then I'll give them credit for time served, the actual time they served in the jail. My understanding is that time is upfront credit when they get to the Nevada Department of Corrections. It doesn't come from the backend, it goes frontend. What I did not know, which I learned from your presentation moments ago, is that they could be eligible once they get to the prison if I gave them 125 days' credit for time served off the sentence, then the prison calculates the 20 days' credit against that credit for time served, so they're actually serving 10 days of a particular 30-day sentence based upon their credit for time served in the Washoe County Jail, which is interesting. But the judgment of conviction says the sentence less the actual jail credits in the Washoe County Jail here in the north, and that's how I sentence and that's how the judgment of conviction looks.

**Mr. Pruyt:**

Based upon the judgment of convictions I receive, that appears to be fairly uniform across the state. There's the occasional outlier depending on department. And just to clarify, any actual day-for-day credit for that flat time, that will always be there regardless of behavior. A day in jail is a day in jail, but for example, yes, if someone had 120 days' credit going into jail, once they arrive at the Nevada Department of Corrections, they will receive 20 days for every 1 of those that they had served, and it would then be added on. In a sense, you could end up with 80 days more and be at 200 days' credit towards your parole eligibility day already.

**Chair Hardesty:**

As an example, this would have contributed—let's take a DUI (driving under the influence) for example, a third-time DUI, where a person might just rotate right through the prison system within 30 days.

**Mr. Pruyt:**

I would have to agree. In areas where I've seen it more in doing research is actually with possession of a controlled substance. A lot of times by the time—because probation is

mandatory upfront on the category E felony, if they are in fact revoked after some time, revocation generally following a few different violations that have come throughout the course of time, they have spent a good amount of time there, so by the time you apply credits to the frontend of that sentence, a lot of times, it's a book in an out depending on what parole eligibility is, what they did. I mean, there are a lot of things that will be considered by the Parole Board. There are a lot of things that go into that consideration, but in effect, yes. A person could be revoked from their probation on a felony, calculate the credits when they add it up, that might mean they go to the Parole Board within intake of the Nevada Department of Corrections and they may be paroled within a short time.

**Senator Ben Kieckhefer (Senatorial District No. 16):**

How often are stat credits denied based on activities that occurred in the jail, and who is responsible for making that determination?

**Mr. Pruyt:**

To be honest, I don't have a good answer for that, simply because I have not found a consistent mechanism by which the Nevada Department of Corrections is notified. I can tell you how those credits are taken away within the prison system for offenses done in prison for bad behavior there, but generally, in most all of the JOCs and information that I have reviewed that go to the Department of Corrections, it does not include a behavior report from the jail that would otherwise take those credits away, so it is very likely a disconnect.

**Senator Kieckhefer:**

Thank you, I appreciate that.

**Chair Hardesty:**

While we are on the topic, Mr. Callaway, if you would inquire if you don't know, I don't think I've ever seen in Clark County any behavioral information communicated to reduce stat time.

**Mr. Callaway:**

I know that we have been working through the Hope for Prisoners program. In the last legislative session, we brought a bill forward, and I apologize, I don't remember the bill number, but it was to allow us in the jail to not only help certain offenders that are sentenced to the Clark County Detention Center and are part of the Hope for Prisoners program to obtain a driver's license if they had lost theirs or they needed a duplicate license, and they could get credits for certain behavior, such as if they were enrolled in vocational training or if they undergo certain training while they're in the jail. However, I think that's specific to those inmates that are sentenced to the Clark County Detention

Center, and those wouldn't in any way be carried over or transferred if someone were in our custody and was going to go to prison, but I will verify on that.

**Chair Hardesty:**

Thank you.

**Mr. Pruyt:**

Perhaps the other thing I have seen that may be instructive, I have witnessed several times either in a justice court or district court when specifically looking at sentencings that may take place for the county jail only orders that say no good time. I've heard those orders pronounced. I haven't necessarily come across one in a judgment of conviction for a person going to a prison, so I can say on perhaps gross misdemeanors and misdemeanors, that can be addressed as far as jail behavior, but specifically not on the transfer to a prison.

**Judge Freeman:**

I was just going to clarify. I have not seen in my experience as being a criminal lawyer as well as a judge any time that there has been prejudgment credit the jail has taken away for bad behavior, even the worst of the worst that have altercations in the jail while they are awaiting their sentencing don't have credits taken away, so I've never seen that presentence. Postsentence is a whole different discussion depending on the circumstances. I've sentenced people to the county jail with no good time as well, but prejudgment, they get their day-for-day time, and that's what I've seen, at least in Washoe County.

**Chair Hardesty:**

But I think the subtle thing that, as Judge Freeman noted today, I'll bet there are very few district court judges in the state who appreciate the fact that the credit for time served contributes actually one-third, effectively. Or it substantially could be. The example involving Mr. Callaway, the question I posed to him, a defendant with 1,200 days of credit for time served for first-degree murder, that's going to be a substantial amount of credit. I'm not sure that this applies to murder cases, but let's take a sexual assault case. It would.

**Mr. Pruyt:**

What I have before you now is essentially the math of how it breaks down ([Agenda Item IX](#)). I can explain the much simpler way to go through this in a little bit, but in a sentence for someone who has a 12-month minimum, you're looking at 221 days of incarceration for just the application of good time credits and day-for-day time. These days can alter based upon adding work in there and other types of things. That's what it is. This is taking

into account doing the math to make sure that the amount of days served before the credits are applied so that everything is taken into there, and this is where it just seems so incredibly complex. One of the easiest ways that I have found to explain it to persons is when you're looking at all types of credit that are available to a person, let's take the best-case scenario. An inmate is incarcerated and makes the best of his incarceration. He behaves, he gets a job within the system, and otherwise does everything he needs to do while he is incarcerated. Generally, cut the sentence in half. That is by far the simplest rule of thumb in a case. If a judgment is pronounced, we could do possession of a controlled substance. We're going to do an 18 to 48-month sentence. We'll do kind of the top end of that on an E felony: 9 months before they would be eligible for parole, 24 before expiration. That's really how it comes down to. Now, each case will obviously be different, and you can get exact numbers, but if you want to be able to look at a case without full calculation each time, that is generally the simplest method. I'll get into a little bit. There are some caveats as to which cases get credit in different spots, and there are some easy rules of thumb for that too, but with our current crediting system, halve the numbers. That's your general best-case scenario. If a person is not otherwise compliant in prison or doesn't work, doesn't do anything, that can affect things there too. But on your best-case scenarios, you're generally looking at half. Occasionally, it might be a little less than half, but there are actually statutory protections in there as well.

**Chair Hardesty:**

To that point, and I appreciate you raising it, we've learned from a number of states that have sentencing commissions—not all, but some—they have adopted a reform where the defendant is expected to serve actually 85 percent or actually 80 percent. Have you looked at this or discussed with the Nevada Department of Corrections the impact that would occur on Nevada's prison population if in fact we had such a rule in Nevada?

**Mr. Pruyt:**

I haven't specifically spoken to them about the impact, but what I can tell the Commission is that we do have a minimum amount that offenders must serve. Our minimum amount is at 42 percent by statute. We have a specific slide on this, so you will have the information there, but that's where we sit. While I haven't spoken to them about it, adjusting from 42 percent to 85 percent would undoubtedly increase the amount of persons incarcerated regardless of parole, so that is certainly something to take into consideration if that's something the Commission is looking at.

**Chair Hardesty:**

My point is, such a decision could have a tremendous fiscal impact.

**Mr. Pruyt:**

It would have incredible fiscal impacts.



**Chair Hardesty:**

Okay.

**Mr. Pruyt:**

Moving on to work credits. Here, I'm going to break down a few different types of credits. In reading through the legislative history, the policy behind work credits is to provide basically on-the-job education and skills to inmates, and it keeps them busy. It comes back to one of those simple things: if you're busy, if you're working, you have some gratification in what you're doing every day, it's a lot less likely you're going to get in a fight with your cellmate or anyone else or do something that you shouldn't do, because if you have something that you're enjoying doing day by day that is passing your time in the best way, nobody wants to have that taken away. If you get in trouble and you lose your job, you most certainly can lose your job, and it can affect what other types of jobs you can get for the rest of your stay in the Department of Corrections. As I said before, jobs in prison are based upon custody status and level. If you have someone, let's take someone who went away for attempted murder. Very likely, based upon the charge that they have, their first stay is very likely to be in Ely State Prison. They're going to be there for a number of years for what is often referred to as an institutional adjustment period to see how this person is going to do. A lot of that has to do with types of offense. Obviously, not every offender goes straightaway to Ely State Prison, but for fairly violent offenses, that's very common, because they want to ensure that you're not placing certain persons who have committed a very violent crime with those who otherwise have not. While they're in Ely State Prison, the lockdowns are different, everything is different. It is basically, in a sense, a maximum-security prison. That's what it is designed to function as. But there are still jobs available. The first job that's probably most available would be a unit porter. A unit porter is a person who basically cleans up on the tier that has a number of cells on that tier. A unit porter has more freedom because they're able to be outside their cell even if it's to clean up the general shower area, the hallways, those types of things, so that would be the first job available to that person. Now, with time, good behavior, classifications can change.

That person then may move on to another institution, we can say Warm Springs Correctional Center, which is also here in Carson City. The types of programs that open up when you get to a medium security prison are big. Your chances of work change dramatically. We have all different sorts of jobs available. They range from clothing and manufacturing at Lovelock Correctional Center. There is mattress manufacturing right here within Carson City. There is a metal beam and fabrication shop here in Carson City. There's a furniture shop in Carson City. Those types of jobs change, but again, not everyone who applies to work in the furniture shop walks right into the furniture shop. That's just not the case. More likely, first, what you'll be looking at is kitchen duty. So, you've done well on your porter job. If we're going to take that attempted murder conviction, you may have gone to the kitchen, which you can do at Ely State Prison. From the kitchen, maybe you got a direct grounds job where you accompany the maintenance

person who is assigned to the prison. You may be their maintenance assistant for a given cellblock. There are all sorts of different jobs within there. For each of those jobs, the prison system has basically a list or a rubric of the types of credit that go with each type job. You have that huge range of anywhere from 1 credit for your job in that month up to 20 credits. When you get down to minimum security, jobs really open up, and in fact, I would imagine that most everyone in this room or in the room in Las Vegas has probably seen minimum security inmates out working in their general community. If you were to walk here around Carson City, if you see persons cutting state lawns or repairing things within state facilities with a state employee, it won't be hard to notice them. They'll be wearing all blue, all denim. Those persons are actually—that is their job assigned within the camp system that they're in, and their minimum security setup could be state grounds. You can earn up to 20 credits for those. The other area where you're going to find jobs is going to be in fire suppression. We have wildland firefighting units, and inmates are part of those units. There are several conservation camps across the state where those persons are housed.

**Chair Hardesty:**

The source of those credits though are regulation, aren't they? And they're adjusted based upon the regulation of NDOC?

**Mr. Pruyt:**

That is correct.

**Chair Hardesty:**

I wanted the Commission to know that these aren't necessarily statutorily assessed, these are regulation assessed by the NDOC Director.

**Mr. Pruyt:**

That is correct. The statute sets up the ability to give those credits, and basically you have a top and a bottom end as a statute does. Authority's been delegated to the Nevada Department of Corrections to create a crediting scheme, which they then have codified within their administrative regulations, and they publish their administrative regulations on their website. Any individual could actually go and look up any given job at an institution and see the amount of credits that can be earned for that job, and they will be applied each month upon completion of the work.

Moving to merit credits. Again, the policy behind merit credits is very similar to that of work credits. The whole goal in mind here is the individuals within the Nevada Department of Corrections, the greater majority will be paroled or expired and released into the community. The idea of being either with work experience or education that is obtained through their time while they're incarcerated, they will be in a better position to obtain

legal, good employment rather than going back to any deeds that may have landed them in the Nevada Department of Corrections in the first place. The education available, it varies widely. You have the basics. You're going to have your GED programs that are available. Every institution that I visited has a GED program that I've come across. I haven't visited every camp in the state. I have visited every prison more than once. They all have GED classes available to the inmates. You'll have an amount of credits that's available for that, an automatic 60 days. It's 90 days for a high school diploma and 120 days for your first associates degree. My recollection on these, I believe these are set forth within Nevada Revised Statutes (NRS) 209.4465. Now, there are other programs where you can also get merit credit, so they become a little more discretionary. They have a specific credit spot that's listed in statute as meritorious service. I'll admit, meritorious service isn't really defined under statute. It's left open. I found one spot where meritorious service credit was given I believe it was to an inmate on a fire crew who, to my understanding—it was a fairly short excerpt I could find—merited the meritorious service. It was that simple. But there are other programs that are there where you can get credits. Education credits, for example, here at Warm Springs in Carson City, they have a culinary program. Many inmates do everything they can—there is a long waiting list to get into the culinary program, and probably for obvious reasons. One, you're going to gain the skills that you need. When you come out, you can be a line cook. Also, the culinary program within the prison, you get to cook your own food for a number of months and you get to work with a lot of really fantastic stuff, so there is a huge draw to the culinary program. There are credits that are afforded for that. Also, there are credits that are afforded for substance abuse counseling. There are credits that can be afforded for sex-based counseling for different sex offenders. Those types of credit programs are available. They have structured living programs and life skills programs. Some of the structured living programs start to address persons who otherwise have diminished mental capacities, don't rise to the level of being unable to take care of themselves, but for many different reasons based on upbringing or just absence of skills, have lacked the basic skills in order to take care of themselves and they want to ensure that they are able to do that once they are released, so to incentivize participation in those programs, credits are available for that as well.

All of the credits that I've talked about thus far are kept within an individual's prison file or their inmate record, as it's called by most persons in the institution, so any every time they complete something, you'll even find a hard copy of their certificate within the file. It's all kept there so that these credits can be kept track of and then an individual can also go back through and actually manually audit the file to make sure that all the credits are there. The system is designed to ensure through checks and balances that if an inmate does something that merits credits that he receives that credit.

**Mr. Callaway:**

I have a quick question about the merit program. I fully get that educating inmates, the more educated folks are, the less likely they are to recidivate, and I think that those programs are good. But just for my own curiosity, especially when you get to the higher-

level education like above associates degree, do the colleges provide pro bono classes for the inmates, or is that part of NDOC's budget? How are those classes above high school or associates degrees paid for?

**Mr. Pruyt:**

There are a few ways that it can be paid for. There is not a standard university system or classes for higher education in the Nevada Department of Corrections. When I was talking about the culinary program, I believe that's a contract they have with the Western Nevada State College in which the Western Nevada State College provides the teacher and the equipment in order to do that. What the NDOC has tried to do is partner with other organizations to get that in there, because in all honesty, if you go through their general budget, they have a lot to allocate for their budget, and generally they have more things that they need to do with their budget than they have a budget for, so it's not generally coming from a draw. A lot of the higher education, if you want to talk about a bachelor's degree, there are a few universities out there who actually still offer correspondence degrees. They're based in large part off of any other type of degree you could obtain through taking an internet class, which isn't available to the inmates, but there are a few locations out there where they take correspondence course after correspondence course, generally paid for at the inmate's own expense if they want to do that, because there is generally not the budget to fund higher education or extra classes for everyone who would want it above a high school diploma.

**Chair Hardesty:**

We can get some additional information, Mr. Callaway, on your inquiry from NDOC.

**Mr. Callaway:**

Thank you, Chair Hardesty. That's not needed. It was just more of a curiosity.

**Chair Hardesty:**

Okay.

**Mr. Pruyt:**

So, the big question is how do the credits apply. We talked about the parole eligibility date and the parole expiration date. That's where we look at on where the credits apply. First thing: credits applied to the parole eligibility date on most every offense but a category A and category B felony. If you are sitting in a courtroom when a category B felony or a category A felony sentence is pronounced, easy rule of thumb. The frontend that you hear is the true frontend that would be served. Those credits don't apply in that way. You have to serve that time, so even with that good time, we had questions about good time and the way that comes up and the way that reduces a sentence, if you have a 24 to 60-month

sentence on a category B felony, that 24 months is to be served, except in rare circumstances. We'll get into one or two of those in a bit, but that is the easiest general rule of thumb. You have that frontend sentence. If it's an A or B felony or a few sex offenses that involve specifically force, that frontend sentence is exactly what it's purported to be when the judge states it.

**Chair Hardesty:**

If I can make a comment for the Commission, this is an example of why crimes in our categories have an important issue. This is just one of several examples. If you have a group of crimes in category B that maybe belong in some other category, it makes a big difference on the length of stay in the prison for that particular crime. I'm not answering the question, I'm positing the point. I think the Commission should debate that. That's why we've been struggling for the past three sessions in the Advisory Commission about whether certain category B offenses should be reclassified, and frankly certain category C offenses should perhaps be reclassified as well, but this is just a very clear example of where you've got to get these crime types in the right categories or you end up with unintended consequences, one of which is that the person convicted of this particular category B offense is not going to get the credits that a category C offender would get.

**Dennis Cameron (Representative, State Bar of Nevada):**

I wonder if you have some sense how the prison's ability to grant or take back these credits or stat time with the administration of the prison? In other words, I don't think people would want to be getting in trouble and risk losing this time.

**Mr. Pruyt:**

They have what are called offenses in custody. Offenses in custody have similar levels. It's just like our standard felonies on the outside. You have A's, B's and C's, so those offenses in custody based on an A, B or C denote the actual amount of time that can be taken depending on that. It does have an effect. Inmates are aware that these credits can be taken away, so a lot of times, the actual effect will vary depending on the specific inmate. If you have someone who may be staring at the frontend of their 25-year sentence, are they completely processing the full effect? Probably not. You have a lot of inmates, a good majority, who may be in there on lower-level sentences. Yes, they're aware that the credits can be taken away. In talking with inmates when I worked for the Attorney General's Office, their perception of it I will candidly admit here doesn't exactly match reality. Their perception is that these credits can be taken away at any time, so you better do what you need to do and take care of things, when in fact, it's not that way. When credits are given out, there are due process rights that attach to them. Those due process rights are followed, so in actuality, it's fairly rare that you find credits being taken away, but the fact that they can be has the intended effect.

Since we're on this topic, the decision whether to sanction and include this loss is statutorily directed to the Director of the Department of Prisons or his designee. Designee could come down to a warden, but I don't think you're going to find the designee being any lower than that. Even after that, you're still going to have a sign off. The other way that you can have a loss of credit can come from parole revocation. That can take place, but again you're going to come back to the Director, you're going to come back to the Parole Board. There are some ways that this is put in place and recommendations that are made, so the mechanisms are there, sometimes they're utilized when they need to be, and in my conversations with the prison, though limited in nature on this topic, the intended effect seems to be aware to the inmates, especially someone coming back on parole does not want to have them taken away. Upon a revocation, it's forfeiture. That's exactly what it is, and that is perhaps one of the strongest deterrence punishments that comes along. When you have forfeiture of your good time credits because you violated the terms of your parole and you go back, when they go in and recalculate that date and you lost that good time credit, you're looking at a very different date. The understanding of that, and that's one of those things. No one is entitled to parole within the state. It's not a statutory right, so the right to have parole is an opportunity, and if an individual squanders that opportunity, the statute takes into account addressing that. Now, there are all different levels of parole violations, and I'm sure as a Commission you will look at the wide range from new crimes to continuing not following conditions down to the simplest, or perhaps what would what may be considered the triviallest of conditions there. Perhaps when you come across those trivial conditions, credit can be restored in certain cases, so while on parole revocation, you have that automatic loss of those credits, credits can be restored based upon the nature of the revocation that took place, so the statute does contemplate a remedy for that as well.

Going back a little bit to the effect of the credits on conviction, credits apply to the backend of every sentence. They always apply, those good time credits. When you hear that backend regardless of A, B, felony, C, D or E, they apply. When looking at terms of supervision, that's where it's often not as known for people. I can tell you when negotiating cases, the difference between a B and a C comes up a lot, because everyone's thinking about that frontend, the public defenders or any other defense attorney. "Hey, let's call this an attempt and put it at a C." We know where we're going, so that knowledge I think especially among criminal counsel who deal in these cases is well known. But the fact, and certainly the public is not always aware of this, that if the backend sentence on a 24 to 60 is 60 months, you're looking at expiration with credits following that basic rule of thumb at about 30, so even if that first parole was denied at 24 months, 6 months later they expire with no parole supervision.

**Mr. Hicks:**

You bring up a good point, and I've seen that happen obviously often myself. Are you aware or is it common for inmates to, because of that backend date moving forward so much, just opting to not accept parole and flatten out that sentence so they don't have to be on paper once they get out? Is that a common occurrence?

**Mr. Pruyt:**

I don't know if I want to use the word common. Have I spoken to a large number of inmates who say, "I don't want my parole, I just want to be done and off paper, and if all I have to do is 6 months to a year to be off and not have to worry about screwing up and having my good time taken away, I would much rather just serve out that extra time and go do what I want."

**Vice Chair Bisbee:**

A lot of inmates will say that, but when they actually get to the Board, they'll even put on their Board report "I just want to expire," it's a low percentage. The ones that do say, "I'm just cleaning it up" have been out on parole or probation before and haven't been real successful. But when it comes right down to do you really want to be considered for parole, yes, even if it's only 6 months' worth.

**Chair Hardesty:**

I'm glad you brought this point up about supervision. This is from my perspective a serious concern, because what we see is the Legislature has allowed for the credits to be built on or to be taken on the backside, even on a first-degree murder case. I'll give you an example of the Pardons Board. Frequently, we'll get a request from inmates who want a pardon, and the request is they want to be pardoned for their sentence so that they're eligible for parole, but the continuous question is, what's going to be the supervision period left before you do that? Quite frankly, it's surprising to me the amount of supervision time that is available. I think from what we've heard from other sentencing commission states, many have had more success by extending that supervision period on someone well beyond the time that they were on parole. Quite frankly, if these extended supervision periods exist, I think you'd have even fewer instances of the type that Mr. Hicks asked about. I think that's another area that the Commission needs to think about is the extent to which these credits are offered on the backend.

**Mr. Pruyt:**

One think to take into consideration when you're looking at backend credits, you earn credits, you earn your good time when you're incarcerated, or under the definition of incarcerated. We'll get to that. Once they are paroled, good time stops in that sense. If that's making sense, once you're out, then it's just day for day until you expire, but by then, the majority of time, those good time credits have been calculated.

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

Parolees do get good time credit went they're on supervision with us. They get credit for paying their fees and fines and employment.

**Mr. Pruyt:**

Thank you. It's a little different than it was explained to me, so I apologize for that. But a good clarification. So, the good time continues, so that effectively takes care of the supervision that's there.

**Vice Chair Bisbee:**

That's only happened for the last few years though.

**Mr. Pruyt:**

That takes us to aggregation ([Agenda Item IX](#)). When you have aggregation, in a sense, the purpose of aggregation was to prevent when you have persons that go in with multiple different sentences, you would be paroled from one sentence to the other to the other. With aggregation, the purpose of aggregation is to basically aggregate all that time together, take the bottom-end sentences, the top-end sentences, add them together, and that is your aggregate sentence. You won't have to go from parole to parole to parole. That generally should be done at the outset now at the time of sentencing. There are a few ins and outs to aggregation. If a person has already been before the Parole Board on a given sentence and parole was denied, they can't then move to aggregate that sentence with, perhaps, two others that they have. Most of those issues will be cleaned up with time, and what we will see going forward will be aggregated sentences from the frontend. Like I said, a lot of those issues came out right away when inmates could file petitions to aggregate their sentences right up front and those kind of inundated the courts all at once. That seems to be draining off now that a lot of them have had the time to aggregate their sentences and made that decision to or not to, and then the ones going into prison are already coming in with an aggregated sentence if it applies to them.

This gets us back to that 40 percent rule that was mentioned before. If you get that perfect inmate who's going to go in there and they do everything—not only do they work, they go and get a high school diploma and they move onto an associates and they pick up—and probably in the best-case scenario, you're going to find this person in a minimum-security prison campus, so they're earning 20 credits per month based upon the work they're doing, plus their good time credits. In a sense, they're earning more than day for day. But the statutory—I guess you could say—protection is in here that you can't just utilize the credit system so much to your benefit that you serve no time based upon what is set forth under your sentence. The 42 percent is in there. If you have credits exceeding that, then you have credits exceeding that, but you must serve 42 percent of your minimum sentence before you're going to be eligible to go to the Parole Board. After that, it's up to the Parole Board. The credits, however, are still going to apply to the backend of your sentence. One question we often do get, and I don't know if it's as applicable here, is if credits are applied to persons who have life without. How does that work if you have a life case or life without? The NDOC still keeps track. They calculate a sentence. They basically put 99 years into their system, and they'll apply credits to it because they always



want to make sure that those credits are there, so they keep track even though the net effect based upon the sentence if it's a life without the possibility of parole, the credits don't matter as much. They keep an account of those just in case anything may ever change with that person's sentence or conviction.

This brings me to something that came up, and this one's a little newer. I'll thank Mr. Anthony for this. Upon completion of a trial the other day, I was informed by defense counsel, "Hey, expect a petition. This person is not going to prison." That got me thinking, what are you talking about? We don't want to go down that road. The trial I'm mentioning is a fourth DUI, so it's a subsequent felony DUI. The statute's pretty clear on that one and the sentencing range that we're looking at, and we're looking at a 2-year bottom. It brings us to residential confinement in prison and how residential confinement is actually considered prison under the statute. While you're on residential confinement, you get good time, the same way you would any other way, because it's technically considered a location of confinement outside the Department of Corrections but still within its area of purview with the help of Parole and Probation. The question is, when can persons take part and how does this all work? I bring this statute up because it's actually an area of contention right now. I know of a few petitions for writs of habeas corpus and mandamus that are pending in Clark County. Based off the other day, I expect one to be pending in the First Judicial District in a month or so. What's important to look at here is the statute is not as clear as it probably should be. I'm not here to advocate one side or the other on a statute, but to point out what's going on within the statute. This comes up most commonly that I've seen in research in the area of DUIs. You have persons who based upon the mandatory sentencing statutes if you have that second offense DUI, they're looking at that 2-year bottom for their mandatory prison sentence. Are they going to serve two years? It's a B felony. Under the traditional way of looking at things, you're thinking, "Yes, you must serve that 2 years before you're eligible for parole." But that does not take into account house arrest or residential confinement. Under NRS 206.429, the Director shall assign an offender to the custody of the Division of Parole and Probation of the Department of Public Safety for a term of confinement with the following limitations: first, you have an evaluation that's conducted. The way the statute writes it is that the abuser of a drug or alcohol has to be able to be successfully treated. Now, I certainly don't have tremendous experience or a long time looking at these, but most drug and alcohol counselors I find will tell you, "Yeah, we can treat them one way or another with time." This is what we have for step one. Step two that often comes up is that the Director's not required to assign them to participate in such a program unless they're in the minimum-security sentencing. Well, based on the sentencing statutes we have for DUI offenders, they're mandatory minimum security based upon the type of offense it was. In a sense, they would go from either bail, being taken into custody in a county facility, and then they would be assigned to a minimum-security facility after classification, or one of the main camps across the state. The area of contention arises a little more when we're looking at part three here, which is going to say that to the extent that it can be determined, the assignment should take place within a year of their eligibility date for parole. One would think, okay, well that sets it forth pretty clear. You serve a year, and at that year eligibility, you can be set up to go out. Previously, back in 2007, there was some treatment that

would take place in several phases of a treatment program. The first of those could occur within the Nevada Department of Corrections. Following 2007, that was removed. Funding kind of pulled away from certain mandates that were there, so we're left with some interesting parts of that. Within NRS 209.427, there is subsection 6, and it gives a definition not included in the slide, but basically it says that a person can apply for this type of treatment program, and then it has this interesting little caveat at the end, whether they're in custody or out of custody. One may think, "Well, how can you apply if you're not in custody when the requirements say you've got to be in a year with your eligibility date to be able to take part in this program and be on house arrest?" What is essentially argued is that this could say, "Well hey, they could have house arrest at any time and then apply for the program after that year's taken place, so they never need to go to prison." So, there's slight ambiguity in the law. What it appears the law was designed to address based upon the limited history I could find on the subject is you're going have persons, maybe they're out on parole and they have substance abuse problems. In lieu of going back in, they're going to take part in the program. Okay, you have that option. Or, even more likely, as came up earlier, you have persons who may have been incarcerated in their county facility for 18 months. Based upon the application of credits, though they're not specifically incarcerated or supervised by Parole and Probation or the state prison system, they would be able to apply. It can take into account in those ways, but as with any statute, attorneys are very skilled and adept at finding ambiguity in those in favor of one position or another, but it is something to consider. This is one of those areas where you have that category B felony where, though it was pronounced that 24-month bottom, that does not have to be the case. That 24-month bottom, though technically served under statute because they are still incarcerated, although residentially confined in their own home when it comes to something like a DUI.

**Mr. Cameron:**

I was trying to follow what you said, but let's say as a condition of bail that somebody's put in house arrest. Is that going to be a qualification under your statute as time in custody?

**Mr. Pruyt:**

I personally have not found an instance where that is assigned. It's something I'm certainly happy to look more into, but house arrest as a term of bail, generally in my experience and review, hasn't been considered confinement. It's usually house arrest or you can be in, but it's part of bail, so that's the best answer I can provide you with.

**Mr. Cameron:**

Residential confinement as you guys define it would be a different situation?

**Mr. Pruyt:**

That is correct. The way I understand it defined by this statute, it is a different situation, and this is coming under residential confinement specifically set up in this context as supervised by the Department of Corrections and Parole and Probation.

**Mr. Cameron:**

Thank you.

**Mr. Pruyt:**

As I said before, once you're in residential confinement, it's deemed to be a continuation of the offender's imprisonment, so everything we talked about as far as imprisonment still applies, so it technically checks those boxes that, though it's that B felony, it's still complying with the other portions of the statute. Of course, as with most everything that we talked about here, whether it be parole or other things, there is no specific right that codified to be assigned to the custody of Parole and Probation for house arrest in this way. It doesn't create some kind of its own special right in that context.

**Chair Hardesty:**

Could you address this hypothetical in light of this? I've heard Director Dzurenda express concerns about wanting to have the capability of transferring some inmates out to residential confinement. He's used inmates who are seriously medically impaired, present a low risk or no risk to public safety because of their medical condition. He's used geriatric defendants, placing them in residential confinement and expanding the Director's authority to be able to do so. I don't think those issues would be implicated by the hypothetical you're talking about, do you?

**Mr. Pruyt:**

No I do not, and the Director does have that power. What I was attempting to address here are basically misconceptions that persons have when they hear a sentence. Generally, you don't have the same public outcry if the Director says, "This person because of medical issues can be on residential confinement and they're at the end of a long sentence." You may get it depending on a specific case, but this is very different than when you have a person perhaps sentenced for their fourth, fifth or sixth conviction of driving under the influence, and then all of a sudden they're right back out and you get these questions that are either calls to a defense attorney's office or calls to the state on what is going on. The judge says "A and B took place," so the purpose is to help the Commission understand why it is that those events are taking place.

**Chair Hardesty:**

Okay, thank you.

**Mr. Pruyt:**

in closing, there is not much left to say, other than that if you're looking at those rules of thumb, when you look at it, the last thing I can say to remember, halve the sentence. If it's an A or a B, the frontend's going to stay the same, and generally, the odd context where you're going to find that that B doesn't stay the same will be in that DUI context right after the first year they can get out, absent the court's deciding there is any other type of ambiguity that may or may not exist in the statute.

**Chair Hardesty:**

Mr. Pruyt, I really appreciate the thorough presentation to the Commission. I know you've worked with this issue extensively. If you had the opportunity to make recommendations to the Commission, and you may wish to think about this and submit something later, but I think we would, at least I would welcome, your thoughts on areas you feel the Commission should examine and make some assessments about. Obviously, other Commissioners will have their own view on this, but I'd certainly be interested in your thoughts. Here are a couple of guideposts. My takeaway on all of this over all these years is that anybody who calls our system truth in sentencing is kidding themselves. We also have examples illustrated today where judges learn that what they thought they were doing, they weren't doing. Certainly, lawyers are in the same situation. I don't think that's a system that's truthful. I think that ought to be a guidepost. That doesn't necessarily mean that there aren't good policy reasons associated with having, for example, merit credits, but I think it is a serious flaw in our system when the victim, the defendant, counsel and the judge are not clear as to what this person is actually going to do. I would welcome, invite, and if you want to think about this, submit a separate letter, I would certainly invite your suggestions. I'm not sure it's something as, and I'll call it arbitrary, but I don't mean to suggest any insult by doing so, but a half-time is necessarily the right approach, but I do think we've got a system that is so convoluted and so complex that it has become unworkable even from my point of view. I don't know how other Commissioners think. Ms. Bisbee has to deal with this all the time. I would invite her comments and suggestions before we let you go, and maybe there are some additional questions that other Commissioners have before we end this.

**Vice Chair Bisbee:**

There is a saying in Nevada: don't do the crime if you can't do half the time. One of the huge problems A.B. 510 causes for the Parole Board is impact on victims, and we have to deal with that frequently when they are in absolute shock as to what has happened to a sentence. Well, the judge that he is going to do this, and we say, "Well that's not actually the way it works." That's one of the very first things on judgments of conviction, before it

goes anywhere else, offender management works really hard on trying to get back to the court to get them to correct them. Sometimes that works, sometimes it doesn't, but they do put a lot of effort into taking care of it there. On my end where we will see problems with JOCs is when they are a parole violator with a new felony conviction and the judge has made the sentence as concurrent, which the statute doesn't allow. Those will have to go back to the court to make them consecutive sentences. Stat time is always lost upon revocation. With the Parole Board, we can give that time back actually at the revocation hearing, or a portion of that time back at the revocation hearing. Other than that, if the time adds up to more than 6 months, we'll tell them to stay clean, don't get into any trouble program if you can, and write the Board for a request for restoration. For the most part, we've asked the Department of Corrections to approve of that and recommend it, and most of the time they do because that closes out their beds, and you're absolutely correct. There are people who will come back with years' worth of stat time. They panic when they realize it's lost upon revocation. One of the things, and it's a very complicated math problem, but it is possible in Nevada if it's a low enough category and a short enough sentence that you can expire your sentence before becoming parole eligible. On the shorter sentences, something we find very frequently is the first parole eligibility date is exactly the same as the mandatory parole review date, so there are some really interesting things that have happened as a result of A.B. 510. If we start thinking in terms of the 85 percent, the thing that I would say that the Commission really needs to keep in mind is that 62 percent of inmates are granted parole at any given time, and most of those have come nowhere near that 85 percent. If you go to an 85 percent when 62 percent are already let out before that, you can see the disaster that is. That means you have a whole lot more beds filled. If you want to work around that and go to an 85 percent, you have to reduce your sentences. That would be the only way that you would not have—that way the same beds would be occupied for the same period of time, but if you don't do that, you're going to run into a disaster there, and I think that it was the Winkle case that brought the residential confinement issues and DUIs to light, and that's really all I have.

**Senator Kieckhefer:**

The presentation, and I don't want to wade into politics in any real way, but I think this highlights the need and the desire to pass something like Marsy's Law in our state. If the gears of the justice system have a hard time understanding this, how are victim supposed to? I think some of those cries for more clarity and more involvement on behalf of victims make a lot of sense when you see something like this. I don't know if you've looked at how other states do this, and I always hesitate to do that as well, to look at other states as guiding lights always, but is our system more complex, less complex? Where do we fall sort of in the scale of complexity and difficulty when assessing these credits as compared to how other states do it?

**Mr. Pruyt:**

I'll be honest, I can't answer that. It took enough to understand our own system. Before I decide to attack another system, I think there's still more to understand with this system, so unfortunately I can't provide you with a baseline.

**Judge Freeman:**

When Ms. Bisbee had mentioned the Winkle case, the Winkle case was my case. The reason why I mention that to you, what's so important about your presentation is that now that I'm on the bench, I know that when I sentence a felony DUI offender, I know that they're going to be eligible 1 year before their first mandatory date, so I take that into consideration as a judge, whether I'm going to give than the mandatory minimum of 24 months or 36 because I want them to do more time. What's so important about your presentation is that a lot of judges don't take that into consideration from a uniformity perspective. I just happen to know that law because it was my law, my case, but it's really important to know from a truth in sentencing perspective what will happen on a particular sentence. So, if I didn't know that, if I didn't know about the program that let people out on residential confinement, I would think a 24-month minimum on a felony DUI is a 24-month minimum. But it's not, it's really a 12-month minimum with stat credit for time served. If you gave an offender the 24-month minimum as a judge and they had time in the county jail that they got credit for, they could become immediately eligible for release on felony DUI. So, I just want to make that comment. That's so important about your presentation because it tells us as judges what the reality of it is, and to echo the Chairman's comments, we need some uniformity to figure out throughout the state, because if the judge doesn't know that aspect, they're going to think that that's what the sentence is going to be, and that's really not fair to the victims.

**Chair Hardesty:**

But as part of that point, there is a trade-off, there is a fiscal trade-off. That's why the sentence lengths need to be examined, because you can't have both. You can't have it both ways, so you need to take a look. I think the Commission needs to take a look at some of the sentencing lengths. That's why over a period of time when one just defaults to a particular sentence length without understanding its full implications, then you end up with some of these problems, as well as some of these fiscal issues as well. Mr. Pruyt, did you have an additional comment?

**Mr. Pruyt:**

The only additional comment I would have, or perhaps even a recommendation, is probably just education to all those, either judges, prosecutors, defense attorneys, who work on the subject. I can tell you I spend a lot of time when I do talk with victims about the cases so that they are aware upfront. It's usually the first conversation we have before they go in the courtroom and after the courtroom so that they don't leave the courthouse

with this thought of, "Hey, I heard this, it's that." No, we go right through it. This is where the possibilities lie, this is where you may see the person, you may not, so we advise them of those types of things. I think certainly with whatever it is that the Commission ends up adopting or how they move forward, if they keep a credit system, don't keep a credit system, whatever it may be, I think letting especially all members of the judiciary understand exactly what it is that they're sentencing a person to so that we're properly arguing and talking about the same thing when we're in the courtroom would be of incredible importance.

**Chair Hardesty:**

With all due respect to my colleagues in the judiciary, having a simpler system would aid in education and understanding. I'm not sure that under the current system—I remember a presentation that was done at the Nevada District Judges Association 4 or 5 years ago, and my memory is that when all of the judges walked out of that presentation, they all looked at each other and said, "What?" I invite your recommendations. I trust you'd be willing to share your thoughts on that.

**Mr. Hicks:**

I have more of a comment. I think the public at large would be shocked by this kind of information. In my office, we also make the time to tell our victims about the expectations and realities. But what I often hear from the public is just a general lack of faith and anger, really, at the lack of truth in sentencing. I'm thrilled that this was brought before the Commission. I really think this is something that we need to look at. You made a great point, Justice Hardesty. If we eliminate good time credits and go to 85 percent, it's an impossibility. To me, what has been the biggest destruction of truth in sentencing is A.B. 510. The notion that there is a minimum below the minimum is what people get offended by and what victims get upset about. The thought that a judge could say to a defendant, "You're going to serve a minimum of 12 months," but in reality, they're going to serve 220 days is just a degradation of the system. I say all that because I don't know that we have to go to an 85 percent like a lot of people have said. I think one thing we could consider is just what blue-collar Joe off the street would think, and that is, "Hey, if you get parole eligibility at 12 months—you get a 4-year sentence, but you might get out in 12 months," they think if they do the merit and they do the good time, that's what gets you the 12 months. Maybe that's the focus we need is kind of that middle ground. I just throw that out based on experience, because I've really seen some troubling issues with A.B. 510 and its effects on victims, the public at large and truth in sentencing.

**Chair Hardesty:**

As a matter of history, Mr. Hicks, and I appreciate everything you said, I just want to remind the Commission a little bit about the history of A.B. 510. I don't know if Senator Kieckhefer was in the Legislature at the time that was considered. I know Ms. Tolles wasn't. I don't believe Senator Cannizzaro was. But the business decision being made by

the Legislature at that time was a circumstance in which the prison had people in closets, hallways. We had roughly 12,800 people in a system that could house only about 12,000 people. It was a stopgap measure to try to reduce or control the prison population, but what we see is that it had a whole series of unintended consequences. That's why I think an ongoing sentencing commission that can take a look at the various ramifications of these decisions and anticipate this stuff would make greater sense.

**Ms. Welborn:**

I have no argument that this system is an absolute nightmare. I have to go back and really look at this, not working with this every day, but I do think with A.B. 510 there was this problem of prison overcrowding, and it's a problem that we're still facing and why we're here and what we're here to address. I also want to state what I also heard from your presentation is that this provides a lot of incentive for very good behavior within the prison system, provides incentive for inmates to get a college education and to provide better outcomes when they do leave prison, so I think that as we're going through and we're discussing those things, if we're talking about overhauling A.B. 510, what does that look like as far as providing incentives and providing better outcomes for prisoners after they leave prison?

**Chair Hardesty:**

Certainly.

**Sheriff Logan:**

We've been talking about another state that hit 85 percent. We're talking maybe 42 percent. If we split the difference in the 60 to 70 percent with that education and the benefit of all those things that you just said, you get the degree, you get your GED or you go to a culinary school, maybe that's what exactly moves you to the 60 percent on the lower end of that scale as quickly as possible to hit the release with skills that you're not going to hopefully come back and help yourself, help the community, and then we have actual numbers to truly give victims and truly better understand.

**Chair Hardesty:**

It's an interesting point, Sheriff, but I think what we need to do is have a calculus of what would be the impact? We can calculate that. This takes us full circle to the issue about data, being able to make competent decisions with good data and good projections, and I'm not sure we know what percentage. Mr. Pruyt's point is that it's roughly 42 percent is how it works out, but where should we be? One of the things we want to know is what would we be doing to the system if we picked a percentage. What would that translate to? That's why I am so hopeful that we will be able to get access to the Justice Reinvestment Initiative's data system or data calculation.



**Magann Jordan (Victims' Rights Advocate):**

Another really important aspect to think about is also explaining to the victims when parole hearings are coming about. This truly affects when parole is happening. Unless a victim has completed a victim notification letter to the Parole Board or to the Department of Corrections, and say they moved over the 12-month or 15-month or 18-month period and they want to participate in the parole hearings as far as explaining victim impacts and/or the defendant's family and friends want to come and talk, they can't determine when this is going to be. It's very difficult from a victim advocate standpoint when I'm speaking to a victim and I'm explaining and I'm trying to explain the calculation. Just to highlight what Mr. Pruyt did say was almost calculated by 50 percent. We do that, because in our experience in victim advocacy, we do see that percentage. However, so many victims that I see in my office want to have a dialogue with the Parole Board, not just over what had happened to them, but the continuation of maybe prison phone calls that are happening or what's going on in their own family. So again, I think this also needs to be taking into consideration how we are also notifying victims of upcoming Parole Board hearings.

**Chair Hardesty:**

Okay. Seeing no further questions, I think we've covered it. Mr. Pruyt, thank you. Maybe in a week or two if you could, if that gives you some time to share your recommendations with the Commission, we'd welcome them.

**Mr. Pruyt:**

Thank you.

**Chair Hardesty:**

With that, I'd like to invite Ms. O'Rourke up to offer her input from the Division of Parole and Probation. This is under agenda item X.

**Ms. O'Rourke:**

With me, I have Captain Claudia Stieber. We are presenting on the PSI process and the regulations for PSIs ([Agenda Item X](#)). Hopefully, many of you have already seen his presentation and it will be a refresher. If not, hopefully you find it informative, and between Captain Stieber and I, we can answer many of your questions.

The first slide is NRS 176.135, which is the statute that authorizes the Division to conduct presentence investigations on defendants. As noted, there are certain offenses that require a psychosexual evaluation that must be conducted before the imposition of sentence or the granting of probation. Also, the PSI must include the psychosexual evaluation of the defendant. The psychosexual evaluation for someone that is eligible to

be granted a parole or a probation sentence has to have a psychosexual evaluation, and that evaluation has to conclude that these individuals do not pose a high risk to reoffend. Also, per statute, the psychosexual evaluation is scheduled by the Division and is initially paid for by the Division. Upon sentencing, those fees are transferred to the defendant. As a continuation of NRS 176.135, PSIs are also ordered for cases that do not have a fixed sentence by a jury or if a PSI has not been written by the Division within the last 5 years preceding the most recent offense date. Presentence investigations are not mandatory for category E felonies or gross misdemeanor cases, but judges can order those for those categories. Nevada Revised Statutes 176.145 discusses the content that is required for the report. In the reports, we list the criminal records, the characteristics of the defendant, which can include their financial status, employment, education, marital status, military service, basically their social life and identifiers that will help the Division and the court make a determination on their needs to grant a probation. We also include victim information, and we like to include the physical, psychological harm or financial losses of the victim. We also include any child support obligations. In addition to the child support obligations, if they have children, we like to identify the age of the children, the status of who has custody of the children, their whereabouts. Continuing on NRS 145, we also include their substance abuse history. The PSI contains a recommendation of the minimum or maximum sentence, a fine or both. We also can make recommendations for boot camp or regimental discipline. We also include the psychosexual evaluation so that our stakeholders such as the judge, NDOC and the Parole Board can review those reports. As you see in number two, there is additional information that we can also include in the report. That additional information has been determined with the input of the court, and it also includes gang affiliation, medical issues, physical identifiers, immigration status, if applicable, and also gambling activity if applicable. Assembly Bill 326, which was just passed in the last legislative session, made some changes to the PSI report, and then that, if gang affiliation is documented in the PSI, the Division is required to disclose the source information where that information came from. On the next slide, NRS 176.153 discusses who is entitled to the PSI report. Of course, the prosecuting attorney, counsel for the defendant, the defendant and the court. This statute also determines guidelines for when the report must be submitted. There are two statutes actually that talk about the guideline for report submission. The first is NRS 176A.100, which affords the Division up to 45 calendar days to complete the PSI. However, in this statute, NRS 153 also known as A.B. 11, requires the PSI to be submitted to the court no later than 14 calendar days prior to sentencing. This gives the Division a maximum of 59 days to complete the PSI. Sometimes we get into a little bit—it's confusing because if the sentencing judge orders the PSI to be completed in less than 59 days, that requires the Division to conduct the report, investigation and submit the report in less than the 45 days authorized in NRS 176A.100. A little confusing, but the Division is doing a really good job. We provide letters of intent to the Legislature. We just submitted a letter and we are 95 percent in compliance with that 14-day requirement, so we're doing a really good job.

The next slide talks about the purpose of the presentence investigation. The purpose is to provide accurate information to aid judges in pronouncing sentences. It's utilized by NDOC during the classification process and in determining program eligibility. It's utilized

by the Parole Board in making parole decisions. It's utilized by the Pardons Board to determine worthiness for pardon consideration. It's also used by the Division of course as an avenue to make appropriate sentence recommendations and special conditions, as well as agent supervision of parolees and probationers.

The next slide is an overview of the PSI process. So, the PSI starts when a person pleads guilty to a crime or is found guilty of a crime and the judge orders a PSI to be written on the defendant. The Division, our specialist, will contact the defendant and provide them with a detailed questionnaire and schedule an interview to meet with the defendant. During that interview, our staff—the purpose of that interview is to get an insight onto their social history, find out about their criminal history, learn more about the incident offense. In addition to speaking with the defendant to gain information for the PSI, we can also rely on other information, such as obviously the police reports, the district attorney's files. Sometimes folks that are coming in for PSI interviews have been with us in the past, so we can rely on our prior Division records as well as evaluations such as the psychological or psychosexual evaluations. In addition to contacting the defendant, of course if there is a victim, we contact the victim. The victim can be contacted in a variety of means. Usually we send them a letter letting them know that the defendant has either pled guilty or been found guilty of a crime. We follow up with telephone calls, we can email, we can see them in person. Some victims do like to come in and speak to us in person. Generally, they fill out a victim's statement and provide it back to the Division for us to review. If the victim is a child, we will contact the child's parent or guardian. In addition to—I've already spoken about determining the psychological harm and financial losses, but we like to take this opportunity if there is a financial impact to obtain bills or evidence to support the victim's claim for restitution.

The next slide is sentence recommendations. The Division utilizes a scoring tool that requires the PSI specialist to answer a series of 35 questions. The answers are then calculated to create a score which is used by the PSI specialist to formulate a sentence recommendation. The information in those 35 questions that we gather includes but is not limited to reviewing the defendant's felony convictions, their age at first arrest, number of jail terms and incarcerations. We also consider their substance abuse issues and severity and impact to the victim. For sentence options, some sentences are mandatory probation, some are mandatory prison, so of course those are some of our recommendations. We can recommend jail. When we make probation recommendations, we also look to see what an appropriate special condition would be, such as restitution, counseling, maybe getting a GED, something that will help them improve and help them get out of the society that they're in and help them get on their way. There were some changes to the PSIs. I've already talked about one. During the last legislative session, A.B. 291 now requires the Division to submit the scoring sheet and the matrix with every PSI that we submit. Additionally, A.B. 291 and A.B. 326 update the provisions so that the court may allow content corrections to the report up to 180 days from the judgment of conviction entry when the prosecuting attorney and the defendant agreed to those corrections.

On the next slide, Justice Hardesty asked us to provide statistics. These are statistics for Fiscal Year 2017, and what I have done is I have separated out the PSIs written by office and also by category ([Agenda Item X](#)). Judge Hardesty, you can see we've talked about category B felonies, and they make up the most of the PSIs that we've written and they exceed by 35 percent of all the PSIs that we've written. But the PSIs completed statewide in Fiscal Year 2017 was 10,135, and 11,183 were referred to the Division. As you can see in my matrix, I have a category of other. I just wanted to point out that that is a data entry error. We know that those are felony convictions, but we just don't know what category felony. While I hate to say that we have an error, it's a very, very small percentage, only 44 out of 10,000. Prison recommendation concurrency rate is 68 percent, while our probation concurrency rate is 87 percent, so we're doing pretty good with those. I know I've gone through this really quickly, but the last two pages of my slides are glossaries of terms. Unless you have any questions on those, I will be happy to answer any questions you may have.

**Chair Hardesty:**

Could you explain the concurrency rate calculations again, please?

**Ms. O'Rourke:**

What I mean by concurrency rate is, out of the PSIs that we—in the bottom right half of the slide, we made prison recommendations on 4,400 PSIs, and out of those, 68 percent of the judges agreed with our recommendations. For probation, 87 percent of the judges agreed with our recommendations for probation.

**Chair Hardesty:**

Okay.

**Vice Chair Bisbee:**

I think a lot of people don't know that you actually do post-conviction reports. Do you keep the stats on how many of those you're doing now?

**Ms. O'Rourke:**

We do, but I don't have them today. I wasn't asked for those, but yes. Post-conviction reports, as I said, some defendants are not required to have a PSI. Some category E felonies, gross misdemeanors or if there was a PSI written within the last 5 years. In order to help the Parole Board make parole determinations for those individuals, we do a report on the backend of their sentence. It's not as detailed as a presentence investigation and we don't make recommendations. It's an information report for the Board.

**Judge Freeman:**

I did have a question to follow-up to Justice Hardesty's question on your concurrency rate stat. I'm just curious why you keep a stat related to your recommendation for prison and whether or not the judge followed it and for probation, because I can tell you that I make my decisions based on all kinds of different factors. Sometimes I agree with the Division, sometimes I don't. Sometimes I agree with the Division for completely different reasons. I'm curious as to that statistic and its relevance.

**Ms. O'Rourke:**

Part of it is that it is something we can actually pull from our current information tracking system. As the PSI is written, we log in certain information and our Offender Tracking Information System (OTIS) of what the recommendation is, and when they come back from sentencing, we log in what the actual recommendation was. It was just information I decided to provide. Captain Stieber just reminded me that it is also a performance measured that we provide to the Legislative Counsel Bureau.

**Chair Hardesty:**

If you maintain this record, would Parole and Probation be able to prepare a report to break down this concurrency report by judge?

**Ms. O'Rourke:**

I think so, because the way our system works, we do have data that's—yes, I do think we could, without getting into the specifics.

**Chair Hardesty:**

So, without naming the judge, but going by department? I would request that you supply us with that report, because I think that this is the area I've been wanting to ask about as to whether there is substantial deviation. Just because at 68 percent, you've got some judges, I think, who are sentencing people to prison even contrary to the recommendation at a higher rate, and others at a much lower rate. I get the fact that judges should be and can be making discretionary decisions and have lots of reasons why they would do this, but I think it would be informative to the Commission as part of our data drill down how disparate is this approach between and among the districts in the state by judge.

**Ms. O'Rourke:**

Okay.

**Chair Hardesty:**

The other issue that I want to raise is you had 11,183 referrals, but you prepared 10,135. I think I know the answer to this, but could you explain to the Commission for the record the difference for that number?

**Ms. O'Rourke:**

It's a fiscal year, so when they're referred, so when the end of the fiscal year comes, our referred cases that the due dates haven't come yet will roll into the next fiscal year.

**Chair Hardesty:**

I think I know the answer to this question as well, but the total in the concurrency rate calculation of recommendations is roughly 8,500 out of 10,135 written. Could you comment on that please?

**Ms. O'Rourke:**

Yes, I can. Our total recommendations do not include recommendations for diversion court, boot camp, the mental health diversion court in NRS 485.453, so those make up the rest of the population.

**Chair Hardesty:**

I was going to request that additional information, those recommendations and the comparison of instances in which you recommended that.

**Ms. O'Rourke:**

Okay.

**Chair Hardesty:**

And the agreement or disagreement by the judge to do so, because that's roughly another 1,500 or 1,600 or so cases. Okay?

**Ms. O'Rourke:**

Okay.

**Chair Hardesty:**

The accountant in me just can't resist.

**Ms. O'Rourke:**

I noticed that too when I asked my staff what the discrepancy was.

**Chair Hardesty:**

But I thought it was specialty courts.

**Ms. O'Rourke:**

Yes, it is.

**Chair Hardesty:**

And diversions.

**Ms. O'Rourke:**

Yes.

**Chair Hardesty:**

That would be helpful to know as well. Again, by district. Or by judge, I should say.

**Ms. O'Rourke:**

Okay.

**Senator Kieckhefer:**

To your point about differences in sentencing outcomes, I think that's probably to be expected based on the fact that we elect our judges, but also that different districts and different communities may have certain different expectations over punishments for crimes, so it will be interesting data to see when it's generated for sure. I have a question and a request. Is there any way to produce for the Commission maybe a couple examples of some redacted PSI reports so that I can see what these things actually look like? Because again, I'm not involved, so I don't see them. Also, is there anything in the report that talks about, particularly in instances of plea agreements, charges that have been dismissed as a part of the plea agreement and whether that goes into the scoring system?

**Ms. O'Rourke:**

Yes. The cover page of the PSI report gives the information of the defendant's character. It identifies their name, case number, stuff pertinent to that offense. It gives the offense that they are being charged with and it also discusses the plea negotiations. Our matrix

talks about unrelated cases. I'm looking at our matrix, and the matrix talks about all of the convictions, whether it's a felony, misdemeanor, pending, unrelated cases. I don't think that the matrix talks about the actual cases that were dismissed. However, the actual PSI under the criminal record, the criminal record lists all of the criminal history that we have dispositions for as far back as we have the records, and those dispositions list the date, the agency, what they were arrested for and what they were actually charged with, and the disposition of that case. If they were arrested on January 1 for DUI, sentenced on July 2, sentenced to prison, if they were paroled, their parole status, if they got an honorable or dishonorable parole. So, in that criminal record, you will be able to tell not only in the PSI, it will note in the plea negotiation section what the negotiations were, what charges were dismissed, and also you can see all of their criminal history how plea negotiations impacted what they were actually charged with.

**Senator Kieckhefer:**

But if it's not in the actual matrix, does it go into the sentencing recommendation that goes to the judge, or is that just up for the judges' review?

**Ms. O'Rourke:**

What they plea to, just quickly glancing at the questions, it does go back to our matrix, so plea-bargain benefits are included. I apologize.

**Chair Hardesty:**

A key component, I assume the answer to the Senator's question about a redacted PSI or two, I think that would be helpful, and if you could, maybe one on a third or fourth time DUI, another one maybe on a sexual assault case or at least a sex crime, and an example of a psychosexual analysis. That would be tough to redact, but I think that would be useful to people who haven't read those before. And then a third area would be a category E felony where you've done one, because oftentimes, those are being requested because somebody who otherwise is probation-presumed and maybe has been on probation, now there's been a request for a PSI to send them to prison, so I think that would be worthwhile. This is an alert to the Commission. On Monday, the Advisory Commission is meeting, and one of the presentations, and we'll get the agenda item for you, is a presentation by the Criminal History Repository folks on the situation that exists in the Criminal History Repository. The presentation has already been made to the Committee I formed and chair, which is the pretrial release committee. Mr. Hicks is on that committee, as are a number of others. The presentation we received provided a rather shocking, I'll characterize it, list or number of cases to be entered in the system. Correct me if I'm wrong, Mr. Hicks, but it's like 1,000,002, I think I added. The question for you, Major O'Rourke, I know the Division does a very deep dive. I have great confidence in your work. You do a very deep dive on criminal history. But the question I have is, does the Division have a concern about this, about the Criminal History Repository data entry, and how do you go about trying to make sure you've got the most accurate criminal history?



**Ms. O'Rourke:**

The Division relies on National Crime Information Center (NCIC) and Nevada Criminal Justice Information System (NCJIS) printouts. What we do is we go through those records, and they are sometimes incomplete and, to be honest with you, it's been a long time since I've written the PSI. As a former PSI writer, that's the most difficult part of the report is trying to decipher those records. But what happens when the disposition is not—if a disposition is listed on the NCIC report, we assume it's correct. If there is no disposition, then we start investigating. I'm speaking for me. I would contact the district attorney's office for that county, that jurisdiction, to find out what the disposition was, and I've contacted jails, public defenders, courts, and it's a very time-consuming project to tackle. Luckily, in Reno we have Tiburon, in Las Vegas there's SCOPE (Shared Computer Operations for Protection and Enforcement) that helps us find those dispositions. Another change with the legislative session is we used to list all criminal history, whether the disposition was there or not. If there is not a disposition in the last 10 years, we will list that they were arrested but provide no disposition. We would go back as far as the NCIC would go. Now, we only go back 10 years. Sometimes, those lists will be half the PSI because we wouldn't have dispositions. I'm not saying that's just for Nevada. That would be for other states as well. Of course, a problem that we have is records retention. If we go back however many years, some departments don't retain records for that long. But what we do is we contact the jurisdiction where they were arrested and start with the courts, the public defenders, the district attorneys, jails, whatever we can do to get that information. Sometimes they tell us over the phone and then send us the proof in the mail, sometimes they charge us for that. We don't have funds to pay for those records, so we take verbal confirmation over the phone. I'm not sure, I think we used to have a caveat that it was a verbal confirmation of what the actual disposition was. But that's how we go about rectifying those discrepancies.

**Chair Hardesty:**

So, for Commission members, if you have time in your day, I invite you to logon and watch the hearing, at least with respect to the Criminal History Repository presentation on Monday, because I think it's relevant to your consideration of some of the issues we will be dealing with on this Commission.

**Judge Freeman:**

I was going to add that it would be helpful for Senator Kieckhefer to see a presentence report with someone who has a prior record that is fairly extensive.

**Ms. O'Rourke:**

Yes.

**Judge Freeman:**

Because what you'll see, and what I get from that which is so valuable—and again, I echo Justice Hardesty's comments here. Presentence reports for a sentencing judge are critical, and we appreciate the work that you do. If I'm able to tell where somebody has moved, they have a criminal history in Kansas and they have a criminal history in Illinois and they'll have a criminal history in Delaware and they'll have a criminal history in our state, and you actually can see the movement of the offender based on their prior record and where those prior offenses are, which is very valuable to me because it indicates that this person is not a part-time criminal. So he'd be interested in seeing something like that, because it not only shows you the original charges, but it shows what the convictions are. Although we pay attention to convictions, it also has a paragraph section on prior involvement with law enforcement, which we don't give much weight to, but it's very interesting to see a paragraph or page full of arrests with no disposition. That's very helpful to determine the level of the sentence to a particular offender. That would be helpful too.

**Mr. Hicks:**

Thank you for that presentation. I've looked at thousands of PSIs in my career, and they are so valuable. There's so much great information there, I really do think that it will be a valuable tool for this Commission. In line with what Chair Hardesty was asking, on the concurrence statistics, if a judge doesn't concur and let's say goes up in the sentence or goes down, let's say you are recommending a prison term and they do probation, or vice versa. Do you guys keep that actual sentence, or do you just put "lack of concurrence"?

**Ms. O'Rourke:**

I'm not sure I understand the question.

**Mr. Hicks:**

Let's say you recommended, to keep it simple, 12 to 30 on the case, and the judge says, "You know what, it's a close call. I'm going to give them probation." When you keep those records, do you put "Recommendation 12 to 30, judge went with probation," or alternatively, let's say you said 12 to 30 and the judge went, "You know what? I think he deserves more. I'm sentencing him to 19 to 48." Do you keep those numbers?

**Ms. O'Rourke:**

No, it's just whether they received probation or parole.

**Mr. Hicks:**

Okay, because I think if we are going to—

**Ms. O'Rourke:**

To see the deviation, is that what you're looking at?

**Mr. Hicks:**

Yeah, if we are going to try to drill down as this Commission to the data, it's very important to have what that deviation was, whether it was one way or the other or a couple months' difference?

**Chair Hardesty:**

This is why we want to get JRI involved in this, because what's the reason for the deviation? Was she up, was she down?

**Mr. Hicks:**

Absolutely, and I was a little optimistic that maybe you kept that, because we have more access to it, but I'm sure there's ways to get it.

**Chair Hardesty:**

But they have their records. We can get them.

**Ms. O'Rourke:**

It would have to be hand logged. It would be a lot of work. Let me explain it. Even if we recommend probation, they can deviate how long we recommend probation, they can deviate the underlying score. But if they still go with probation, we'll still log it in our system as probation. There would be a lot of deviations that we would miss just on the face value. It would be a lot of work.

**Mr. Hicks:**

Just one follow up to that. If you do, let's say, that discrepancy and amount of PSIs completed versus actual recommendations, you're saying that's boot camp recommendations or diversion recommendations. Are those the types that you mentioned?

**Ms. O'Rourke:**

Yes.

**Mr. Hicks:**

Do you keep records of if someone who gets boot camp, let's say, or someone gets diversion court, of the subsequent failure or success in those programs?

**Ms. O'Rourke:**

I'm not sure. if they're ordered to go to boot camp, if they succeed in boot camp and the boot camp sends us a letter and they recommend that they be granted probation and then we do what's called a boot camp letter for the judge so the judge knows that they were successful in boot camp, we don't even really log them as boot camp because they're not active with us until they come back. When they come back, they would just be a probation status. We would have to figure out how—let me first make sure I understand what you're asking. Are you asking how many people that go to boot camp are successful?

**Mr. Hicks:**

No, I'm just trying to get my brain around where we can find the most amount of data we need. I guess, for example, let's say you recommend someone goes to drug court. You guys are involved in specialty courts as well. So, if you keep track of how many times they've been sanctioned or if it ultimately led to a failure? Let's say it led to a failure, because you would naturally keep track of that. Does that offender essentially have an individualized file where you will be able to look at the PSI, the success of the boot camp or the success in probation with violations or not, and then the ultimate result?

**Ms. O'Rourke:**

Yes.

**Mr. Hicks:**

Okay, thanks.

**Mr. Cameron:**

I had a couple of questions about your matrix. I've seen a number of them, and you score different points in several different areas, and there are differences in each subsection as to what the point scoring will be. Is there empirical research that supports that type of scoring system, or is that more of making a call with each individual writer, or how did you arrive at those particular categories and the numbers that you've assigned? Because they make a big difference when you're at 55 and 54 makes you probation eligible.

**Ms. O'Rourke:**

It's going to be a long answer, so bear with me. Our current scoring tool is the Wisconsin scoring tool. It's pretty old. It's from the 1970s, and we adopted it in the 1990s, so it's been around long before I was even with the Division, so I don't know the theory or what the Division looked at when they decided to go with the Wisconsin tool. We are in the process of implementing the Ohio Risk Assessment Tool. Once it comes to Nevada, it will be the Nevada Risk Assessment Tool (NRAS). Knowing that this tool was very, very old, Chief Wood when she became Chief recognized that we needed something more modern, and it's been a slow, slow process because first we had to research different scoring tools to find out what we thought would be the best for the Division, and once we decided that we were going to go with the Ohio Risk Assessment Tool, we realized that we had to change our Nevada Administrative Codes (NAC). The NAC was very specific to the Wisconsin tool, so in December of 2016, our NAC was changed to allow us to go with a new tool. Through the Governor's reentry grant, NDOC is also using the NRAS tool for their portion of the risk assessments. We were able to—through that grant our officers were trained in the community supervision tool of the Ohio tool. The Ohio tool has many components, and they have a component for jails, prisons, probation. They don't have one for PSIs yet. We are training our staff in the community risk assessment tool. We should have everyone trained by the end of July of this year. The NRAS signed our contract with Ohio in March of this year, so they're going to be developing a risk assessment tool for PSIs, and that's going to be a while before we implement that, because they go through a lengthy data collection. I think it's 6 months of data collection, and then after that data is collected, then they go through a lengthy validation process, 12 months I believe, so we're looking that we won't have that implemented until late 2019. But going back to the current risk tool, you're right. There are 35 questions, and the questions are separated into 4 different categories, and that's prior criminal history, present offense, social history and impact on the community. Each one of those questions has a numeric value to it, and how Wisconsin came up with that numerical value and formulated those scores that you're speaking of, it gives us two numbers, a raw score and a total score which we transfer over to our matrix. How Wisconsin came up with that, I'm not sure. It's a validated tool. I think 2009 was the last validation. How those scores are used, how we plug those scores into this matrix is one score, the total score, is a score that helps us to determine if they would be a good candidate for probation, if they're a borderline candidate or if they're not a good candidate. Then there is a raw score. The raw score is put into the bottom of the matrix. The bottom half of the matrix, and I can provide this to you guys too if you don't have one, the raw score is used to determine whether they're high risk or their criminogenic needs, and it goes from a low range to a maximum range. Also the scale lists all of the sentence structures for each of the categories, felonies and gross misdemeanors. We use this matrix to plug in their raw score with whatever felony that they were convicted of, what the underlying sentence was, to come to a recommended sentence to give the judge.

**Mr. Cameron:**

I'll preface this next question by indicating I've always been impressed with the evenhandedness of the way you guys make your recommendations to the judge. But one of the big criticisms of the federal guidelines has always been it's supposed to be predicated on empirical data, but oftentimes it's not. It sounds like you guys are moving in the right direction. I'm just concerned if it's going to be a tool of that importance where I think the statistics are 87 percent of the judges along with the recommendation, there should be some empirical data to support the numbers. I'm guessing that you're working in that direction by establishing the new model that you're going to use, but is it possible to find out what data they used on that? They're going to come and do 6 months of data. Is that going to be Nevada sentencing data or overall throughout the country?

**Ms. O'Rourke:**

It will be specific to Nevada, as I understand it.

**Mr. Cameron:**

Okay, thank you.

**Ms. Jordan:**

Is it always an officer that completes the PSI reports? If not, what are their qualifications?

**Ms. O'Rourke:**

When I started with the Division Captain Stieber and I wrote a number of reports, but we have transitioned that over to civilians. They're called specialists, PSI specialists, and they're in a specific classification for PSIs. As far as what their requirements are, I'd have to look to see what the specific requirements are, but I know that we have a lot of civilian staff. Some of our staff have masters' degrees that write these reports, but they go through an extensive training with the Division. I know I've been on some oral boards for the specialists, and we even give them a writing test to see. We give them a little offense report and have them write a mock offense report to see how they will do with our reports. I hope that answered your question.

**Ms. Jordan:**

Thank you.

**Chair Hardesty:**

Seeing no further questions, thank you very much. We appreciate the input. I do have one request if you could add it to the other requests, and that is share with the

Commission a copy of this assessment tool that you were referring to that Mr. Cameron was asking you about.

**Ms. O'Rourke:**

The Wisconsin tool?

**Chair Hardesty:**

Yes.

**Ms. O'Rourke:**

Okay.

**Chair Hardesty:**

Thank you. Does that cover it, Mr. Cameron?

**Mr. Cameron:**

Yes, thank you.

**Chair Hardesty:**

It's actually two, I'm sorry.

**Ms. O'Rourke:**

The matrix is separate from the tool, but yeah.

**Chair Hardesty:**

Both of them, if you would. Thank you. In the interest of time, the next area of the agenda relates to responses we received from North Carolina ([Agenda Item XI A-2](#)), Oregon ([Agenda Item XI A-3](#)) and Virginia ([Agenda Item XI A-4](#)) to follow-up information. It's in your materials. I don't know whether anybody has any additional questions. I don't know that it's necessary for Mr. Anthony to regurgitate what you can read. If you do have additional questions, if you would let me know or Mr. Anthony know, then we'll put that on the next agenda to do any follow up or clarify anything that we've received from those states. Are there any questions at this time about the material that we received from either North Carolina, Oregon or Virginia? Seeing none, then we will move on to agenda item XII. At my request, we had received requests from various Commissioners in response to my request that you do so about what data would you like to see. Staff has compiled the responses that we received from the various Commission members regarding data

that you would like to see. I'd like to open this up based upon either the presentations today or other information that you have received in these hearings or other reasons. Does anyone have any other data requests that they would like to make? This is going to be an ongoing issue. I don't think it's something that is static. It's dynamic. But this is a request at this point to see if anybody has any other data requests. We've identified several throughout the presentations today. I don't mean those will go on the list, but we've identified those, but I'm talking about anything else that may have come to mind that you'd like to have us include on the list.

**Mr. Segal:**

Actually, I do, and it has to do with restitution. I know that my office prosecutes a lot of white-collar crime involving financial loss to victims, and I know that a lot of judges in determining whether to send a defendant to prison or grant them probation take into consideration, and I often hear this argument from defendant's, that if the defendant receives probation, they'll have an opportunity to work and earn money and pay restitution, and I know that weighs on the minds of judges. It weighs on the minds of prosecutors, because we want to make sure that our victims get restitution. It would be interesting, I think, for the Commission, and certainly for myself, to know how much of restitution that is ordered is actually paid.

**Chair Hardesty:**

I think it's a great item to add. If I may, I'd like to expand your point. There are so many issues surrounding restitution. Yours is one, but I'd like to expand that. Not only is there an issue about how much restitution is ordered and how much is collected, but how much is collected during the time that the defendant is under probation and how much goes uncollected when they get off of probation? That is an ongoing concern. I know it was when I was a district court judge. I believe Parole and Probation has restitution reports that can answer some of those questions. Is that true, Major O'Rourke?

**Ms. O'Rourke:**

Yeah, we do keep track of restitution. As far as after they're off probation or parole, it becomes a civil liability, so that's where it becomes a difficult number to track for us.

**Chair Hardesty:**

I think you're going to be stunned, Mr. Segal, at the amount of uncollected restitution, so I'm anxious to get that information, and we will add that to the list. Major, if you could share with us what you folks track, that would be helpful. Would you be able to provide the restitution information from the Division?



**Ms. O'Rourke:**

I can get with my fiscal staff and see what we can provide. Like I said, it will be difficult because once the parolee or probationer is off supervision, we don't track it at that point. If they pay after they're off, it will be difficult for us to give you a good figure.

**Chair Hardesty:**

I don't doubt that. I'm just talking about while you have them under supervision.

**Ms. O'Rourke:**

Yes, we should be able to do that.

**Chair Hardesty:**

Okay.

**Christy Craig (Chief Deputy Public Defender (Alternate for Tegan Machnich)):**

I would also point out, and I think it's important for all of us to remember, that when someone is on parole or probation, Parole and Probation sets and collects and divvies up their monthly funds, whatever they are, in a certain format. If someone's paying \$100 a month, part of a goes to supervision, and Parole and Probation is the one who makes the decision about how much goes to restitution.

**Chair Hardesty:**

Right.

**Ms. O'Rourke:**

Actually, the probationers and parolees actually come in and they pay a specific amount to supervision fees and a specific amount to restitution. The Division doesn't arbitrarily decide what fund is paid.

**Chair Hardesty:**

We'll dig into this more deeply. I might invite Judge Adams to come and make a presentation to the Commission. Frustrated with this same issue, Judge Adams decided for about a year to start collecting his own restitution. That is, the restitution that he ordered. It overwhelmed his staff, it overwhelmed him. They didn't collect much, and the whole process showed just how difficult this is. Judge Freeman laughs because it was pretty—

**Judge Freeman:**

He made the Division of Parole and Probation come to court on orders to show cause, why they weren't collecting restitution.

**Chair Hardesty:**

And the defendant, of course, is homeless, has no job and no money.

**Ms. O'Rourke:**

Another comment on restitution that makes it difficult for the Division is that the probationers get good time credit, so their sentence is shrinking, but the restitution is only shrinking a little bit. Of course, we have the option to add the credit back to their sentence, but that is a consideration of how we apply monthly restitution payments and their overall supervision. Sometimes that makes it a little bit difficult.

**Chair Hardesty:**

Mr. Segal, I'd like you and the Commission to think about this, because it was a proposed solution. Part of the problem is that the Division of Parole and Probation does not have the staff to adequately pursue the collection and the supervision and so forth of restitution, and they generally do not have these people under supervision long enough to get it collected. We had proposed I think 8 years ago that the collection process of restitution be taken up separately as a collection effort and that victims in the state be assisted by a collection effort, either supervised by the State Controller's Office or some other agency. I'm told and I'll defer to Mr. Hicks and others that defendants generally are more concerned about the collector than they are about their Parole and Probation supervisor. If you can institute an effective collection mechanism that lasts well beyond the supervision period, I think we would be far more effective at actually gaining collection restitution on behalf of victims, so I'd like the Commission to hear more about those proposals that were advanced 8 years ago with the State Controller's Office. Mr. McCormick, I think we still have a lot of data in the AOC about that, right?

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

Yeah, I think it was A.B. 196 of 2009.

**Chair Hardesty:**

It was.

**Mr. McCormick:**

It's my recollection that initially restitution was included in the amount that would eventually end up at the Controller or the county office to do collections, and then it was taken out somewhere along the line in the process at the request of the Parole and Probation.

**Chair Hardesty:**

Yeah, that was when I was Chief Justice the first time. We tried to do that, unsuccessfully.

**Assemblywoman Tolles:**

I want to revisit a statement that was made in a previous presentation by Mr. Pruyt about the parole violations and that they could range for a more serious to very, very conceivably trivial. Is that an appropriate data request in terms of what constitutes a Parole and Probation violation and how and if we categorize them?

**Chair Hardesty:**

Ms. Bisbee has some current information.

**Vice Chair Bisbee:**

We actually do collect data on parole violators as to whether they were technical, whether it was a new law. We actually have that information right now.

**Assemblywoman Tolles:**

Thank you. I bring it up because I know we had some of that discussion this past session in regard to A.B. 181, what constitutes honorable versus dishonorable discharges in regards to probation, and whether or not those were technical violations or more serious violations, so if you have that data—

**Vice Chair Bisbee:**

I know we do for parole violators. I don't know if you capture it on probation violators.

**Ms. O'Rourke:**

Yes, we capture the same information for parole violators as probation. We only list three categories: technical violations, new charges and absconders. As far as what led them to the technical violation, we'd have to dig into each specific report. But those are the categories that we can query.

**Chair Hardesty:**

We'll put that on the list, because yes, it's available, but like other areas, we need some bodies to dig into this data. That's why I'm so hopeful that we will be selected as a JRI state to collect that kind of data and to make those distinctions. What is a technical violation? What's the definition of it? What are the range of things that might be included in it? Should we have different definitions? That type of thing. Any other suggestions to be added to the list?

**Mr. Callaway:**

Not really a suggestion of something to add to the list, but just kind of a general comment regarding data. At this point, between this Commission and the Advisory Commission, Mr. Chair, I'm sure you're sick of me preaching this, but to me, the data has to be meaningful and it has to be detailed, and I think if we're looking at how we can improve sentencing in the state, before we can identify solutions, we have to identify where the problems are. I'm not convinced at this point that we have taken a look at our system. We can say North Carolina does this or Virginia does this or Tennessee does this, and that's great, but if we look at the people that are currently in prison and we look at why they are there, how they got there, what led them to that, and when we can identify the folks that we say, "You know what, we've got this group of people here that absolutely should not be in prison and they're here. What was the problem that caused them to end up here?" Or maybe we look at those folks and we go, "You know, gee, after looking at this information, most of these folks sitting in prison are probably where they should be." Now, obviously we can't keep people in prison forever. I know that folks have to get out at some point when they've served their time and they've been held accountable, but what I'm getting at is before we say, "We need these sentencing guidelines" or before we say, "Let's implement these programs or let's look at this percentage or let's get rid of these credits or add these credits," I think we really need to look at what the focus is of what we're trying to address and identify those key problems so then we can start working towards fixing those problems. Maybe it is an eye-opening situation where we do say, and I'll use category B for an example because that's an area we continue to talk about over the years, and the example I always give is there were times when we had presentations where somebody came in and said, "You know, we looked into this and 72 percent of our prison population is category B offenders," and that data means nothing to me. I want to know how that person ended up with that charge. What were they originally charged with and what did they plead to? What was the conviction? What was their criminal history? How many times had they been before a judge before the judge finally said, "You know what, I've had enough of your shenanigans. It's time for you to go serve some time for what you've done." Or to the point you made earlier, Chair Hardesty, looking at the habits of sentencing by the judges. Maybe there are those cases where somebody had a bad day, did something stupid and got the book thrown at them and they're serving a lengthy sentence for something that they really shouldn't be there for. I think that until we really dig down and look at that data, it's difficult to look for and find solutions until we've identified those problems. To wrap up my lengthy rant here, I think that all of these

categories are great, but we just need to be sure that we really dig down and really get all the facts, the totality of facts, not just a snapshot here or a snapshot there, which doesn't help us accomplish our goals.

**Chair Hardesty:**

Mr. Callaway, I never get sick of hearing from you. I very much appreciate your remarks, and I think it's a great place to start and that's why I'm hopeful, frankly, that we get selected by JRI, because that's where they will start. Who's in prison, why are they there, what are the circumstances behind that and what is the issue? I would just supplement what you said, though. Let's assume that everyone in prison appropriately belongs there. Then the next question is why are they there for the length of stay? Because length of stay as much as anything drives the fiscal impact. The Sentencing Commission has not debated yet, and I'm hopeful that we will, the lengths of sentences that have been set for certain crimes. We can't throw life without at everybody, and as well, the issue on category B's is that you have a number of crime types and those category B's that have sentencing lengths that may not match up with other category B's, or more appropriately could be treated under some other category. That's the debate I think one needs to have if you want to have a serious impact on prison population, even if we assume that everybody who's there should be there. There are lots of questions that surround this. The last presentation that we got in February from the prison raised more questions than it answered. To have a Commissioner say, "Well, this obviously shows that we don't have a bunch of people in prison who shouldn't be here," you can't make that conclusion yet until you drill down into why they're there and what were the circumstances that took them there. But in addition, how long have they been sentenced to be there? I think all of that requires extensive data evaluation, and that's what having staff people who are experienced in dealing with this population and their PSIs and their criminal history and their sentencing transcripts and JOCs will be able to share. The representation to me by JRI is that they provide a written report on all of this information by the end of the year if we're selected, and they dedicate five to seven staff people who sit in the prison and will also sit in other offices that have this data and generate it for us. I think it would be a very valuable tool. Otherwise, we are expecting to do this by asking people who are already overburdened to generate this data for the Commission. You and I have been asking for this for however long and it just hasn't happened. We've got to find a way to get all of this out here where we can make some good business decisions, and assessing who's in prison and why is important. Now, if the answer is we're perfectly satisfied that everybody in prison should be there and we're also satisfied that they should be there for the length of time set by the judge and we're also satisfied that they should have been there even longer, then we probably should be telling the Legislature, "You better come up with some money," because as of now, we've got 14,000 people in prison and we don't have a capacity for that. So, if that's what our report is, that's what our report is. But the facts dictate the recommendations. Since we've moved on from data requests and into this general discussion, let's continue the general discussion beyond Mr. Callaway and I having our conversation as we do almost all the time.

**Ms. Kreizenbeck:**

It seems like a lot of these sentencing commissions were initiated or driven by an immediate need to build another prison. Does anybody have the resources to determine where we are in that regard? Are we bumping up against having to build another prison when we talk about funding?

**Chair Hardesty:**

We can get an answer to that from Mr. Dzurenda. My understanding is yes, but we'll get some specifics from him. But the answer is, that's my understanding.

**Senator Kieckhefer:**

Certainly since I was elected to the Legislature in 2010, our state population has increased by 300,000 people or so and we don't have any additional capacity with our correctional system. There are multiple dynamics, certainly. I have a question relating to data, and some of it has to do with length of sentence, and I've communicated this with Mr. Anthony before. I think it goes back to A.B. 510, but that was 2007 and I wasn't here, so it may have been a different piece of legislation, but it has to do with the change in the enhancement for crimes committed utilizing a firearm. A lot of discussion about gun violence, and I'd be curious to determine what's happened in sentencing based on the change from the consecutive and equal enhancement to the judicial discretion that's now in statute. I'd like to understand if possible what that meant for sentences and if there's any way to track that.

**Chair Hardesty:**

I think it's definitely trackable, and yes, we can find that out. Assuming we get the people that we could use to mine the data, but the data is available. Any other comments about the mission of the Commission? The approach or steps we should be taking or data you'd like us to request?

**Vice Chair Bisbee:**

If we get the Justice Reinvestment grant or assistance, when would that start? Are we able to continue going on while they mine all that data, because you guys are absolutely right. If we don't have the data, it doesn't matter what we do.

**Chair Hardesty:**

Yes. To answer your question, after next week, the week after that, they make a presentation to the Pew Trust as to which state they recommend. It's been represented to me that if we are selected, the 5 to 7 staff members will be in Nevada by June 1. I've already seen the draft, by the way, of the letter that they're asking the Governor and the

judiciary and the Legislature to sign, which is an invitation to accept Nevada, and it outlines generally speaking what kind of things we want to have them look at. First among the list is going to be who's in our prison and why. That's part of the approach. We would get interim reports as we progress, but at the very beginning of the process, they're going to want to get from us, "What do you folks want us to look at? What is it you're trying to do?" Then, we'll make some recommendations and give you some suggestions as we see data also. It's a collaborative effort. They'll be working principally with the Advisory Commission, but obviously with this one as well. They promised the report by December. That would mean that if we got such a report, that we would all be sharing Christmas and New Year's Eve together. I don't think any of you believe me.

**Mr. Cameron:**

Just as a thought in regards to spending time prior to getting all of this data, which is voluminous and hard to get at, there might be some policy considerations we can push around I think with all the presentations we've had and all the comments, one of the areas we're inevitably going to have to look at is the reasoning and the length of time in sentences for B, C and maybe some A felonies based on amounts of narcotics, whether or not the B felonies need to come down. Those are areas we might be able to look at based on simple policy matters

**Chair Hardesty:**

Well, I think the Commission might want to have a fundamental debate. Do you want to become a guideline state or abandon that idea and just focus on what we're doing now? To go along with your point, Mr. Cameron, I think the Commission can also assess and gain information about what crimes are mandatory sentencing and what crimes aren't and why are they mandatory? We have a number of crimes that have mandatory sentences in this state. They give the judges no discretion. Is that a good idea? A bad idea? Is there a middle ground? Should we reconsider it? If you're going to be doing guidelines, then you really have to have a lot of this imprisonment data before you can develop the guidelines. I know some of you may think I'm a real advocate for the guidelines. I think everything's on the table. I haven't made up my own mind yet. I have reservations, I'll say that. Certainly, the testimony that Ms. Forsman offered and others have suggested causes me a real pause to say, "Should we be spending our time in life doing that?" We might be better off and more productive taking Nevada's own approach to this and identifying those problem areas and debating those and seeing what recommendations we could make while we're waiting for some of this data if we're selected. If we're not selected, I'm also working with Mr. Dzurenda about how can we drill down into some of this data ourselves? Can we reach out to the Boyd Law School? Can we reach out to the university? There are some resources similar to what was discussed in Connecticut that we may be able to take advantage of that doesn't cost us a bunch of money. That's a possibility. We'll have to look at some alternatives. Any other comments or suggestions?

**Mr. Hicks:**

In regards to your initial question and your last comments, I don't think we know yet if we want to be a guideline state, and I don't need to reiterate what you and Commissioner Callaway already said. I think that is critical that that foundation is what we need to lay as a report of where we are in the state. That in fact might lend itself to all those different options. We'll know. I'm not going to beat a dead horse there. I do think it's prudent for us to try to think of other, like you just said, opportunities, whether it's the universities in case, fingers crossed, Justice Reinvestment doesn't work out. I think it's hard right now to focus on anything else, because to me, that is the fundamental starting point for this entire Commission.

**Chair Hardesty:**

Okay. Along those lines, I'm going to ask every one of the Commissioners, please—and Mr. Callaway, you in particular because you've been down this road, you've got a lot history with it—what is it you would like to know about those that are in our prison system? If we had the opportunity, if we had staff or other qualified people to develop the demographics of who's imprisoned, why and for how long, and so forth, what would you like to know about that population, beyond their sentence length and so forth? I think it would be extremely important to have that data. If we were fortunate enough to be selected by JRI, I would love to be able to sit down with them and say, "Here you go. Here are the 10 or 12 or 15 items we want you to tell us about as quickly as you can." I'm asking every Commissioner to send an email to Mr. Anthony. What do you want to know about that population? Do so by next Friday, please. By next Friday, please. This is just not an exercise. This is really critical. Whether we get JRI selected or we don't, this is the stuff you folks would like to know about the prison population. I know that it changes. It fluctuates. Would it be acceptable to the Commissioners if we said we want to know this as of May 1 or June 1? At least we've got to pick a date. Say, June 1. Does that make sense? Everybody okay with that? How about in Las Vegas?

**Senator Nicole Cannizzaro (Senatorial District No. 6):**

I think everyone here is a yes.

**Chair Hardesty:**

Okay. Let's go with that and ask for your input. What do I want to know about the prison population? No question is too hard or too simple. Why were they there? How many times had they been there before? Whatever it is you want to know about that population, and we'll try to sort it out and make it understandable for the folks that are going to dig out the data. If we get JRI, they spend—as I said, they go to the prison and they stay there daily. They have already warned Director Dzurenda, they're obnoxious. They really dig into this. But the data sources we've got in our state are there. We've got them in the PSIs, we've got them in the JOCs, we've got them in different areas. We just need to go dig them out.



Okay, any other general comments for the Commission about objectives and where we go? I probably will not schedule another meeting until we have a little bit better information about some of the issues we've been talking about. One of the areas I do think we can discuss in the interim is this credit business. I think we all agree that's an issue that needs to be reviewed, and I'm anxious to get Mr. Pruyt's suggestions, but certainly that's going to be an agenda item that we can talk about without getting too much of the data. Or it may generate requests for additional data, I don't know. But at least we can start having a debate about some of the policy questions behind those credits and why they are being done and what are some alternatives.

**Ms. Welborn:**

I just wanted to let the Commission know, I actually just got permission while I was sitting here from an inmate who contacted me about the Commission and what we're doing here and why and the purpose of it. He's been communicating with Nevada CURE. I got a very lovely letter from him talking about how enthusiastic he is about the fact that we're looking about this. This individual was convicted for trafficking 25 grams of methamphetamine and he was sentenced to 25 years. I think hearing from impacted persons is something that I can also offer the Commission because we have a direct line to those individuals. I've shared that letter with everyone ([Agenda Item XIV B](#)). I do encourage you to read it. He is also going to work with some other inmates to send more letters to me, so I think that's another important voice to hear directly from the people impacted.

**Chair Hardesty:**

Thank you. Are there any other concluding remarks before we invite public comment and close out for the day? I asked Mr. Anthony, and he's kindly identified the agenda item and the materials on Monday regarding the Criminal History Repository. There's a PowerPoint that will be displayed. He's going to circulate that to our Commission, but I invite you to watch that presentation if you have time to do so. Mr. Callaway, I'm going to send around the recidivism report on the federal report you provided Mr. Anthony ([Agenda Item XIV A](#)). I'm sorry. I was a little bit concerned about doing that and potentially violating the Open Meeting Law since it wasn't on the agenda, but we'll get it circulated after this meeting. Then, we'll be in touch about a future meeting date when we have a little bit more information about JRI. Mr. Callaway, if you could, let me know about yours or the Sheriff's willingness or availability to meet with the team in Vegas if that's a possibility.

**Mr. Callaway:**

Yes, I've already had some communication with them and we're coordinating that.

**Chair Hardesty:**

Perfect. Okay. All right, thank you all very much. Let's go to public comment.

**Ms. Brown:**

You were talking about a study being conducted. I would like to see something if that's possible, a study conducted. Over the years with the ACAJ presentations, a case study has come forward showing that the male brain doesn't really mature until age 25, so what I would like to see if it's at all possible is to look at those who have been convicted under the age of 25 who received a life sentence with or without parole, death penalty, to see what age and their involvement would be. For example, say it was a drug deal that had gone bad. Perhaps they were there just as maybe a lookout or to do a drug deal. They did not. It escalated into a death, but yet, they did not actually participate in the death. They were only present. That's something I would like to see, how many inmates do we have in our prison system who are there just because they were present but they received either the death penalty or the life with or without the possibility of parole. Then, perhaps see where they're at now, where they have come over the years, because we know that they are not the same person they were when they were 17, 18, 19, 20, 21 years old. Perhaps maybe, I know that's mandatory, but maybe change situations from that to maybe a category B felony and from A to a B felony.

**Chair Hardesty:**

Seeing no additional public comment, I will adjourn this meeting at 2:20 p.m.

RESPECTFULLY SUBMITTED:

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Jordan Haas, Secretary

APPROVED BY:

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Justice James Hardesty, Chair

Date: \_\_\_\_\_

<b>Agenda Item</b>	<b>Witness/Agency</b>	<b>Description</b>
A		Agenda
B		Attendance Roster
<a href="#"><u>Agenda Item IV</u></a>	Jordan Haas, Secretary	Draft Minutes of the November 27, 2017 Meeting
<a href="#"><u>Agenda Item VI</u></a>	Ross Caldwell, Justice Reinvestment Liaison to the Oregon Criminal Justice Commission	Presentation on Oregon's Justice Reinvestment Program
<a href="#"><u>Agenda Item VII</u></a>	Judge J. Devlin, Chair, Connecticut Sentencing Commission	Presentation on the Connecticut Sentencing Commission
<a href="#"><u>Agenda Item VIII</u></a>	Marshall Thompson, Director, Utah Sentencing Commission	Presentation on Utah's Sentencing Commission
<a href="#"><u>Agenda Item IX</u></a>	Garrit Pruyt, Carson City Deputy District Attorney	Accounting and Application of Sentencing Credits
<a href="#"><u>Agenda Item X</u></a>	Parole and Probation Division of the Department of Public Safety	Presentation on Pre-Sentence Investigations
<a href="#"><u>Agenda Item XI A-1</u></a>	Nicolas Anthony, Senior Principal Deputy Legislative Counsel	Other State Sentencing Information Requests
<a href="#"><u>Agenda Item XI A-2</u></a>	Nicolas Anthony, Senior Principal Deputy Legislative Counsel	Additional Information from North Carolina
<a href="#"><u>Agenda Item XI A-3</u></a>	Nicolas Anthony, Senior Principal Deputy Legislative Counsel	Additional Information from Oregon
<a href="#"><u>Agenda Item XI A-4</u></a>	Nicolas Anthony, Senior Principal Deputy Legislative Counsel	Additional Information from Virginia

<a href="#">Agenda Item XII</a>	Victoria Gonzalez, Deputy Legislative Counsel	Summary of Data Requests from Members of the Nevada Sentencing Commission
<a href="#">Agenda Item XIII</a>	Robina Institute of Criminal Law and Criminal Justice	Purposes of Sentencing Guidelines
<a href="#">Agenda Item XIV A</a>		U.S. Sentencing Commission Report
<a href="#">Agenda Item XIV B</a>		Letter from an Inmate