

# NEVADA SENTENCING COMMISSION



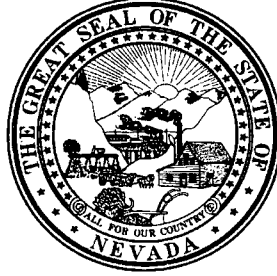
## FINAL REPORT

JANUARY 2019

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## **FINAL REPORT**

### **NEVADA SENTENCING COMMISSION**

[Nevada Revised Statutes 176.0133]

**January 2019**

The Nevada Sentencing Commission (Sentencing Commission) (NRS 176.0133) is statutorily required to identify and study various aspects relating to the sentencing of offenders convicted of a crime within this State. Prior to the next regular session of the Legislature, the Sentencing Commission is further required to prepare and submit to the Director of the Legislative Counsel Bureau a comprehensive report, including the Sentencing Commission's findings and any recommendations for proposed legislation (NRS 176.0134). Additionally, the Sentencing Commission is statutorily authorized to request the drafting of not more than one legislative measure for each regular session of the Legislature (NRS 218D.216).

This report is intended to provide a brief overview of the Sentencing Commission's course of action during the 2017-2018 interim. It includes a summary of recommendations and a full report detailing each of the meetings held throughout the interim, including the background discussion on the development of each final recommendation.

For purposes of this document, the final recommendations of the Sentencing Commission have been organized by type of recommendation and are not listed in preferential order. By category, each recommendation falls within a request to: (1) draft legislation to amend the Nevada Revised Statutes; or (2) draft a letter to the Governor and Legislature.



## **SUMMARY OF RECOMMENDATIONS**

### **NEVADA SENTENCING COMMISSION**

The 2017-2018 Sentencing Commission held a final work session on August 29, 2018. At the work session, the Sentencing Commission considered seven total recommendations and voted to approve one recommendation for the drafting of legislation and three recommendations for the drafting of a letter. A summary of each recommendation is identified below:

#### **RECOMMENDATION TO DRAFT LEGISLATION**

1. Draft legislation to statutorily create an independent Office of the Nevada Sentencing Commission. The legislation would revise the duties of the Nevada Sentencing Commission to statutorily require the Commission to function as an independent and standalone analytic and oversight body for sentencing and related criminal justice data. The Commission staff would be required to facilitate the collection and aggregation of data deliverables (from the courts, corrections, parole and probation and other agencies of criminal justice) in an effort to further enable the Commission to efficiently and effectively evaluate criminal justice practices across the State. The legislation may include the identification of certain variables or data sets not currently collected or shared across Nevada's criminal justice agencies, along with requirements and timelines for their definition, collection and aggregation. Once in place, the Commission will have the necessary data to perform its statutory duties, including, without limitation: the evaluation of statewide sentencing practices, the potential use of sentencing guidelines, the use of mandatory sentencing, enhanced penalties for habitual criminals and the identification of other sentencing and corrections practices.

This legislation would serve to further the legislative findings and declarations contained in NRS 176.0131 in an effort to ensure that sentencing and corrections policies embody fairness, consistency, proportionality and opportunity. It would also enable a coordinated and systematic approach by the Commission to make data driven sentencing and corrections policy recommendations to the Nevada Legislature.

Additionally, this legislation would provide that the Commission staff function as an independent agency located in the executive branch of state government. The Commission membership would have the same statutory membership pursuant to NRS 176.0133, but would be staffed by newly established full-time independent nonpartisan staff.

## **RECOMMENDATIONS TO DRAFT A LETTER**

2. Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to provide budgetary funding for staffing and technology for the Central Repository for Nevada Records of Criminal History. The letter would specifically request dedicated general fund revenue, rather than the implementation of any new fees or court assessments.
3. Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to consider additional general fund appropriations for criminal justice agencies throughout the State, including: the Division of Parole and Probation of the Department of Public Safety, the Department of Corrections and the State Board of Parole Commissioners. The letter would specifically request dedicated general fund revenue, rather than the implementation of any new fees or court assessments.
4. Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to provide dedicated budgetary funding of \$6 million to the specialty court program. Past budgets have included \$3 million in specialty court funding. This request would increase that amount to \$6 million total, as there is currently a \$15 million need for the specialty court program. The letter would specifically request dedicated general fund revenue, rather than the implementation of any new fees or court assessments.

# **REPORT TO THE 80th SESSION OF THE NEVADA LEGISLATURE BY THE NEVADA SENTENCING COMMISSION**

## **I. INTRODUCTION**

Criminal justice is often referred to as an organized system meant to punish individuals who commit criminal acts and to deter such future bad acts. It has long been recognized as a means to promote a safe and orderly society. In establishing the Nevada Sentencing Commission pursuant to Senate Bill No. 451 (2017), the Legislature declared it to be the public policy of this State that:

1. Sentencing and corrections policies should embody fairness, consistency, proportionality and opportunity.
2. The laws of this State should convey a clear and purposeful rationale regarding sentencing and corrections. The statutes governing criminal justice should articulate the purpose of sentencing, and related policies and practices should be logical, understandable and transparent to stakeholders and the public.
3. A continuum of sentencing and corrections options should be available, with imprisonment reserved for the most serious offenders and adequate community programs for diversion and supervision of other offenders.
4. Sentencing and corrections policies should be resource sensitive as those policies may impact costs, inmate populations and public safety. Criminal justice agencies should strive to effectively measure costs and benefits.
5. Criminal justice information should be a foundation for effective data driven sentencing and corrections policies.
6. Sentencing and corrections policies should reflect current circumstances and needs.
7. Strategies to reduce crime and victimization should involve prevention, treatment, health and labor and must endeavor to utilize all available federal, academic and private resources and expertise.

## **II. NEVADA SENTENCING COMMISSION DUTIES**

By way of background, the current incarnation of the Sentencing Commission evolved from the former Advisory Commission on Sentencing. The Advisory Commission on Sentencing was originally established by statute in 1995 after the Legislature enacted "truth in sentencing," which required a defendant to serve 100 percent of his or her minimum sentence. However, the

original Advisory Commission on Sentencing, whose membership was limited, laid largely dormant for many years. In 2007 the Legislature formed the Advisory Commission on the Administration of Justice (NRS 176.0123) and gradually expanded the scope of the Advisory Commission's duties beyond sentencing, to include a myriad of issues related to criminal justice. Then in 2017, the Legislature enacted Senate Bill No. 451, which newly created and broadened the membership, duties and scope of the Sentencing Commission to resemble its current form. The 25 members of the Sentencing Commission are appointed each interim and serve for a two year term between biennial sessions of the Nevada Legislature.

Pursuant to NRS 176.0134, the Sentencing Commission is statutorily required to:

1. Advise the Legislature on proposed legislation and make recommendations with respect to all matters relating to the elements of this State's system of criminal justice which affect the sentences imposed for felonies and gross misdemeanors.

2. Evaluate the effectiveness and fiscal impact of various policies and practices regarding sentencing which are employed in this State and other states, including, without limitation, the use of plea bargaining, probation, programs of intensive supervision, programs of regimental discipline, imprisonment, sentencing recommendations, mandatory and minimum sentencing, mandatory sentencing for crimes involving the possession, manufacture and distribution of controlled substances, enhanced penalties for habitual criminals, parole, credits against sentences, residential confinement and alternatives to incarceration.

3. Recommend changes in the structure of sentencing in this State which, to the extent practicable and with consideration for their fiscal impact, incorporate general objectives and goals for sentencing, including, without limitation, the following:

- (a) Offenders must receive sentences that increase in direct proportion to the severity of their crimes and their histories of criminality.

- (b) Offenders who have extensive histories of criminality or who have exhibited a propensity to commit crimes of a predatory or violent nature must receive sentences which reflect the need to ensure the safety and protection of the public and which allow for the imprisonment for life of such offenders.

- (c) Offenders who have committed offenses that do not include acts of violence and who have limited histories of criminality must receive sentences which reflect the need to conserve scarce economic resources through the use of various alternatives to traditional forms of incarceration.

- (d) Offenders with similar histories of criminality who are convicted of similar crimes must receive sentences that are generally similar.

(e) Offenders sentenced to imprisonment must receive sentences which do not confuse or mislead the public as to the actual time those offenders must serve while incarcerated or before being released from confinement or supervision.

(f) Offenders must not receive disparate sentences based upon factors such as race, gender or economic status.

(g) Offenders must receive sentences which are based upon the specific circumstances and facts of their offenses, including the nature of the offense and any aggravating factors, the savagery of the offense, as evidenced by the extent of any injury to the victim, and the degree of criminal sophistication demonstrated by the offender's acts before, during and after commission of the offense.

4. Facilitate the development and maintenance of a statewide sentencing database in collaboration with state and local agencies, using existing databases or resources where appropriate.

5. Provide training regarding sentencing and related issues, policies and practices, and act as a sentencing policy resource for this State.

6. Evaluate the impact of pretrial, sentencing diversion, incarceration and postrelease supervision programs.

7. Identify potential areas of sentencing disparity related to race, gender and economic status.

8. Propose and recommend statutory sentencing guidelines, based on reasonable offense and offender characteristics which aim to preserve judicial discretion and provide for individualized sentencing, for the use of the district courts. If such guidelines are enacted by the Legislature, the Sentencing Commission shall review and propose any recommended changes.

9. Evaluate whether sentencing guidelines recommended pursuant to subsection 8 should be mandatory and if judicial findings should be required for any departures from the sentencing guidelines.

10. For each regular session of the Legislature, prepare a comprehensive report including:

(a) The Sentencing Commission's recommended changes pertaining to sentencing;

(b) The Sentencing Commission's findings and any recommendations for proposed legislation; and

(c) A reference to any legislative measure requested pursuant to NRS 218D.216.

### **III. SENTENCING COMMISSION MEMBERS**

The ensuing members were appointed to and served on the Sentencing Commission for the 2017-2018 interim:

Justice James W. Hardesty, Nevada Supreme Court, Chair  
Senator Nicole Cannizzaro  
Senator Ben Kieckhefer  
Assemblyman Ozzie Fumo  
Assemblywoman Jill Tolles  
Scott Burton, Gubernatorial Appointee  
Chuck Callaway, Police Director, Las Vegas Metro  
Dennis Cameron, State Bar of Nevada  
Christopher DeRicco, Chairman, Board of Parole Commissioners  
James Dzurenda, Director, Department of Corrections  
Judge Scott Freeman, Second Judicial District Court  
Chris Hicks, Washoe County District Attorney  
Magann Jordan, Victims' Rights Advocate  
Karin Kreizenbeck, State Public Defender  
Adam Laxalt, Attorney General  
Keith Logan, Sheriff, Eureka County  
Tegan Machnich, Chief Deputy Public Defender, Clark County  
John McCormick, Assistant Court Administrator  
Elizabeth Neighbors, Ph.D., Public and Behavioral Health  
Stephanie O'Rourke, Major, Parole and Probation  
Jon Ponder, Representative, Offender Reentry  
Jeff Segal, Bureau Chief, Office of the Attorney General  
Donald Soderberg, Director, Employment, Training & Rehabilitation  
Judge Jennifer Togliatti, Eighth Judicial District Court  
Holly Welborn, Policy Director, ACLU of Nevada, Inmate Advocate

The Legislative Counsel Bureau staff services were provided by Nicolas Anthony, Senior Principal Deputy Legislative Counsel; Victoria Gonzalez, Deputy Legislative Counsel; Angela Hartzler, Deputy Administrator, Legal Division; and Jordan Haas, Secretary, Legal Division.

### **IV. SENTENCING COMMISSION MEETINGS**

Throughout the interim period between legislative sessions, the Sentencing Commission is required to periodically hold public meetings to review the criminal justice system and all matters related to sentencing of criminal offenders in Nevada. During the 2017-18 interim, the Sentencing Commission held three substantive meetings, a joint meeting with the Advisory

Commission on the Administration of Justice and a work session. The Sentencing Commission diligently and proficiently addressed each of the statutory duties prescribed pursuant to NRS 176.0134. Through the endeavors of the Sentencing Commission and with the support and concurrence of the Governor, Legislature and Supreme Court, the Sentencing Commission was instrumental in Nevada being selected as a Justice Reinvestment Initiative site for nonpartisan policy analysis and technical assistance in the area of criminal justice reform. The technical assistance, including data analysis and formation of policy recommendations, of the Justice Reinvestment Initiative was conducted by staff of the Crime and Justice Institute of the Community Resources for Justice. The primary oversight and coordination of the Justice Reinvestment Initiative was undertaken by the Advisory Commission on the Administration of Justice, with additional joint meetings and briefings of the members of the Sentencing Commission when the subject matter related to criminal sentencing.

The Sentencing Commission received formal presentations from interested stakeholders and national experts and heard public testimony on a broad range of topics involving the sentencing of convicted offenders in the State. Discussion topics included, but were not limited to: (1) an overview from the Robina Institute of Criminal Law and Justice concerning state sentencing commissions and the use of criminal history in other states; (2) a review of Nevada's felony sentencing structure; (3) a presentation on inmate status and population by the Nevada Department of Corrections; (4) presentations by the Virginia Criminal Sentencing Commission, North Carolina Sentencing and Policy Advisory Commission, Oregon Criminal Justice Commission, Connecticut Sentencing Commission and Utah Sentencing Commission; (5) a report on specialty court funding; (6) a review on the accounting and application of sentencing credits; and (7) a presentation on the presentencing investigation report process from the Nevada Division of Parole and Probation. At the joint meeting with the Advisory Commission on the Administration of Justice, the Sentencing Commission also received testimony regarding: (1) criminal procedure in Nevada; (2) the Central Repository for Nevada Records of Criminal History; and (3) an overview and timeline of the Justice Reinvestment Initiative.

#### A. FIRST MEETING

The first meeting of the Sentencing Commission was called to order on November 27, 2017.

##### Organizational Matters

To begin the 2017-2018 interim, the Sentencing Commission addressed organizational matters and elected Supreme Court Justice James Hardesty as Chair, and Connie Bisbee as Vice Chair. The Sentencing Commission then proceeded with an overview of statutory duties and a review of the 2017 legislation creating the Sentencing Commission.

Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legislative Counsel Bureau, provided an overview of Senate Bill No. 451 (2017). Mr. Anthony explained, by way of background, that the State has come full circle in establishing the Nevada Sentencing Commission. In the 1980s, the State established the Commission to Establish Adjusted Sentences for Felons; however, it lay dormant until about 1995. At that point, the Legislature

made a dramatic shift to truth in sentencing legislation. During that 1995 Session, they also established a sentencing commission. That sentencing commission also laid dormant for a period of time. Then, in 2007, the Legislature recognized that need and took the existing sentencing commission and created a new Advisory Commission on the Administration of Justice, which Justice Hardesty chaired this past interim.

In 2017, the Legislature again felt the need to place an emphasis on sentencing and extracted the sentencing portions out of the Advisory Commission and created this new, 25-member Sentencing Commission. The Commission is comprised of members from all fields of criminal law, including: judges, prosecutors, defense attorneys, legislators, laypersons, victims' advocates and inmate advocates. The legislation, S.B. 451, that passed in 2017, as Justice Hardesty indicated, was a recommendation from the Advisory Commission modeled after the Connecticut Sentencing Commission, which was then tweaked and tailored to Nevada's standards, and additional members were added as needed. The goal behind the legislation was spelled out in the legislative declaration of public policy at the beginning of S.B. 451. Those principles are embodied in fairness, consistency, proportionality and opportunity. The goal is to be data driven in the State sentencing decisions and, again, to utilize all expertise.

Mr. Anthony also briefly covered the duties of the Sentencing Commission, which are chiefly to advise and make recommendations relating to sentencing. They are to evaluate the fiscal impact and effectiveness, recommend any changes in the structure of sentencing, and facilitate and develop the maintenance of a state-wide sentencing database. Over the years, the Advisory Commission has wrestled with the issue of how to make data-driven decisions without proper data. So the question has been, "who's in charge of collecting that data and where does it get reported?" The Legislature has tasked this body with determining the data analysis and identifying any data gaps. The Sentencing Commission is also tasked with providing training regarding sentencing, looking at pre-trial and post-release supervision, meaning parole and probation. Another duty is to identify sentencing disparities on the basis of race, gender and economic status. Lastly, this Commission is tasked with reviewing policies related to sentencing guidelines, and if the Commission were to propose sentencing guidelines, whether those guidelines should be mandatory or advisory.

*Presentation by Kelly Mitchell, Executive Director, Robina Institute of Criminal Law and Criminal Justice*

Kelly Mitchell, Executive Director, Robina Institute of Criminal Law and Justice, University of Minnesota Law School; Past President, National Association of Sentencing Commissions, appeared and presented on the issue of state sentencing commissions. Ms. Mitchell began by explaining that there are essentially two types of sentencing commissions, the first formed and established to develop and monitor sentencing guidelines, and the second formed to look more broadly at the criminal justice system and to make policy recommendations about pretty much any topic within the criminal justice system. She noted that Nevada's Sentencing Commission had been tasked with both of these purposes. The role that commissions play is dependent on when they were formed. Nevada's creation of a sentencing commission brings the number of



jurisdictions with sentencing commissions, including the federal government and the District of Columbia, up to 25.

Some of the main functions of sentencing commissions across the country are to develop sentencing guidelines and revise them as needed, to model their compliance with the guidelines, to collect and analyze data to identify sentencing trends, patterns and sources of disparity, to forecast correctional populations based on current practices and to develop physical or racial impact analyses of proposed legislation or policy changes. Ms. Mitchell said that the most effective sentencing commissions collect data and serve as a central collection point for sentencing data in the form of a database, which “allows the commission to actually be a nonpartisan source of expertise so that the state and the commission can make data-driven policy decisions.” She provided examples of the data collection services provided by Minnesota’s Sentencing Commission and how they have allowed the state to make policy decisions in response to changes in crime rates and to evaluate the effects of legislation. The Commission’s data also allowed the state to analyze racial disparities in incarcerated populations. Ms. Mitchell detailed the types of data collected by Minnesota’s Sentencing Commission, and Chair Hardesty asked Commission Members to consider what types of data Nevada’s Sentencing Commission should collect. Ms. Mitchell noted that sentencing data could allow commissions to project prison populations and impacts on the system of proposed changes, which helps state agencies develop fiscal notes, and the importance of support staff in maintaining and analyzing data.

Ms. Mitchell then moved on to sentencing guidelines, which are a set of standards that are generally put in place to establish rational and consistent sentencing practices within a particular jurisdiction. Some states abolish parole when they create sentencing guidelines, but seven states have retained the use of parole. Sentencing guidelines are enacted for five main reasons: to foster proportionality, secure public safety, reduce disparity, manage correctional capacity and achieve certainty in sentencing; all of these purposes are present in the bill that created Nevada’s Sentencing Commission. Proportionality suggests that the seriousness of a crime and the offender’s criminal history should impact the sentence. The public safety aspect involves incarcerating violent offenders and having alternative sentences for low-level offenders. This connects with managing correctional capacity, since determining which offenses merit incarceration as opposed to community supervision has an effect on prison and jail populations. For reducing disparity, tracking data can raise awareness about where disparity might be occurring and provide insight on how to tackle reducing that disparity. Regarding certainty in sentencing, for states that have a parole system, like Nevada, sentencing guidelines typically set either the maximum or minimum term for parole.

Sentencing guidelines can provide guidance to judges in three ways. First, they help the judge make the “prison in/out decision,” whether an offense should be sentenced to prison or community supervision. Second, if the offense should be sentenced to prison, guidelines usually tell the judge how long that prison term should be. Third, if the sentence should be probation, they will indicate the term of probation, and some jurisdictions also include information such as jail terms as a condition of parole or other alternative punishments. Ms.

Mitchell then showed an example of Minnesota and Oregon's sentencing guidelines and grids. In response to questions about Nevada's system of categorizing felonies, Ms. Mitchell said that this system could coexist with a guidelines system, and provided examples of different states' systems. It is important for guidelines to cover typical cases, but to leave discretion to the courts to account for atypical cases. Some states establish mitigating or aggravating factors for departure.

There are two major factors in guidelines: offense severity and criminal history. Some states break out different offense types, such as sex offenses, onto separate grids. For criminal history, almost every system looks at prior felonies, misdemeanors, gross misdemeanors and prior juvenile adjudications. Some states use a point-based system to score prior offenses and establish rankings for point sums. Other states have a categorical system, where criminal histories are categorized by the number and type of prior offenses. Most states use the point-based system. Ms. Mitchell then listed some of the questions that come up about how crimes are counted and assigned points under such systems.

In developing guidelines, the Commission must determine whether they will be mandatory or advisory. Guidelines that are more mandatory are subject to appellate review and require departure reasons. For advisory guidelines, there is limited or no appellate review, or there is full judicial discretion in sentencing, meaning that no departure reasons are required.

There are two types of departures. A dispositional departure is when the guidelines recommend prison or probation and the judge does the opposite, and a durational departure is when a judge calls for a different prison or jail term than the guidelines recommend. Additionally, there are aggravating or mitigating dimensions. Some states allow for departures in cases with substantial or compelling reasons to depart, or cases that have aggravating or mitigating factors. Other states require that departure reasons are written down or on the record so they can be tracked. One reason to track departures is to establish rates of compliance for greater uniformity and proportionality. Another reason is to create a feedback loop so the commission or state legislature can see high departure rates, which may indicate that guidelines need to be changes.

Appeals are another way to bolster the strength of sentencing guidelines. One type of appeal is to correct errors. For example, the criminal history score may have been incorrectly added, or there is an unclear provision in the guidelines. There are also appeals on departure reasons and whether they were valid. Typically, both the state and the defendant can appeal. Ms. Mitchell then showed a continuum of states with guidelines ranging from mandatory to advisory.

Ms. Mitchell concluded by discussing case law challenging the use of guidelines.

#### *Presentation by the Nevada Department of Corrections*

James Dzurenda, Director of the Nevada Department of Corrections, provided statistics about Nevada's incarcerated population. He explained a breakdown of drug, sex and property

crimes. Director Dzurenda said, "It's going to be important with some of the decisions that we make to look at the severity and risk of the offenses with the lengths of sentencing." He noted that approximately 50 percent of offenders in NDOC were serving sentences of less than 20 years, meaning that they would be back on the streets, meaning that "we really have to look at how we deal with sentencing and discharge of offenders, to reduce not only crime, but to reduce victimization." Director Dzurenda also provided statistics on offenders, including ethnicity and the cost to house different offenders. Higher-risk offenders cost more to house, and the age of offenders and those that are parole-eligible is also going to play a factor in discussions about certain sentences.

As the former Commissioner for the Connecticut Department of Corrections, Director Dzurenda also discussed Connecticut's sentencing system. As a result of its Sentencing Commission, Connecticut saved \$300 million, reduced its prison population by over 6,000 people and reduced victimization in the community. Connecticut specifically looked at having its violent, high-risk offenders serve more of their sentences, while working with low-risk offenders to reduce crime in the community. Director Dzurenda urged the Nevada Sentencing Commission to follow Connecticut's example with cost savings and invest the savings in wrap-around services in the community, addiction services, victims' funds, and specifically, special education services in lower-level elementary schools. In Nevada, another important use for such funds would be mental health treatment. He stressed that simply releasing inmates from prison sooner was not the solution and would not reduce crime. Rather, putting saved prison money into services would be the key to reducing victimization in the long term. Connecticut did not abolish parole, but chose to reinvest prison savings in treatment and programming for parole violators rather than returning them to prison. Connecticut distinguishes between their sex offenses in a way that Nevada doesn't, which Director Dzurenda thought might be something to look at down the road regarding its impact on public safety.

Director Dzurenda said that 6 years after Connecticut implemented the changes with its Sentencing Commission, crime rates were down by 40 percent as a direct result of those measures. In measuring crime rates, they also took into account calls to the police, even when no arrest was made, which Director Dzurenda suggested Nevada consider as well. Connecticut made changes to its structure for violent and nonviolent crimes, as well as for drug crimes. He also specified that drug offenders who weren't being put in prison needed wrap-around treatment services in the community.

Director Dzurenda concluded by saying that education in the communities was also important, and that Nevada should start focusing on reducing the risk of juveniles in the education system being incarcerated. Connecticut found that special education was one of the "most dramatic areas in which you can reduce risk down the road," and that a significant portion of the repeat offenders in their super-max prison had mental health diagnoses. Putting those offenders back in the community with wrap-around services was a large piece in how they started reducing crimes and preventing those repeat offenders from coming back. Additionally, Nevada has the largest population of veterans as a percentage of any state. Thus, Director Dzurenda suggested focusing on services and sentences for veterans specifically.

### Additional Topics for Future Meetings

Chair Hardesty opened the discussion on potential topics, dates and locations for future meetings. Justice Hardesty indicated that he wanted the Sentencing Commission to focus on the primary objectives prescribed pursuant to statute. Additional topic recommendations from Members included: drug weights, details about other states' experiences, availability of wrap-around services, comparing crimes of Nevada's inmates with other states, definition of goals and standards of success, and other criminal justice-related matters.

### B. SECOND MEETING

The second meeting of the Sentencing Commission was held on February 16, 2018.

#### Commission Member Remarks Regarding Possible Study Topics

Chair Hardesty asked Commission Members to discuss what additional information they would like to collect, as well as whether Members would like to continue studying states with sentencing guidelines. Commissioner Welborn said that she would like to continue learning about states with guidelines and focus on one of the original goals of the Commission, which was prison overcrowding. Sheriff Logan indicated that he was interested in looking at a western guidelines state similar in population to Nevada. Commissioner Hicks noted the importance of collecting accurate data on the prison population. Judge Freeman said he would like to focus on Nevada's data and structures rather than hearing additional presentations on other states' systems. Commissioner Burton agreed that data collection was important and that the data would drive the development of new practices. Commissioner Segal stressed the importance of public safety and said he would like to see data on Nevada's alternative sentencing options and what works to reduce recidivism. He was also interested in accountability of alternative sentencing programs. In response to a question asked by Chair Hardesty, most members said they would like more information on locally focused grant programs like the ones in Oregon. Senator Cannizzaro thought it was useful to look at other jurisdictions but that Nevada-specific data was necessary, particularly sentencing data. Commissioner Machnich echoed these comments on data and sentencing disparities and said she would like to learn about deferment practices. Commissioner Jordan asked for data on qualifications of PSI writers and statistics on their consistency. A majority of Commission Members responded affirmatively to Chair Hardesty's question as to whether the felony categories undermine truth in sentencing. Dr. Neighbors was in favor of less extensive out-of-state presentations, and she was interested in local data on the nexus between mental illness and substance abuse issues, as well as decisions by judges on diversion and programing. Director Dzurenda said the most important information would come from the jails and courts as opposed to the prisons. Assemblywoman Tolles reiterated that she would like to see a cost-benefit analysis of the cost of programs and data collection systems compared to the increase in public safety and reduced recidivism. Chair Hardesty said that he intended to have Connecticut present since their state had reduced crime rates and experienced a cost savings. Judge

Freeman pointed out that Oregon's Legislature had invested in alternatives to incarceration and reducing recidivism. Finally, several Commissioners discussed the importance of how the state defines recidivism and expressed an interest in discussing the definition.

### *Presentation by the Virginia Criminal Sentencing Commission*

Meredith Farrar-Owens, Director of the Virginia Sentencing Commission, provided an overview of the work of the Virginia Sentencing Commission. The Virginia Sentencing Commission was formed to address disparity within the state, collect data and create sentencing guidelines, and the effort was led by the state's judges. After compiling several years' worth of data, the Commission was able to statistically analyze judges' decision making and disparities.

For the creation of sentencing guidelines, Virginia's judges specified several elements: compliance with the guidelines had to be voluntary for judges, the guidelines had to be grounded in historic sentencing practices, and they needed to be offense-specific to reflect certain types of crimes. Virginia's guidelines were implemented in 1991 and provide broad sentencing ranges to give judges discretion to account for aggravating and mitigating factors. Virginia's guidelines are structured as a worksheet rather than a grid. The worksheet uses scores to determine whether an offender should be sentenced to jail, prison or probation, as well as the prison sentence, if applicable.

Virginia later abolished parole and enacted truth in sentencing laws, meaning that offenders had to serve at least 85 percent of their felony sentences. Only 15 percent of a sentence can be reduced through earned credits. The Virginia Legislature wanted violent offenders to serve longer terms of incarceration, and they decided to expand alternative options to incarceration for nonviolent offenders to avoid overloading the prisons. They developed a risk assessment tool to assist in this process. Ms. Farrar-Owens noted that nearly all offenders would have a term of probation once released.

Speaking to the mechanics of the guidelines, Ms. Farrar-Owens explained that prosecutors and probation officers are tasked with preparing the worksheets. There are sentence enhancements available for higher-risk sex offenders. The guidelines must be prepared in all cases and judges must state for the record that they have reviewed the guidelines. As previously mentioned, the guidelines are not mandatory, but judges must note their reason for departure if they choose not to follow the guidelines. These departure reasons, as well as judges' rates of compliance with specific guidelines, are used by the Virginia Sentencing Commission to revise the guidelines. Ms. Farrar-Owens concluded by citing research that Virginia's guidelines "effectively limit undesirable sentencing disparity by reducing the role of factors that shouldn't play a role in the sentencing decision."

### *Presentation by the North Carolina Sentencing and Policy Advisory Commission*

Michelle Hall, Executive Director for the North Carolina Sentencing and Policy Advisory Commission, and John Madler, Associate Director for Policy and Staff Attorney for the Commission, presented on North Carolina's sentencing structure. Prior to the implementation of structured sentencing, North Carolina's prisons and jails were overcrowded and offenders were being released after serving very little of their sentences, and Mr. Madler stated that the public "did not have any confidence in the system anymore." The North Carolina Legislature created an objective body to create policy based on several factors. They believed the length of a sentence should match the severity of the crime and the harm inflicted. The Legislature also wanted a more structured approach to incorporating criminal history into sentencing, as well as additional alternatives to prison for offenders. The state was also interested in having a correctional population simulation model to make projections on the prison population. The Commission's structure was developed by considering offense classes, prior history, duration and dispositions.

North Carolina's Sentencing Commission began by setting goals that sentences would be truthful, consistent and certain. The Commission also aimed to prioritize the use of resources, using prison beds for violent or repeat offenders and using community sanctions for nonviolent or first-time offenders. They also thought the state should provide adequate resources to back up the new policies.

Mr. Madler then explained North Carolina's sentencing grid and the calculation of sentences. The judge determines the minimum sentence based on the grid, and a maximum sentence of 20 percent higher is automatically determined. An offender can earn credits to lessen their sentence, but can never go below the minimum sentence. Several changes have been made to the structures since their inception. In one case, the Legislature asked the Commission for options on stemming projected growth. The Commission also monitors and collects data on sentences issued under structured sentencing for review. Additionally, they produce fiscal notes to the Legislature about potential legislation and its impact on the criminal justice system. Mr. Madler concluded by listing additional duties of the Commission, including the production of recidivism reports and study reports.

### *Presentation on Specialty Court Funding*

Chief Justice Michael Douglas of the Nevada Supreme Court presented an overview and data on Nevada's specialty court programs. There have been 13,000 participants in specialty courts and 9,000 graduates since the program began. Over \$40 million has been saved through funding to drug courts, according to the National Association of Drug Courts. Specialty courts receive approximately \$10 million a year in funding between the collection of fines and fees and money appropriated from the Legislature. Drug courts have had difficulty in the past determining an offender's drug of choice due to missing information, and the fact that the offenders themselves are the main source of information in this instance. It is also a struggle to evaluate the effectiveness statistics of drug courts due to reporting on fiscal years, since many

of the programs do not fall neatly into alignment in finishing programs at the end of a fiscal year.

Chief Justice Douglas mentioned an article he had seen indicating that Americans saw jails as more of a rehabilitative institution than one meant for punishment. He went on to note that Nevada has seen a decline in its community non-profit partners in rehabilitative efforts and that a partnership was necessary for success. Nevada lacks the personnel to track recidivism in drug treatment programs, making it difficult to evaluate their long-term success. Nevada is also experiencing problems with opioid users who offend on low-level charges and are released without treatment, only to reoffend shortly after.

Chief Justice Douglas ended his presentation by saying that one goal was to certify certain state programs, which has a direct application to funding, ensuring the courts are doing what they need to, providing data and standardizing methodologies.

### *Presentation on Nevada's Felony Sentencing Structure*

Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legislative Counsel Bureau, provided a presentation on the history of Nevada's felony sentencing structure. There are a number of ideals from criminologists and those who practice in the area of criminal justice and public safety that the criminal justice system should be responsive to public safety, victims' rights, retribution and deterrence. Senate Bill (S.B.) 451, which is the enabling legislation for this Commission, outlines and enumerates a number of those factors, including fairness, proportionality and opportunity.

Generally, there are three different types of sentencing structure. Determinate sentencing is where there is a fixed sentence without judicial discretion. There are also sentencing guidelines, often referred to as structured sentencing, where decisions are laid out on a grid and it is up to the sentencing judge to look at the grid. Finally, there is indeterminate sentencing, which is largely discretionary, where the legislature lays out crimes and their elements and provides a range of punishments. A judge then determines the appropriate punishment at sentencing.

Prior to 1995, Nevada had four different ranges of sentences, which was largely in response to the enactment of the model penal code in 1992, after which states developed their own sentencing structures. After a crime wave in the early 1990s, a number of states adopted truth in sentencing, which Nevada also adopted in the 1995 Session. The idea was that the sentence should be measured and the defendant should know exactly what he or she is going to serve. The victim should also know exactly what that defendant is going to serve. In 1995, S.B. 416 in Nevada changed the system from indeterminate sentencing to a structure in which the judge determined the mandatory minimum and maximum range. No credits could reduce the frontend of the sentence, meaning that the minimum sentence was absolute. The Legislature divided crimes into five categories, A through E, and sentence ranges were designated. When new

crimes are established, the Legislature makes a policy choice as to which category they should be placed.

Assembly Bill No. 510 (2007) effectively ended truth in sentences for certain crimes, as it allowed credits to apply to the frontend of C, D and E felonies. By “frontend” it means the time before a convicted person is eligible for parole. Additional bills over the next 10 plus years have made various other changes to sentencing ranges and credit guidelines.

Mr. Anthony also discussed the differences between Categories A, B, C, D and E. The Legislature back in 1995 looked at all the sentences that were handed out and came up with the scheme A through E. Category A is typically your most serious offenses, your murder and sex offenses. Category B is typically crimes against the person, such as batteries, robberies, pretty serious crimes. Category C’s are mostly general property crimes. Categories D and E include substance abuse and controlled substance violations, with E offenses providing for mandatory probation. Mr. Anthony also addressed the differences in being convicted of different categories of felony. One of the major differences beyond the frontend parole eligibility is the restoration of rights. That has shifted towards automatic restoration for almost everybody except for Category A felonies and certain Category B offenses. There are also differences in the sealing of criminal records based on the category of offense.

#### *Presentation on the Oregon Criminal Justice Commission*

Mike Schmidt, Executive Director of the Oregon Criminal Justice Commission, discussed the work of Oregon’s Commission. The Commission is a planning agency that works with the Legislature and Governor’s Office on long-term projects. The Commission also performs tasks such as analyzing data, writing fiscal impacts and advising the Legislature on policy impacts. Mr. Schmidt described the history of the Commission and the various legislative measures involved in shaping Oregon’s practices. Since implementing Justice Reinvestment, Oregon’s prison population has remained relatively stable.

The main role of Oregon’s Commission is performing research and administering grants, including the Justice Reinvestment grant money and specialty court grants. Each county in Oregon has a local public safety coordinating council that writes applications for Justice Reinvestment grants and decides how the money will be spent. The Commission gathers detailed statistics on each county, such as prison usage, arrest rate and recidivism rate, and shares that across the state, which the local councils then draw from in deciding how to spend the grant money. For example, if a county’s recidivism rate has been rising, the Commission would ask them to address that in their grant application and to develop a plan to combat increased recidivism, which is where data from similar counties may be especially helpful in considering alternatives. The recidivism grants target property and drug offenders and decreasing their prison usage. Mr. Schmidt explained that the Justice Reinvestment grant allows localities to “tailor those resources to whatever it is that they locally are experiencing that could be driving their use” of prison facilities. The Oregon Commission also funds specialty court grants.



Mr. Schmidt ended his presentation by discussing another main task of Oregon's Commission, which is research. The Commission acts as the statistical analysis center for the state. It puts out reports and does experiments looking at different programming tools. Mr. Schmidt noted that it was nice to be an institution involved in both funding and research. Research is often economically burdensome and requires expertise, so the Commission can assist counties with such services.

*Presentation by the Department of Corrections Concerning the Status of Inmate Population for Property and Drug Offenses*

James Dzurenda, Director of the Nevada Department of Corrections, and Dwayne Deal, Administrator of the Offender Management Division, presented data on property and drug offenders. Mr. Deal explained that the data did not represent all property and drug convictions, but only those offenders whose highest crime fell into one of those two categories. For example, an offender with a sex crime and a drug crime would not appear on his list, because that individual would be listed under sex crimes since that was the more serious offense. Chair Hardesty noted that approximately 18 percent of the prison population had a primary offense category of property and approximately 12 percent had a primary offense category of drugs. The primary source of data for these reports created by NDOC was the presentence investigation reports. Chair Hardesty told the Commission that there was some data collection availability, although some refinement was needed.

C. THIRD MEETING

The third meeting of the Sentencing Commission was called to order on April 27, 2018.

*Presentation by the Oregon Criminal Justice Commission Regarding Justice Reinvestment Initiative Programs*

Ross Caldwell, Justice Reinvestment Liaison with the Oregon Criminal Justice Commission, presented on Oregon's experience with the Justice Reinvestment Initiative. Mr. Caldwell said, "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." Mr. Caldwell also assists counties with preparing plans for tasks like reducing recidivism. One of Oregon's most effective cost-cutting measures was to extend short-term transitional leave, which allows offenders to be released 90 days early. Since parole is less expensive than incarceration, this saved a great deal of money. Another important aspect of Justice Reinvestment was the grants that were provided to counties to improve local programs and public safety systems. This required an initial investment by the Oregon Legislature. Many of Oregon's counties have been increasing investments in specialty court programs and other diversions from incarceration.

Mr. Caldwell noted that the most successful counties had buy-in from the parties involved, such as judges who sentenced differently, rather than just providing saved funds to parole and probation without good direction from the local public safety coordinating councils. Collaboration and trust between parties in the county is also important, since individuals in different sectors need to break out of their silos and work together. Ensuring adequate jail space is also important, because property and drug offenders that are released without treatment can reoffend and come back on more serious charges.

*Presentation by the Connecticut Sentencing Commission Regarding the Role of the Commission, Recidivism and Sentencing Reforms*

Judge Robert J. Devlin, Jr., Superior Court Judge in Connecticut and Chair of the Connecticut Sentencing Commission, presented on the effects of Connecticut's sentencing reforms. The job of the Connecticut Commission is to "review existing criminal sentencing structure and make changes that may seem appropriate, changes to existing statutes, proposed legislation, policies, practices," but they do not create sentencing guidelines. Recommendations from the Commission are required to be heard by the State's Legislature, though they aren't required to enact changes. The Commission forms subcommittees that evaluate issues and discuss them with stakeholders, then a recommendation is made to the full Commission. In response to Chair Hardesty's questions about data collection, Judge Devlin explained that state law schools provide their scholarship, and they also acquire information from other resources around the country like think tanks. As a recent example, the Commission has worked with interested parties to address bail reform and sex offender laws.

*Presentation by the Utah Sentencing Commission Regarding the Role and Duties of the Commission*

Marshall Thompson, Director of the Utah Sentencing Commission, presented on Justice Reinvestment in Utah and the role of the Sentencing Commission. Mr. Thompson said that the Commission provides advice to all three branches of government on criminal sentencing and policy issues, including taking positions on legislation and developing legislation with subcommittee groups, and ultimately finding sponsors for legislation and providing support during the legislative process.

When Utah began the Justice Reinvestment process, they found that almost 50 percent of offenders in prison were either first-time or nonviolent offenders, or there on drug possession, which Mr. Thompson said "kind of blew everyone's mind. It was way worse than we thought it was." Utah decided to reduce many sentences, especially for drug possession, and to base sentences on the offender's risk to public safety rather than the crime itself, resulting in a significant decrease in the nonviolent offender prison population. Mr. Thompson noted that racial disparity had increased after the reforms and that identifying the cause was their top priority. They are also working on implementing probation supervision length guidelines.

### *Presentation on the Accounting and Application of Sentencing Credits*

Garrit Pruyt, a Deputy District Attorney with the Carson City District Attorney's Office, presented on Nevada's system of sentencing credits. Mr. Pruyt began by noting that the sentence handed down by the judge can easily confuse people since the actual sentence is not always within the specified sentencing range due to credits. One side sees the credits as a "get out of jail free card," while the other side still sees a lengthy sentence. There have been sentencing reforms and other changes recently, such as the implementation of aggregated sentences. There are numerous types of credits, and part of their purpose is to mitigate an inmate's potential attitude that there is no reason to behave in prison due to a fixed term of incarceration.

One type of credit is flat time, which an inmate earns based on the amount of time they have been incarcerated. A second type is called stat time, which inmates refer to as good time credits because they are essentially statutory good time credits. These credits are also earned based on length of incarceration, and the maximum an offender can earn is 20 credits per 30 days served. These credits are also earned when an offender is incarcerated in a county jail. There are also merit credits which are earned for work performed. Depending on the type of work, these credits can range between 1 and 20 credits earned per month. Opportunities for work depend on factors like the inmate's location and custody level. Finally, merit time is given for mostly educational achievements, such as earning a GED or other degrees. Merit time can also be earned by completing programs such as substance abuse counseling or sex-based counseling. The purpose of work and merit credits is to incentivize inmates to acquire work skills or education that will help them after release, as well as to keep them busy and out of trouble. In the case of an inmate who "makes the best of his incarceration" by getting a job and behaving, the rule of thumb for calculating the actual length of time someone will be incarcerated is to divide their sentence in half. However, in the case of A and B felonies, the frontend of a sentence cannot be altered and must be served. Additionally, inmates must serve 42 percent of their sentence at a minimum, so no amount of credits can push an inmate's length of stay lower than 42 percent of the sentence.

One recent area of contention that Mr. Pruyt brought up is that subsequent felony DUI convictions, which are B felonies and should have an unmovable frontend, technically allow for residential confinement, which is eligible for good time credits, thus moving the frontend sentence forward.

### *Presentation on the Presentence Investigation and Report Process, Including Statistics and Data Regarding Presentence Investigations and Reports*

Stephanie O'Rourke, Major, Division of Parole and Probation, presented on the presentence investigation (PSI) report process. She began by stating that certain offenses require the Division of Parole and Probation to perform a psychosexual evaluation on a defendant as part of the PSI process. For parole or probation to be granted, the evaluation must indicate that the individual does not pose a high risk to reoffend. For category E felonies and gross

misdeemeanors, PSIs are not mandatory but can be ordered by a judge. Major O'Rourke listed the content that must be in the PSI, such as victim impact, substance abuse problems and personal details.

The PSI has a recommendation for a minimum or maximum sentence, a fine or both. A recommendation for boot camp or regimental discipline can also be made. Additional information can be included in the PSI. There are statutory requirements on which parties must have access to the report, as well as deadlines for its completion. The purpose of the PSI "is to provide accurate information to aid judges in pronouncing sentences." The PSI is used by the Pardons and Parole Boards in making decisions, by the NDOC to determine program eligibility and by the Division to determine recommendations and supervision conditions. It is written primarily based on an interview with the defendant, and other documents like police reports can be used as well. The Division also contacts any victims and obtains a statement from them. Major O'Rourke concluded by presenting statistics on PSIs written during Fiscal Year 2017.

*Presentation on Commission Member Requests for Data/Information to be Collected by the Nevada Sentencing Commission*

Staff of the Commission provided a breakdown of topics for which the Commissioners would like to review additional data. Chair Hardesty then asked Members if there were any other topics they wished to request data for or review. Commissioner Segal was interested in knowing how much of a defendant's ordered restitution is actually collected, and Chair Hardesty requested that Major O'Rourke bring back data from the Division of Parole and Probation. She commented that it was difficult to collect restitution when probationers' sentences shrink due to good time credits. Chair Hardesty mentioned that the Division has inadequate staff to pursue restitution from offenders and suggested that the Commission consider alternate means of collection. Assemblywoman Tolles asked about what constitutes a parole or probation violation and whether that information was tracked. Chair Hardesty added that more detail on technical violations and definitions might be relevant. Commissioner Callaway said that the Commission needed to identify problems before it could come up with solutions, and he felt that there was not enough data on the prison population to make informed decisions. Chair Hardesty noted that Nevada was hoping to receive support from Justice Reinvestment, which would greatly assist in data collection. Chair Hardesty also noted that the Commission should debate the lengths of sentences, especially for Category B felonies. Senator Kieckhefer asked about the effect of Assembly Bill 510 from 2007 on judicial discretion in crimes involving firearms and whether that could be tracked. Commissioner Cameron suggested that the Commission could begin evaluating certain sentences while awaiting the data needed to make other decisions. Chair Hardesty added that the Commission had yet to decide whether or not to pursue sentencing guidelines or judicial discretion in sentencing. Commissioner Hicks stressed the importance of evaluating Nevada's data before making such decisions. Chair Hardesty concluded by asking Members to submit details on what data they would like to have on the prison population, which would serve as a starting point should Nevada be chosen for Justice Reinvestment.

#### D. JOINT MEETING

A joint meeting of the Nevada Sentencing Commission and the Advisory Commission on the Administration of Justice was held on August 2, 2018.

##### Introductory Remarks

Chair Yeager began the meeting by thanking Justice Hardesty for all of his work throughout the years on the ACAJ and for helping to bring Justice Reinvestment to Nevada. Chair Hardesty said he was also excited about the “unique opportunity and extraordinary resource” presented by the Justice Reinvestment process.

##### Presentation on Criminal Procedure in Nevada

District attorneys and public defenders from various jurisdictions throughout the State presented to the Joint Committee on criminal procedure, beginning with Jennifer Noble, Chief Deputy District Attorney in the Office of the Washoe County District Attorney, and John Jones, Chief Deputy District Attorney in the Office of the Clark County District Attorney. Ms. Noble explained that district attorneys handle misdemeanors, gross misdemeanors and felonies. She and Mr. Jones wanted to acknowledge something often overlooked that is important to prosecutors and the criminal justice system: “Our primary duty is not to convict people or put them in prison. Our primary duty is to seek justice, and our priority is to make sure that the truth comes out and that justice is served. If that means an acquittal or that means we drop charges, that’s fine, and if it means that someone is convicted, that’s also our objective depending on what the facts are and if we believe it’s a meritorious case.” Ms. Noble said that prosecutors also try to assist offenders with mental health issues and addiction issues through the use of specialty courts.

Ms. Noble discussed misdemeanors, gross misdemeanors and felonies, along with punishments and sentence ranges. She then explained crimes against property and against persons, as well as the court in which the case is heard. Mr. Jones detailed how a case moves through the criminal justice system and the various hearings and negotiations. Ms. Noble mentioned the systems in place to review claims of actual innocence, such as her Appellate Unit and Clark County’s Conviction Review Unit. Ms. Noble then turned to post-conviction proceedings, including the appellate process and motions that the defendant can file.

Anna Clark, Chief Public Defender in the Office of the Clark County Public Defender, provided additional detail on cases’ progression through the criminal justice system, specifically noting the high volume of cases resolved through negotiation. Deputy Public Defenders Jordan Davis and Katelyn Cantu from the Washoe County Public Defender’s Office then presented on statistics from Washoe County.

John McCormick, Assistant Court Administrator with the Administrative Office of the Courts (AOC), presented on the courts’ role in the process. He said that the AOC is responsible for

the continuing education of judges, staffing committees within the judiciary and maintaining case management systems, especially for rural jurisdictions.

*Presentation by the Central Repository for Nevada Records of Criminal History*

Mindy McKay, Records Bureau Chief with the Records, Communications and Compliance Division, presented on the Central Repository for Nevada Records of Criminal History, the Nevada Criminal Justice Information System (NCJIS) and the disposition backfill. She began by stating that her Division's mission is to "provide complete, timely and accurate criminal justice information by balancing the need for public safety and individuals' rights to privacy." The Central Repository collects and maintains records submitted by criminal justice agencies and other records of criminal history. Such information includes records of fingerprints and DNA, dispositions, arrests and Nevada Offense Codes. The Central Repository is also responsible for communicating with other states and the FBI. Staff of the Repository are currently working on an NCJIS Modernization that will replace or upgrade numerous systems to enhance efficiency.

Another current project of the Repository is the disposition backfill. In 2013, it was discovered that there was a massive backlog of dispositions and that very few courts were coordinating with the Division on dispositions in a timely and consistent manner. The Repository secured additional funding for staff to work on processing the backfill, and they have since completed the original backfill project. Additionally, all courts are now reporting consistently, and measures have been implemented to avoid future backfills.

Ms. McKay concluded by updating the Joint Committee on the status of the ACAJ's Subcommittee on Criminal Justice Information Sharing and its working groups.

*Presentation on the Presentence Investigation and Report Process; Including Statistics and Data Regarding Presentence Investigations and Reports*

Major Stephanie O'Rourke provided follow-up information to her presentation during the April meeting of the Sentencing Commission. She noted the specific statutes that pertain to the PSI and explained the current effect.

*Presentation on the Accounting and Application of Sentencing Credits*

Garrit Pruyt provided follow-up information to his presentation from the April meeting of the Sentencing Commission, adding in specific policy recommendations as Chair Hardesty had requested. Mr. Pruyt started his recommendations by discussing credits, and said that merit credits incentivizing education were a good thing in his opinion. His first recommendation was that credits should not affect the frontend of a sentence, only the backend. He said that many people he talked to were okay with credits reducing the backend of a sentence, but not the frontend, and that this change would "go a long way to restoring more trust in our system." Mr. Pruyt did point out that this would result in changes to NDOC's budget as inmates would

be serving their frontend sentence without reductions, potentially resulting in a larger population. He also noted that this change would take the guesswork out of whether a sentence couldn't have the frontend reduced, because currently certain felonies cannot have the frontend reduced while others can. Mr. Pruyt opined that addressing the sentences of crimes is where reform should begin. Mr. Pruyt's next suggestion was on credits for parolees, and he mentioned the potential for Parole and Probation to discharge supervised offenders after a certain period of good behavior.

### *Presentation on the Justice Reinvestment Initiative*

Staff of the Crime and Justice Institute (CJI) presented on the Justice Reinvestment Institute (JRI) and what the process involved. Chair Hardesty began by discussing how the Advisory Commission on the Administration of Justice (ACAJ) had been calling for data since its inception, and that the JRI process and assistance from the Crime and Justice Institute would be of great use to Nevada. Maura McNamara, a Policy Specialist with CJI, explained the mission of the JRI, which is to "work with local, state and national criminal justice organizations to use data to reduce recidivism, cut costs and promote public safety." In partnership with the Pew Charitable Trusts, CJI has provided this assistance to 16 other states.

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

Ms. McNamara discussed the reasons for national increases in prison populations. Colby Dawley, Deputy Director of Adult Policy with CJI, explained the objectives of incarceration: incapacitation, deterrence and rehabilitation. However, research has not found that incarceration is the best tool to reduce recidivism, and incarceration actually increases recidivism for many offenders, including first-time offenders, drug offenders and technical probation violators.

Ms. Dawley explained the Risk, Needs, Responsivity Model. The risk principle tells us who to target, the needs principle tells us what to target, and the responsivity principle tells us how to target those needs. Risk involves identifying those offenders most at risk of recidivating, and needs refers to identifying the needs of those offenders to help them avoid recidivating. She compared reducing recidivism to reducing the risk of a heart attack in that it is most important to target the largest risk factors that can be changed. Responsivity identifies barriers to

successful programs and directs focus to removing those barriers. Resources are most effective in preventing recidivism when frontloaded during the first days, weeks and months that an offender is on supervision. Treatment that specifically targets criminogenic needs is also more effective. Programs must also be implemented with fidelity to ensure that they are successful. Training staff on evidence-based practices and collecting data help with ensuring quality and fidelity of programs.

Ms. McNamara explained trends in national prison populations and crime rates, including research that both began to decrease around 2015 when evidence-based practices began to be implemented around the country. She also discussed data on mental illness in the incarcerated population, which showed a disproportionate number of people with a mental illness incarcerated, along with longer periods of incarceration than those without such disorders.

Ms. McNamara elaborated on the work that CJI had done previously in several states. Alison Silveira, a Data and Policy Specialist with CJI, then began discussing Nevada-specific data. Unlike the national trend, Nevada's prison population continued to increase after 2015, outgrowing even population growth in the state. Nevada also has a higher female imprisonment rate than other states around the country. These high incarceration rates lead to increased expenditures by NDOC to house a growing population. Nevadans also struggle with access to treatment for mental illness.

Ms. McNamara concluded by detailing the upcoming work to be done by CJI and the ACAJ. Chair Yeager stated that work on JRI would take up most of the ACAJ's remaining time and focus.

## **V. DISCUSSION OF ISSUES AND FINAL RECOMMENDATIONS**

This report is intended to provide a brief summary of the Sentencing Commission's work product throughout the course of the interim. Additionally, this portion of the report primarily focuses on the final recommendations, with relevant background. The 2017-18 Sentencing Commission held a final work session on August 29, 2018. At the work session, the Sentencing Commission considered seven recommendations relating to: (1) data oversight; (2) criminal justice impact statements; (3) justice reinvestment initiatives and sentencing credits; (4) recidivism; (5) funding for the Central Repository for Nevada Records of Criminal History; (6) funding for the Division of Parole and Probation, the Department of Corrections and the State Board of Parole Commissioners; and (7) funding for the specialty court program. The Sentencing Commission voted to approve one recommendation for the drafting of legislation relating to the organization, duties and staffing of the Sentencing Commission and three recommendations for the drafting of letters to urge support from the Governor and Legislature for additional funding for criminal justice agencies. Given the ongoing coordination of the Justice Reinvestment Initiative through the Advisory Commission on the Administration of Justice, the Sentencing Commission chose to defer a number of recommendations until after the final report by the Crime and Justice Institute is prepared and presented.



## A. RECOMMENDATION TO DRAFT LEGISLATION

### 1. Recommendation on Nevada Sentencing Commission

Throughout the interim, the Commission received testimony from numerous policy experts and agency officials on the need for increased data collection, data transparency and data predictability as it relates to the system of criminal justice. Presenters and Commission members alike acknowledged that such data is critical for policy makers to make data driven and results oriented criminal justice policy decisions.

At the Commission meeting held on November 27, 2017, Kelly Mitchell, Executive Director, Robina Institute of Criminal Law and Justice testified, “The most active and effective commissions are ones that serve as a central collection point for sentencing data and that begin to develop a database. This allows the commission to actually be a nonpartisan source of expertise so that the state and the commission can make data driven policy decisions. It is really important to have that independent, nonpartisan voice that can take the overview of what’s actually occurring within the state to provide an objective source of information.” Commissioner Bisbee then questioned whether “support staff would be essential to these commissions” to which Ms. Mitchell replied, “Yes, I would say that is absolutely true, especially if the commission decides to take on that data-collection task. The support staff is really essential to building that database, tracking down information that maybe wasn’t supplied the first time, or missing information, writing data reports, writing information and then doing this fiscal impact function during the legislative session.” Chair Hardesty indicated, “On the issue of data collection, as some of us know from hearings in various committees and commissions, we do have this collection process. We also have some problems with it, and one of the issues I intend to have the Commission address is that whole process.”

At the meeting held on February 16, 2018, Commissioner Hicks asked Ms. Farrar-Owens, Director, Virginia Criminal Sentencing Commission, “. . . would it be your recommendation that we ensure we have a reliable criminal history system to base our scoring sheets on before we implement scoring sheets?” To which, Ms. Farrar-Owens responded, “I do think that would be an important element from any consistency and potential disparity point of view. Depending on the information that’s there versus not there in your criminal history system, I think it would be important for individuals’ criminal history to be scored consistently from offender to offender in different areas of the state.” Further, at the February 16, 2018, meeting, Chair Hardesty added, “What I find interesting is centralizing the research and data collection, because quite frankly, for a lot of our counties, certainly 15 and maybe 16 of the 17 counties in our state, collecting data and analyzing it is a real challenge fiscally. If the state were to, say, fund the AOC or a statewide agency to perform this service for the counties, it could be a tremendous step in being able to make good business decisions.” Mike Schmidt, Executive Director, Oregon Criminal Justice Commission, responded, “Our ability has really been enhanced by having access to our law enforcement data (LED) system. We have access to the court system where we get our conviction data, and then our department of corrections and parole and probation has a statewide case management system for anybody on felony supervision and/or in a prison. What we do as a commission is we merge all three of those

data sets into a bundle. We do matching across to make sure we can track people, and that's really been key, having all three of those."

Also, at the February 16, 2018, meeting, Commissioner Welborn stated, "I would really like to look at that data and for our state and really look at how or where these guidelines systems have actually resolved that problem in the states we're looking at." Commissioner Hicks added, "I'd give the same short answer to what Ms. Welborn gave, and that's yes. I think, in my opinion, a lot of the decisions we might have to make or recommendations we might make are going to be largely based on the data."

As with the Virginia and North Carolina Commissions, Chair Hardesty asked Mr. Schmidt, "And what is the gross amount of your commission's budget?" To which, Mr. Schmidt, stated, "In a biennium, we have 15 full-time equivalents, and we are, just for staff and not the grants and everything that I talked about, approximately \$4,000,000." Ms. Farrar-Owens stated, "For us as an agency of nine, almost all of our budget is for staff. Our budget started a little below \$1,000,000 and now it's a little above \$1,000,000." Michelle Hall, Executive Director, North Carolina Sentencing and Policy Advisory Committee, stated, "We have 10 full-time staff members, so we have 9 professional staff and 1 administrative secretary. Our budget is roughly just under \$1,000,000 annually, and that is primarily for staff, the same as Virginia."

Throughout the interim, numerous members of the Sentencing Commission, voiced their concerns that additional data was needed before policy choices could efficiently and effectively be reached. In that vein, Chair Hardesty asked each member to provide his or her input on what data needs to be collected and studied. Staff then compiled those requests into a list which included: number of offenders by offense type; presentence investigation report data; inmate programming; sentences by each judicial district; sentence data; recidivism; criminal history of offenders; procedure of criminal cases; and other miscellaneous data deliverables. Additionally, Chair Hardesty directed staff to compile a list of all sentencing commission staff sizes and annual budgets. The majority of independent sentencing commissions were located in the executive branch, with staffs sizes ranging from 2 to 15 employees, and annual budgets ranging from \$200,000 to \$7 million.

At the August 29, 2018, work session, the Members considered the need for data and the cost of providing an independent functioning Sentencing Commission prior to unanimously approving the following recommendation. Chair Hardesty indicated, "We have heard a lot in this Commission about how other sentencing commissions work, and we've heard a lot about everything from guidelines, mandatory guidelines, some guidelines, no guidelines, but the consistent recurring theme seems to me to be the role of the sentencing commission in each state, which is to advise the legislature on the impact of both fiscal as well as other impacts associated with criminal justice decisions through analyzed data. One of the things that came to my attention through the Justice Reinvestment effort was an example of the assessment that is provided in the State of Illinois through their sentencing commission. As all of you know that have been involved with the Legislature, there's frequently a fiscal impact request, but I invite you to compare the exhibits that we've attached for a fiscal impact request in Nevada versus

the kind of analysis that takes place in the State of Illinois when the sentencing commission there is asked to evaluate either proposed legislation or other alternatives. So, what this proposes is the sentencing commission's role going forward in addition to its other statutory duties." The motion to approve Recommendation No. 1 passed unanimously.

**RECOMMENDATION NO. 1** — Draft legislation to statutorily create an independent Office of the Nevada Sentencing Commission. The legislation would revise the duties of the Nevada Sentencing Commission to statutorily require the Commission to function as an independent and standalone analytic and oversight body for sentencing and related criminal justice data. The Commission staff would be required to facilitate the collection and aggregation of data deliverables (from the courts, corrections, parole and probation and other agencies of criminal justice) in an effort to further enable the Commission to efficiently and effectively evaluate criminal justice practices across the State. The legislation may include the identification of certain variables or data sets not currently collected or shared across Nevada's criminal justice agencies, along with requirements and timelines for their definition, collection and aggregation. Once in place, the Commission will have the necessary data to perform its statutory duties, including, without limitation: the evaluation of statewide sentencing practices, the potential use of sentencing guidelines, the use of mandatory sentencing, enhanced penalties for habitual criminals and the identification of other sentencing and corrections practices.

This legislation would serve to further the legislative findings and declarations contained in NRS 176.0131 in an effort to ensure that sentencing and corrections policies embody fairness, consistency, proportionality and opportunity. It would also enable a coordinated and systematic approach by the Commission to make data driven sentencing and corrections policy recommendations to the Nevada Legislature.

Additionally, this legislation would provide that the Commission staff function as an independent agency located in the executive branch of state government. The Commission membership would have the same statutory membership pursuant to NRS 176.0133, but would be staffed by newly established full-time independent nonpartisan staff.

**Appendix A - Assembly Bill No. 80 (2019)**

**Appendix B - Sentencing Commission Data Requests**

**Appendix C - Comparison of State Sentencing Commission Staffs and Budgets**

## **B. RECOMMENDATIONS TO DRAFT A LETTER**

### **2. Recommendation on the Central Repository for Nevada Records of Criminal History**

During the Joint Commission meeting held on August 2, 2018, Mindy McKay, Records Bureau Chief, appeared and presented an overview of the Central Repository. Ms. McKay indicated, "the Central Repository for Nevada Records of Criminal History is housed within

the Records Communications and Compliance Division within the Nevada Department of Public Safety pursuant to the statutes. We collect and maintain records reports and compilations of statistical data submitted by each agency of criminal justice, collect maintain and arrange all information regarding records of criminal history, DNA profile of certain persons for whom a biological specimen was obtained and we use biometric and personal identifying information of a subject as the basis of maintaining any records regarding him or her. The Records Bureau's primary responsibility is to provide Nevada's criminal justice community with the information necessary for them to ensure public safety."

Chair Hardesty posited, "We will get into this in a little bit more when we talk about data, but it does seem like your department is expected to collect a lot of data but you can't collect that which you don't have, and it sounds like you have a pretty severe demands. I know that it's always awkward for people in the executive branch to respond to questions like this, but staffing is a big issue for you folks, and I know your staff worked very hard and I've seen them work and I wonder if you could comment on the staffing needs for your department to meet these extraordinary numbers and these extraordinary responsibilities." To which, Ms. McKay responded, "Yes, staffing is always an issue, for various reasons, shift work is not desirable, the level of the positions, I feel that they're underpaid for what they do and for what interpretation analyzation decisions that they're required to make. I feel that technology would really be helpful to reduce staffing needs. I think it's going to have to be a combination of both human and technological advances."

This recommendation would support the system modernization efforts of the Central Repository and is significant and in line with improving criminal justice information sharing and data gaps. As indicated by staff of the Central Repository, "System modernization is the Central Repository's number one priority, along with cooperation by all criminal justice agencies so that the Central Repository is in partnership toward a common goal."

At the work session, the Sentencing Commission discussed the importance of adequately funding and prioritizing criminal justice. Thus, in support of the Sentencing Commission's approved recommendation for legislation, and in furtherance of the pressing financial needs for the entire criminal justice system, the Advisory Commission unanimously voted to draft a letter to the Governor and Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance. The letter from the Commission is to support additional funding for the Records, Communications and Compliance Division of the Nevada Department of Public Safety through increased funding from the general fund for staffing and technology. Commissioners Kieckhefer, Tolles and Cannizzaro voted with a caveat as to defer to the legislative process and budget requests as determined throughout the 2019 Legislative Session.

**RECOMMENDATION NO. 2** — Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to provide budgetary funding for staffing and technology for the Central Repository for Nevada Records of Criminal History. The letter would specifically request dedicated general fund revenue, rather than the implementation of any new fees or court assessments.

**Appendix D - Letter to the Governor, Chair of the Senate Committee on Finance, Chair of the Assembly Committee on Ways and Means, dated January 7, 2019**

**3. Recommendation on Funding for Criminal Justice Agencies**

During the interim, the Commission received testimony and input from the Division of Parole and Probation, the Department of Corrections and the State Board of Parole Commissioners on a number of issues relating to the funding and functioning of the criminal justice system in Nevada. At the November 27, 2017, meeting, Director Dzurenda stated, “You’ll see that a little more than 50 percent of our offenders that are sentenced in the Department of Corrections in Nevada are serving less than 20 years. I just want to make it clear that those are offenders who are going home, which is why we really have to look at how we deal with sentencing and discharge of offenders, to reduce not only crime, but to reduce victimization. The other thing I think is going to be important to look at down the road is juveniles that are sentenced into the adult prisons. Currently there are 16 in the State, and down the road, I can explain how we treat juveniles and how we house them and where they’re located.” Additionally, he added, “When you start saving prison money, moving that saved money into those wrap-around services is going to be the whole key with reducing victimization in the long term.”

At the meeting held on August 2, 2018, Major O’Rourke testified, “The pre-sentence recommendation, the Division utilizes a scoring tool that requires a PSI specialist to answer a series of 35 questions. The answers are then calculated to create a score which is used by the PSI specialist to formulate an appropriate sentence recommendation. Some of our sentence recommendations include prison, jail or probation with special conditions such as restitution or fines and fees. For Fiscal Year 2017 we authored 10,135 PSIs while 11,183 were referred.”

The Sentencing Commission considered input on the increased demands on the PSI writers, the shifting prison population and the release mechanism through parole. This has been a consistent theme over the past several interims (as previously identified by the Advisory Commission on the Administration of Justice), as the State has faced a continued shortfall in difficult economic times since the Great Recession. Certain issues such as staffing levels of the Division of Parole and Probation for the issuance of presentence investigation reports and courtroom staffing levels, resources and staffing issues for the Department of Corrections, and a growing prison population raised concerns from numerous members of the Commission. As such, while the Commission is specifically tasked with evaluating and recommending policy, this recommendation would urge the Governor and the Legislature to consider the pressing need for additional funding for the Division of Parole and Probation, Department of Corrections and State Board of Parole Commissioners. For efficiency purposes, staff combined all three criminal justice agencies into one recommendation for a single letter.

At the work session, Chair Hardesty introduced the recommendation by stating, “This is a letter of support for additional funding for the Division of Parole and Probation, the

Department of Corrections and the State Board of Parole Commissioners. It is a general letter of support for the financial support for those agencies.”

Commissioner Welborn indicated, “The ACLU is not typically in the position to really advocate for funding of correctional systems, however, I have been compelled by much of the testimony, particularly from Director Dzurenda, in regard to several different programs, the need to increase staff, the need to increase staff to meet the requirements of PREA when it comes to the youthful inmates who are housed at Lovelock Correctional Center. I have been engaged with this Department for several months now on addressing that issue and really looking at the youthful offenders and how the State can really address it in trying to find reasonable solutions in the next legislative session, so for those reasons, because I don't think that we are looking at an increase in any kind of new facilities that it is really at the end of the day policy wise a way of protecting those offenders and the people who are involved in these programs. I will be voting for it.”

Commissioner McCormick motioned, “I would move that we adopt the recommendation, but also include the caveat that this funding not be fee funding, it would be general fund support.” The motion passed unanimously.

**RECOMMENDATION NO. 3** — Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to consider additional general fund appropriations for criminal justice agencies throughout the State, including: the Division of Parole and Probation of the Department of Public Safety, the Department of Corrections and the State Board of Parole Commissioners. The letter would specifically request dedicated general fund revenue, rather than the implementation of any new fees or court assessments.

**Appendix D** - Letter to the Governor, Chair of the Senate Committee on Finance, Chair of the Assembly Committee on Ways and Means, dated January 7, 2019

#### **4. Recommendation on Specialty Court Programs**

At the Commission meeting held on February 16, 2018, Chief Justice Michael Douglas presented an overview of the Specialty Court Programs. Chief Justice Douglas opened by stating, “The interview you just went through with Oregon was very interesting, and some parts as he got into specialty courts comports with some of the things you will see in the presentation that we are doing here in Nevada. I wish we were as advanced and I wish we had the money that they talked about in Oregon.”

Chief Justice Douglas continued, “The first slide is just an overview and a reminder that Nevada’s first drug court came about in 1992. The late Judge Jack Lehman started the program in Las Vegas, closely followed by Judge Peter Breen, in Northern Nevada. They are kind of rock stars on a national basis for what they have done for the State. Over the years, the specialty courts have had over 13,000 participants, and there has been over 9,000 graduates.

More importantly, one of the things that people can applaud, over 700 drug-free babies have been born because of the relationship to the programs. We have looked at our statistics, and in the last 20 years, there has been a savings of more than \$40,000,000 based on what has been put together by the National Association of Drug Courts.”

Adding to the discussion by way of history, Chair Hardesty explained, “In 2015, the Legislature considered recommendations from the Advisory Commission on the Administration of Justice to consider funding from the State general fund to help support Nevada’s specialty court effort. This was a unanimous recommendation from the Advisory Commission in 2014. The 2015 Legislature entertained this, and really for the first time since we’ve had specialty courts in our State, the Legislature agreed to fund \$3,000,000 per year into our specialty court front end effort in trying to deal with this matter. In the 2017 Legislative Session, the Advisory Commission had also in the 2016 Interim recommended that funding continue. There was a report presented to the judiciary committees and the money committees in the 2017 Session about what the Nevada judiciary had done with those funds, and the 2017 Legislature elected to continue that program. I asked Oregon, through their Criminal Sentencing Commission, to comment about what Oregon’s experience was with their investment in their specialty court programs and their front end money. Their investment began with \$15,000,000. At the time we had made our investment of \$3,000,000, they had invested \$15,000,000. We learned during our interviews with Oregon that that had been increased to \$40,000,000 (in total for justice reinvestment). They have made a sizable investment on the front end of addressing the criminal justice issues in Oregon, and I thought it would be informative for the Commission to hear how that sentencing commission has evolved now toward—principally, their function is managing those dollars and using those dollars to address front end issues in the criminal justice system.” Additionally, Mike Schmidt, Executive Director, Oregon Criminal Justice Commission, added, “Specialty courts are our other major grant program. We currently fund 41 specialty courts across the state. We estimate that there are approximately 72 specialty courts across the state [of Oregon]. We don’t fund them all, but we are the biggest source of funding for specialty courts. We use the term specialty courts because it’s an umbrella term. It encompasses mental health courts, veteran courts, adult drug courts, juvenile courts, family courts. We have a wide range of court types that we fund, but we supply them with the resources they need, mainly court coordinators and some other ancillary staff needs. They use their local system to access things like treatment, housing and other things that those programs might need. We try to get them as many resources as we can, but \$17,000,000 spread out across 41 courts kind of spreads it a little bit thin.”

Chair Hardesty suggested this recommendation follows the approach of the previous two Advisory Commissions and is a recommendation to draft a letter to the Governor and the Legislature, specifically requesting a continuation of the \$3 million general fund appropriation, and supporting an increase of an additional \$3 million to more adequately meet the expanding needs and demands of the specialty court program.

Testimony at the work session noted that there is currently a need for an additional \$15 million for specialty courts, and the Sentencing Commission noted that the request for a total of \$6

million would provide needed and greater access to the specialty court programs. Prior to the vote, Commissioner Togliatti indicated, "I didn't make a statement earlier, but perhaps before we take a vote, I would just want to state for the record that as the competency judge for Clark County, last year I had 11,00 cases where persons charged with crimes were evaluated for legal competency, which is under the *Dusky* case not an incredibly difficult standard to meet. I would tell you that I understand that the specialty courts have a big focus on drug addiction and all of that and I always appreciate those programs and they are exceptional in what they do, but I just want to highlight that specialty court programs also include mental health court and services for the mentally ill which in Southern Nevada is a profound problem."

The motion to draft a letter of support passed with Commissioner Kieckhefer voting No.

**RECOMMENDATION NO. 4** — Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to provide dedicated budgetary funding of \$6 million to the specialty court program. Past budgets have included \$3 million in specialty court funding, this request would increase that amount to \$6 million total, as there is currently a \$15 million need for the specialty court program. The letter would specifically request dedicated general fund revenue, rather than the implementation of any new fees or court assessments.

**Appendix D** - Letter to the Governor, Chair of the Senate Committee on Finance, Chair of the Assembly Committee on Ways and Means, dated January 7, 2019

**Appendix E** - Specialty Court Review, presented by Chief Justice Michael Douglas

## **VI. CONCLUSION**

Throughout the 2017-2018 interim, the Sentencing Commission diligently considered, reviewed and deliberated Nevada's current sentencing structure, and considered many approaches adopted by other states. This systematic approach, as guided by the Sentencing Commission's statutory duties, resulted in the culmination of hours of expert and public testimony at numerous public meetings. This final report memorializes those efforts, with an eye towards future criminal justice reforms which are intended to coincide with the legislative findings and declarations regarding sentencing outlined in NRS 176.0131. As directed pursuant to NRS 176.0134, the Sentencing Commission hereby forwards its findings and recommended policies pertaining to the elements of this State's system of criminal justice which affect the sentencing of offenders, and final recommendations for proposed legislation, to the 80th Session of the Nevada Legislature.



# Appendix A

ASSEMBLY BILL NO. 80—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SENTENCING COMMISSION)

PREFILED NOVEMBER 20, 2018

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to the Nevada Sentencing Commission. (BDR 14-469)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal justice; creating the Office of the Nevada Sentencing Commission within the Office of the Governor; providing for the appointment of the Executive Director and the selection of the staff of the Office; establishing the duties of the Executive Director and staff of the Office; revising the membership of the Nevada Sentencing Commission; transferring the responsibility for staffing the Nevada Sentencing Commission to the Office; revising the duties of the Nevada Sentencing Commission to reflect the newly created Office; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law establishes the Nevada Sentencing Commission consisting of 25  
2 voting members appointed by the Governor, the Legislature and various other  
3 agencies and organizations related to criminal justice. The Nevada Sentencing  
4 Commission is charged with, among other duties, identifying and studying the  
5 sentencing of offenders convicted of a crime in this State and making  
6 recommendations concerning the adoption of sentencing guidelines. (NRS  
7 176.0131-176.0139) **Section 5** of this bill creates the Office of the Nevada  
8 Sentencing Commission within the Office of the Governor and provides for the  
9 appointment of an Executive Director of the Office. **Section 6** of this bill prescribes  
10 the duties of the Executive Director, which include, among other duties, overseeing  
11 the functions of the Office, serving as the Executive Secretary of the Nevada  
12 Sentencing Commission, developing the budget for the Office and assisting the  
13 Nevada Sentencing Commission with preparing the biennial report of the Nevada  
14 Sentencing Commission. **Section 7** of this bill requires the Executive Director to



\* A B 8 0 \*

select at least one research analyst and two secretaries for the Office and provides for the duties of those positions. **Section 9** of this bill: (1) revises the membership of the Nevada Sentencing Commission to remove the Attorney General; and (2) requires the Nevada Sentencing Commission to hold its first meeting on or before September 1 of each odd-numbered year.

Existing law requires the Nevada Sentencing Commission to be provided with such staff as is necessary, to the extent of legislative appropriation, by the Director of the Legislative Counsel Bureau. (NRS 176.0133) **Section 9** designates the Executive Director as the Executive Secretary of the Nevada Sentencing Commission and transfers the staffing of the Nevada Sentencing Commission to the newly established Office.

**Section 10** of this bill revises the duties of the Nevada Sentencing Commission to: (1) include the oversight of the Executive Director; and (2) provide certain recommendations and advice concerning the Office.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 176 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

**Sec. 2.** *As used in NRS 176.0132 to 176.0139, inclusive, and sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 176.0132 and sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Executive Director” means the Executive Director of the Office.*

**Sec. 4.** *“Office” means the Office of the Nevada Sentencing Commission created by section 5 of this act.*

**Sec. 5. 1.** *The Office of the Nevada Sentencing Commission is hereby created within the Office of the Governor.*

**2.** *The Executive Director of the Office must be appointed by the Governor from a list of three persons recommended by the Sentencing Commission.*

**3.** *The Executive Director:*

*(a) Is not in the classified or unclassified service of this State;*

*(b) Serves at the pleasure of the Sentencing Commission, except that the Executive Director may only be removed upon a finding by the Sentencing Commission that his or her performance is unsatisfactory;*

*(c) Must be an attorney licensed to practice law in this State; and*

*(d) Shall devote his or her entire time and attention to the duties of his or her office and shall not engage in any other gainful employment or occupation.*



\* A B 8 0 \*



1     *Sec. 6. The Executive Director appointed pursuant to section*  
2 *5 of this act shall:*

3     1. *Oversee all of the functions of the Office.*

4     2. *Serve as Executive Secretary of the Sentencing*  
5 *Commission without additional compensation.*

6     3. *Report to the Sentencing Commission on sentencing and*  
7 *related issues regarding the functions of the Office and provide*  
8 *such information to the Sentencing Commission as requested.*

9     4. *Assist the Sentencing Commission in determining*  
10 *necessary and appropriate recommendations to assist in carrying*  
11 *out the responsibilities of the Office.*

12     5. *Establish the budget for the Office.*

13     6. *Facilitate the collection and aggregation of data from the*  
14 *courts, Department of Corrections, Division of Parole and*  
15 *Probation of the Department of Public Safety and any other*  
16 *agency of criminal justice.*

17     7. *Identify variables or sets of data concerning criminal*  
18 *justice that are not currently collected or shared across agencies of*  
19 *criminal justice within this State.*

20     8. *Assist in the development, presentation and submittal of*  
21 *any legislative measure requested by the Sentencing Commission*  
22 *pursuant to NRS 218D.216.*

23     9. *Assist in preparing the comprehensive report required to be*  
24 *prepared by the Sentencing Commission pursuant to subsection 11*  
25 *of NRS 176.0134 and submit the report pursuant to subsection 12*  
26 *of that section.*

27     10. *Take any other actions necessary to carry out the powers*  
28 *and duties of the Sentencing Commission pursuant to NRS*  
29 *176.0132 to 176.0139, inclusive, and sections 2 to 7, inclusive, of*  
30 *this act.*

31     *Sec. 7. 1. In addition to the Executive Director, the Office*  
32 *must include not less than one research analyst and two*  
33 *secretaries, each of whom must be selected by the Executive*  
34 *Director and serve at the pleasure of the Executive Director.*

35     2. *The research analyst:*

36     (a) *May be an attorney licensed to practice law in this State;*

37     (b) *Is not in the classified or unclassified service of this State;*

38     (c) *Must be proficient in the use, collection and analysis of*  
39 *statistics and data; and*

40     (d) *Shall devote his or her entire time and attention to his or*  
41 *her duties as specified by the Executive Director and shall not*  
42 *engage in any other gainful employment or occupation.*

43     3. *The secretaries selected pursuant to subsection 1:*

44     (a) *Are not in the classified or unclassified service of this*  
45 *State;*



\* A B 8 0 \*



1       ***(b) Must include not less than one secretary who is proficient***  
2 ***in transcribing minutes; and***

3       ***(c) Shall be responsible for preparing and posting agendas,***  
4 ***transcribing minutes and performing any other duties assigned by***  
5 ***the Executive Director.***

6       **Sec. 8.** NRS 176.0132 is hereby amended to read as follows:

7       176.0132 ~~{As used in NRS 176.0132 to 176.0139, inclusive,}~~  
8 "Sentencing Commission" means the Nevada Sentencing  
9 Commission created by NRS 176.0133.

10       **Sec. 9.** NRS 176.0133 is hereby amended to read as follows:

11       176.0133 1. The Nevada Sentencing Commission is hereby  
12 created. The Sentencing Commission consists of:

13       (a) One member appointed by the Governor;

14       (b) One member who is a justice of the Supreme Court of  
15 Nevada or a retired justice of the Supreme Court of Nevada,  
16 appointed by the Chief Justice of the Supreme Court of Nevada;

17       (c) Two members who are judges appointed by the Chief Justice  
18 of the Supreme Court of Nevada;

19       (d) One member who is a representative of the Administrative  
20 Office of the Courts appointed by the Chief Justice of the Supreme  
21 Court of Nevada;

22       (e) The Director of the Department of Corrections;

23       (f) ~~{The Attorney General;}~~

24 ~~—(g)—~~ One member who is a representative of the Office of the  
25 Attorney General, appointed by the Attorney General;

26 ~~{(h)}~~ (g) One member who is a district attorney, appointed by  
27 the governing body of the Nevada District Attorneys Association;

28 ~~{(i)}~~ (h) The State Public Defender;

29 ~~{(j)}~~ (i) One member who is a representative of the office of a  
30 county public defender, appointed by the governing body of the  
31 State Bar of Nevada;

32 ~~{(k)}~~ (j) One member who is an attorney in private practice,  
33 experienced in defending criminal actions, appointed by the  
34 governing body of the State Bar of Nevada;

35 ~~{(l)}~~ (k) One member who has been a victim of a crime or is a  
36 representative of an organization supporting the rights of victims of  
37 crime, appointed by the Governor;

38 ~~{(m)}~~ (l) One member who is a member of the State Board of  
39 Parole Commissioners, appointed by the State Board of Parole  
40 Commissioners;

41 ~~{(n)}~~ (m) One member who is a representative of the Division  
42 of Parole and Probation of the Department of Public Safety,  
43 appointed by the Governor;



- 1     ~~[(e)]~~ (n) One member who is a representative of the Nevada  
2 Sheriffs' and Chiefs' Association, appointed by the Nevada  
3 Sheriffs' and Chiefs' Association;
- 4     ~~[(f)]~~ (o) One member who is a representative of the Las Vegas  
5 Metropolitan Police Department, appointed by the Sheriff of Clark  
6 County;
- 7     ~~[(g)]~~ (p) One member who is a representative of the Division of  
8 Public and Behavioral Health of the Department of Health and  
9 Human Services;
- 10    ~~[(h)]~~ (q) One member who is a representative of an organization  
11 that advocates on behalf of inmates, appointed by the Governor;
- 12    ~~[(i)]~~ (r) Two members who are Senators, one of whom is  
13 appointed by the Majority Leader of the Senate and one of whom is  
14 appointed by the Minority Leader of the Senate;
- 15    ~~[(j)]~~ (s) Two members who are members of the Assembly, one  
16 of whom is appointed by the Speaker of the Assembly and one of  
17 whom is appointed by the Minority Leader of the Assembly;
- 18    ~~[(k)]~~ (t) The Director of the Department of Employment,  
19 Training and Rehabilitation; and
- 20    ~~[(l)]~~ (u) One member who is a representative of an organization  
21 that works with offenders upon release from incarceration to assist  
22 in reentry into the community appointed by the Chair of the  
23 Legislative Commission.
- 24    2. *The Executive Director shall serve as the Executive*  
25 *Secretary of the Sentencing Commission.*
- 26    3. If any organization listed in subsection 1 ceases to exist, the  
27 appointment required pursuant to that subsection must be made by  
28 the association's successor in interest, or, if there is no successor in  
29 interest, by the Governor.
- 30    ~~[(3)]~~ 4. Each appointed member serves a term of 2 years.  
31 Members may be reappointed for additional terms of 2 years in the  
32 same manner as the original appointments. Any vacancy occurring  
33 in the membership of the Sentencing Commission must be filled in  
34 the same manner as the original appointment not later than 30 days  
35 after the vacancy occurs.
- 36    ~~[(4)]~~ 5. The Legislators who are members of the Sentencing  
37 Commission are entitled to receive the salary provided for a  
38 majority of the members of the Legislature during the first 60 days  
39 of the preceding session for each day's attendance at a meeting of  
40 the Sentencing Commission.
- 41    ~~[(5)]~~ 6. At the first regular meeting of each odd-numbered year,  
42 the members of the Sentencing Commission shall elect a Chair by  
43 majority vote who shall serve until the next Chair is elected.
- 44    ~~[(6)]~~ 7. The Sentencing Commission shall ~~meet~~:





1       (a) *Hold its first meeting on or before September 1 of each*  
2 *odd-numbered year; and*

3       (b) *Meet* at least once every 3 months and may meet at such  
4 further times as deemed necessary by the Chair.

5       ~~[7.]~~ 8. A member of the Sentencing Commission may  
6 designate a nonvoting alternate to attend a meeting in his or her  
7 place.

8       ~~[8.]~~ 9. A majority of the members of the Sentencing  
9 Commission constitutes a quorum for the transaction of business,  
10 and a majority of those members present at any meeting is sufficient  
11 for any official action taken by the Sentencing Commission. A  
12 nonvoting alternate designated by a member pursuant to subsection  
13 ~~[7]~~ 8 who attends a meeting of the Sentencing Commission for  
14 which the alternate is designated shall be deemed to be a member of  
15 the Sentencing Commission for the purpose of determining whether  
16 a quorum exists.

17       ~~[9.]~~ 10. While engaged in the business of the Sentencing  
18 Commission, to the extent of legislative appropriation, each member  
19 of the Sentencing Commission is entitled to receive the per diem  
20 allowance and travel expenses provided for state officers and  
21 employees generally.

22       ~~[10. To the extent of legislative appropriation, the Director of~~  
23 ~~the Legislative Counsel Bureau]~~

24       11. *The Office* shall provide the Sentencing Commission with  
25 such staff as ~~[is necessary]~~ *prescribed in sections 5, 6 and 7 of this*  
26 *act* to carry out the duties of the Sentencing Commission.

27       **Sec. 10.** NRS 176.0134 is hereby amended to read as follows:

28       176.0134 The Sentencing Commission shall:

29       1. Advise the Legislature on proposed legislation and make  
30 recommendations with respect to all matters relating to the elements  
31 of this State's system of criminal justice which affect the sentences  
32 imposed for felonies and gross misdemeanors.

33       2. Evaluate the effectiveness and fiscal impact of various  
34 policies and practices regarding sentencing which are employed in  
35 this State and other states, including, without limitation, the use of  
36 plea bargaining, probation, programs of intensive supervision,  
37 programs of regimental discipline, imprisonment, sentencing  
38 recommendations, mandatory and minimum sentencing, mandatory  
39 sentencing for crimes involving the possession, manufacture and  
40 distribution of controlled substances, enhanced penalties for habitual  
41 criminals, parole, credits against sentences, residential confinement  
42 and alternatives to incarceration.

43       3. Recommend changes in the structure of sentencing in this  
44 State which, to the extent practicable and with consideration for



1 their fiscal impact, incorporate general objectives and goals for  
2 sentencing, including, without limitation, the following:

3 (a) Offenders must receive sentences that increase in direct  
4 proportion to the severity of their crimes and their histories of  
5 criminality.

6 (b) Offenders who have extensive histories of criminality or  
7 who have exhibited a propensity to commit crimes of a predatory or  
8 violent nature must receive sentences which reflect the need to  
9 ensure the safety and protection of the public and which allow for  
10 the imprisonment for life of such offenders.

11 (c) Offenders who have committed offenses that do not include  
12 acts of violence and who have limited histories of criminality must  
13 receive sentences which reflect the need to conserve scarce  
14 economic resources through the use of various alternatives to  
15 traditional forms of incarceration.

16 (d) Offenders with similar histories of criminality who are  
17 convicted of similar crimes must receive sentences that are generally  
18 similar.

19 (e) Offenders sentenced to imprisonment must receive sentences  
20 which do not confuse or mislead the public as to the actual time  
21 those offenders must serve while incarcerated or before being  
22 released from confinement or supervision.

23 (f) Offenders must not receive disparate sentences based upon  
24 factors such as race, gender or economic status.

25 (g) Offenders must receive sentences which are based upon the  
26 specific circumstances and facts of their offenses, including the  
27 nature of the offense and any aggravating factors, the savagery of  
28 the offense, as evidenced by the extent of any injury to the victim,  
29 and the degree of criminal sophistication demonstrated by the  
30 offender's acts before, during and after commission of the offense.

31 4. Facilitate the development and maintenance of a statewide  
32 sentencing database in collaboration with state and local agencies,  
33 using existing databases or resources where appropriate.

34 5. Provide training regarding sentencing and related issues,  
35 policies and practices, and act as a sentencing policy resource for  
36 this State.

37 6. Evaluate the impact of pretrial, sentencing diversion,  
38 incarceration and postrelease supervision programs.

39 7. Identify potential areas of sentencing disparity related to  
40 race, gender and economic status.

41 8. Propose and recommend statutory sentencing guidelines,  
42 based on reasonable offense and offender characteristics which aim  
43 to preserve judicial discretion and provide for individualized  
44 sentencing, for the use of the district courts. If such guidelines are



\* A B 8 0 \*



1 enacted by the Legislature, the Sentencing Commission shall review  
2 and propose any recommended changes.

3 9. Evaluate whether sentencing guidelines recommended  
4 pursuant to subsection 8 should be mandatory and if judicial  
5 findings should be required for any departures from the sentencing  
6 guidelines.

7 10. *Oversee the Executive Director and provide*  
8 *recommendations and advice concerning the administration of the*  
9 *Office, including, without limitation:*

10 (a) *Receiving reports from the Executive Director and*  
11 *providing direction to the Executive Director concerning measures*  
12 *to be taken by the Office to ensure compliance with the duties of*  
13 *the Sentencing Commission.*

14 (b) *Reviewing information from the Office regarding*  
15 *sentencing of offenders in this State.*

16 (c) *Directing the Executive Director to conduct any audit,*  
17 *investigation or review the Sentencing Commission deems*  
18 *necessary to carry out the duties of the Sentencing Commission.*

19 (d) *Coordinating with the Executive Director to develop*  
20 *procedures for the identification and collection of data concerning*  
21 *the sentencing of offenders in this State.*

22 (e) *Providing direction to the Executive Director concerning*  
23 *any required reports and reviewing drafts of such reports.*

24 (f) *Reviewing recommendations of the Executive Director*  
25 *concerning the budget for the Office, improvements to the*  
26 *criminal justice system and legislation related to the duties of the*  
27 *Sentencing Commission.*

28 (g) *Providing advice and recommendations to the Executive*  
29 *Director on any other matter.*

30 11. For each regular session of the Legislature, *with the*  
31 *assistance of the Office*, prepare a comprehensive report including:

32 (a) The Sentencing Commission's recommended changes  
33 pertaining to sentencing;

34 (b) The Sentencing Commission's findings and any  
35 recommendations for proposed legislation; and

36 (c) A reference to any legislative measure requested pursuant to  
37 NRS 218D.216.

38 ~~12.~~ 12. The report *prepared pursuant to subsection 11* must be  
39 submitted to ~~the~~:

40 (a) *The Office of the Governor; and*

41 (b) *The* Director of the Legislative Counsel Bureau for  
42 distribution to the Legislature not later than January 1 of each odd-  
43 numbered year.



1       **Sec. 11.** NRS 284.140 is hereby amended to read as follows:

2       284.140 The unclassified service of the State consists of the  
3 following state officers or employees in the Executive Department  
4 of the State Government who receive annual salaries for their  
5 services:

6       1. Members of boards and commissions, and heads of  
7 departments, agencies and institutions required by law to be  
8 appointed.

9       2. Except as otherwise provided in NRS 223.085, 223.600 and  
10 232.461 *and section 5 of this act* all persons required by law to be  
11 appointed by the Governor or heads of departments or agencies  
12 appointed by the Governor or by boards.

13       3. All employees other than clerical in the Office of the  
14 Attorney General and the State Public Defender required by law to  
15 be appointed by the Attorney General or the State Public Defender.

16       4. Except as otherwise provided by the Board of Regents of the  
17 University of Nevada pursuant to NRS 396.251, officers and  
18 members of the teaching staff and the staffs of the Agricultural  
19 Extension Department and Experiment Station of the Nevada  
20 System of Higher Education, or any other state institution of  
21 learning, and student employees of these institutions. Custodial,  
22 clerical or maintenance employees of these institutions are in the  
23 classified service. The Board of Regents of the University of  
24 Nevada shall assist the Administrator in carrying out the provisions  
25 of this chapter applicable to the Nevada System of Higher  
26 Education.

27       5. All other officers and employees authorized by law to be  
28 employed in the unclassified service.

29       **Sec. 12.** This act becomes effective:

30       1. Upon passage and approval for the purpose of establishing  
31 the Office of the Nevada Sentencing Commission created by section  
32 5 of this act, including appointing the Executive Director of the  
33 Office, and performing any other preliminary administrative tasks  
34 that are necessary to carry out the provisions of this act; and

35       2. On July 1, 2019, for all other purposes.



# Appendix B

## Summary of Data Requests from the Members of the Nevada Sentencing Commission

CATEGORY of DATA	# of Members*
<b>Offenders by Offense Type</b> <ul style="list-style-type: none"> <li>• Drug trafficking offenses and the drug amount that triggers mandatory sentences</li> <li>• Habitual crimes</li> <li>• Property/Drug offenses</li> <li>• Primary offense</li> <li>• Misdemeanor/Gross misdemeanor</li> </ul>	8
<b>PSI Data</b> <ul style="list-style-type: none"> <li>• How the PSI is prepared</li> <li>• How is the victim is contacted?</li> <li>• Jurisdiction/PSI writer</li> <li>• Did the judge follow the PSI?</li> </ul>	5
<b>Programs</b> <ul style="list-style-type: none"> <li>• Inmate programs: Mental illness, education, work, etc.</li> <li>• Specialty Courts</li> </ul>	4
<b>Sentences by Judge/Jurisdiction</b>	5
<b>Sentence Data</b> <ul style="list-style-type: none"> <li>• Race</li> <li>• Economic status</li> <li>• Concurrent/Consecutive</li> <li>• Sentence credits</li> <li>• Aggravating factors</li> <li>• Probation/Diversion</li> <li>• Average sentence of offender convicted of category B felony</li> <li>• Truth in Sentencing: What percentage of sentence was served?</li> </ul>	8
<b>Recidivism</b> <ul style="list-style-type: none"> <li>• Definition</li> <li>• Violation when mandatory probation for a felony <ul style="list-style-type: none"> <li>◦ By offense type</li> </ul> </li> <li>• Data on new crime</li> </ul>	7
<b>Cost of Incarceration and Available Resources</b>	2
<b>History of Offender</b> <ul style="list-style-type: none"> <li>• Criminal history</li> <li>• Previous probation and diversion programs</li> <li>• Substance abuse</li> </ul>	6
<b>Procedure of Criminal Case</b> <ul style="list-style-type: none"> <li>• Arrest info</li> <li>• Original charges</li> <li>• Plea</li> </ul>	4
<b>Mental Illness Information About Offenders</b> <ul style="list-style-type: none"> <li>• Diagnosis, medication, past treatment, etc.</li> </ul>	4
<b>Parole</b>	1
<b>Other States</b> <ul style="list-style-type: none"> <li>• Sentence credits</li> <li>• States similar to Nevada</li> <li>• Prison populations</li> </ul>	2

**Misc. Requests for Information:** Simplify sentence structure and process of providing information to the public; process of booking; charging decisions; improve distinction between violent and nonviolent offenders.

\*LCB staff received responses from 17 members of the Nevada Sentencing Commission. Some of the responses included requests which fit into multiple categories. If a response fit into more than one category, staff recorded the response in each applicable category.

# Appendix C

### **Sentencing Commissions Located in the Executive Branch**

<b>STATE</b>	<b>Staff</b>	<b>Annual Budget (approx.)</b>
Arkansas	3 (Including: Executive Director, 2 attorneys and other staff with chair approval)	\$200,000 (from Transparent Arkansas)
Connecticut	2 (Including: Executive Director and research and policy associate)	(small budget-per NSC meeting)
Delaware	1 (Employed by Delaware's Criminal Justice Council and has other duties outside of the Commission)	(inference: no separate appropriation because Commission shares staff with another agency)
Illinois	6 (Including: Executive Director, analysts and support staff)	\$500,000 - \$700,000
Kansas	12 (Including: Executive Director, analysts, data entry accountant and finance director)	\$7 million
Louisiana	None (Commission is a legislative body)	Support from PEW and VERA
Maryland	5 (Including: Executive Director, research analyst and policy analyst)	Shares resources with University of Maryland and collaborates with other agencies. Relies on some funds from Justice Reinvestment.
Minnesota	6 (Including: Executive Director, a trainer and 4 researchers)	\$600,000
New Mexico	2 (Including: Executive Director and Deputy Director)	\$500,000 (including funds for research and travel)
Oregon	15 (per NSC meeting)	\$4 million (per NSC meeting)
Utah	3	Receives administrative and financial support from Commission on Criminal and Juvenile Justice (per NSC meeting)

### **Sentencing Commissions Located in the Judicial Branch**

<b>STATE</b>	<b>Staff</b>	<b>Annual Budget (approx.)</b>
Alabama	3 (Including: Executive Director, research analyst and sentencing worksheet specialist)	\$300,000
Massachusetts	5 (Share staff with Department of Research and Planning: director, research manager, research analysts and executive assistant)	(inference: no separate appropriation because Commission shares staff with another agency)

Missouri	1 (staff provided by AOC as needed)	(inference: no separate appropriation because staff provided by AOC)
North Carolina	9 (Including: Executive Director, research policy associates and an attorney)	\$1 million and share budget with AOC
Ohio	4 (Including: Director, research specialist, research and attorney)	\$400,000
Virginia	9 (AOC provides support staff-per presentation to NSC)	\$1 million (per presentation to NSC)

### **Sentencing Commissions Located in the Legislative Branch**

STATE	Staff	Annual Budget (approx.)
Michigan	1 Data Administrator (Receives staffing, office space and equipment from legislative council, a bi-partisan body created to provide service and support to the legislature and its agencies)	Budget allocated from courts to Michigan Judicial Institute to publish guidelines.
Nevada	To the extent of legislative appropriation the director of the Legislative Counsel Bureau provides the Sentencing Commission with staff as necessary (NRS 176.0133)	To the extent of legislative appropriation.
Pennsylvania	18 full-time staff and 1 part-time counsel	\$1.81 million + \$400,000 in Justice Reinvestment Funds

**Notes:** Unless noted otherwise, staff is dedicated to the commission and not shared with another agency or branch of government.

# Appendix D



STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING  
401 S. CARSON STREET  
CARSON CITY, NEVADA 89701-4747  
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800  
JASON FRIERSON, *Assemblyman, Chairman*  
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821  
JOYCE WOODHOUSE, *Senator, Chair*  
Mark Krmpotic, *Fiscal Analyst*  
Cindy Jones, *Fiscal Analyst*

RICK COMBS, *Director*  
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830  
ROCKY COOPER, *Legislative Auditor* (775) 684-6815  
MICHAEL J. STEWART, *Research Director* (775) 684-6825

January 11, 2019

The Honorable Steve Sisolak  
Nevada State Governor  
101 North Carson Street  
Carson City, NV 89701

The Honorable Joyce Woodhouse  
Nevada State Senate  
Chair, Senate Committee on Finance  
246 Garfield Drive  
Henderson, NV 89074

The Honorable Maggie Carlton  
Nevada State Assembly  
Chair, Assembly Committee on Ways and Means  
5540 East Cartwright Avenue  
Las Vegas, NV 89110

Dear Governor Sisolak, Senator Woodhouse and Assemblywoman Carlton:

On behalf of the members of the Nevada Sentencing Commission (NRS 176.0133), I am writing this letter to kindly ask for your continued and much needed support of the criminal justice system as it relates to the sentencing of offenders convicted of crimes in Nevada. As you are aware, public safety is of paramount importance to the citizens of this State; however, the criminal justice system also has a tremendous budgetary impact.

Throughout the 2017-18 interim, the Sentencing Commission considered many significant policy recommendations impacting sentencing. During a work session held on August 29, 2018, the Sentencing Commission unanimously voted to request the drafting of this letter to highlight the pressing need for additional criminal justice resources as you prepare the budget for the upcoming biennium. Therefore, we would encourage that you consider additional

dedicated general fund budgeting for criminal justice, and request that any additional funding not be fee or assessment driven as the revenue source needs to be stable and reliable.

Foremost, the Sentencing Commission believes that it is imperative to adequately fund the State's criminal justice agencies. Throughout the Great Recession, our State agencies have faced reduced budgets, along with staffing cuts and employee attrition. In light of these pressing fiscal demands, the Sentencing Commission deemed it was paramount to highlight the need to fund appropriate staffing levels, information technology advancements, and technical assistance opportunities for the Central Repository for Nevada Records of Criminal History, the Division of Parole and Probation, the Department of Corrections and the Board of Parole Commissioners. Testimony during the interim indicated the Central Repository has faced tremendous obstacles in the technology race and staff retention and the Division of Parole and Probation has confronted staffing shortfalls, especially in the area of preparing presentence investigation reports. The Department of Corrections has similarly faced issues in correctional officer retention, and the Board of Parole Commissioners has continued to manage one of the highest caseloads in the United States.

The Sentencing Commission would also urge your support for the Supreme Court's \$3 million general fund budget request for the operation of our specialty courts. In past sessions, the Governor and Legislature have supported specialty court funding. The need now is never more apparent. Specialty court programs currently being operated in Nevada include: adult drug courts, mental health court; felony DUI court; veteran's court; a family drug court; family mental health court; juvenile drug court; and a prison reentry court. The Sentencing Commission is aware that a commitment to front-end resources, through a properly funded and self-sustaining specialty court program, is key to reducing recidivism and saving long term prison costs. Thus, the Sentencing Commission would graciously ask that you consider an additional \$3 million, bringing the total amount requested to \$6 million, for specialty court programs.

Thank you for your consideration of these critical fiscal issues affecting the criminal justice system in Nevada. These funding pieces will serve as part of a legislative package that includes Assembly Bill No. 80 (2019), which makes various changes to the Sentencing Commission, and a future Assembly Committee on Judiciary Bill Draft Request which will include the recommendations of the data analysis and technical assistance of the Justice Reinvestment Initiative.

Governor Sisolak  
Senator Woodhouse  
Assemblywoman Carton  
Page 3  
January 11, 2019

As Chair of the Sentencing Commission, it is my pledge to continue to work with you during the Legislative Session to ensure public safety and the fiscal soundness of our criminal justice system. I look forward to working with all of you, and am available to further discuss at your convenience.

Sincerely,



Justice James Hardesty, Chair  
Nevada Sentencing Commission

On behalf of members:

Senator Nicole Cannizzaro  
Senator Ben Kieckhefer  
Assemblyman Ozzie Fumo  
Assemblywoman Jill Tolles  
Scott Burton, Gubernatorial Appointee  
Chuck Callaway, Police Director, Las Vegas Metro  
Dennis Cameron, State Bar of Nevada  
Christopher DeRicco, Chairman, Board of Parole Commissioners  
James Dzurenda, Director, Department of Corrections  
Judge Scott Freeman, Second Judicial District Court  
Chris Hicks, Washoe County District Attorney  
Magann Jordan, Victims' Rights Advocate  
Karin Kreizenbeck, State Public Defender  
Adam Laxalt, Attorney General  
Keith Logan, Sheriff Eureka County  
Tegan Machnich, Chief Deputy Public Defender, Clark County  
John McCormick, Assistant Court Administrator  
Elizabeth Neighbors, Ph.D., Public and Behavioral Health  
Stephanie O'Rourke, Major, Parole and Probation  
Jon Ponder, Representative, Offender Reentry  
Jeff Segal, Bureau Chief, Office of the Attorney General  
Donald Soderberg, Director, Employment, Training & Rehabilitation  
Judge Jennifer Togliatti, Eighth Judicial District Court  
Holly Welborn, Policy Director, ACLU of Nevada, Inmate Advocate

# Appendix E

# Nevada Supreme Court

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Specialty Court Review

Chief Justice Michael Douglas



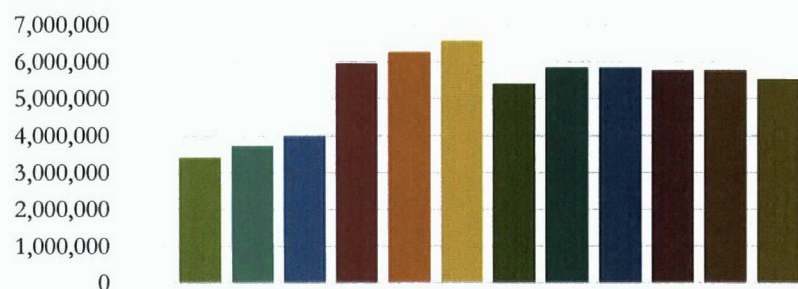
# Overview

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- Nevada's First Drug Court founded by District Judge Lack Lehman was the nation's fifth in 1992. Judge Peter Breen Created the first drug court in Northern Nevada shortly thereafter.
- Nevada has had more than 13,500 participants, with more than 9,300 graduates since the inception of the programs.
- Over 700 babies in Nevada have been born drug free because of the drug court programs.
- Estimated savings to the justice within Nevada by the establishment of drug courts over the last twenty years is more than \$40 Million.
- The National Association of Drug Courts (NADCP) has studies that have shown the benefit range is approximately for every \$1.00 spent up to \$27 is saved from reduced victimization and health care utilization.

# Specialty Court Funding History

- Fee Based Funding 2006-2017



- General Fund Funding 2016-2017



Fee Based Funding

General Fund Funding

2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017

From the beginning the fee based funding has been the primary funding source for the specialty court programs. In 2015 *new* General Fund Funding was appropriate by the Legislature for the upcoming biennium upon the advice of the ACAJ to support specialty courts statewide to increase the number of participants.



# Funding

- **Funding Received to Provide Services**

- **Fee Funding- AB29 \$5.7 m**
  - 34 Programs
    - 15 programs in Clark County
    - 9 programs in Washoe County
    - 10 programs in Rural Nevada
  - Amount spent in FY 2017 actually spent by the courts - \$5,721,184.00

Fee Based Funding has been the primary funding source for the specialty courts throughout the State. These funds are a less-than-stable funding source due to the fact it is dependent upon fees being paid to the limited jurisdiction courts in a timely manner. The fees submitted for use by the Specialty Courts has been from \$350,000 for two courts to now funding \$5,760,000 and over 30 courts.



# Funding (cont.)

The distribution of the Legislative appropriated General Fund Funding was approved by the JCSN in Fiscal Year 2015 for distribution beginning Fiscal Year 2016 to increase the number of participants being served.

- **General Fund Funding - \$3.0 m**
  - 34 Programs
    - 14 programs in Clark County
    - 7 programs in Washoe County
    - 13 programs in Rural Nevada
    - 2,567 participants funded by the General Fund.
    - The approval by the Legislature for the use of General Funds allowed the addition of 22 new programs.
  - General Funds Actually spent in FY 2017 by the courts - \$3,417,264.00

In Fiscal Year 2017 with \$8,7000,000 total funding we still turn away new courts, program enhancements and new clients because there is more demand than there are funds available. Our courts spent last year more than \$8,542,660 in the programs and only \$18,559.40 on training our court staffers. These numbers do not reflect the fourteen specialty courts that are not funded by the AOC. Federal funding accounts for \$1,456,224 in the 8<sup>th</sup> Judicial District Adult Drug Court and \$354,852 divided between five courts in the Las Vegas Municipal Court.

# Programs Provides

## Specialty Courts addresses these issues:

---

- Drug Dependency
  - Top 5 Drug of Choice
    - Methamphetamine – 32%
    - Alcohol – 29%
    - Heroin/Marijuana – 13%
    - Opioids – 3%
- Veteran's issues
- Alcohol abuse
- Mental illness
- Family related matters- Custody/Child Support/Family/Mother's Dependency and Women in Need

# Fiscal Year 2017

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- Demographics:

- 65.6% Caucasian
- 15.8% Hispanic/Latino
- 10.7% African American
- 2.7 Asian/Pacific Islander
- 2.7% Native American
- 1.7% Multi Racial
- .4% Alaska Native
- .82% Other

- Gender participation

- 65% Males
- 34% Female



# Fiscal Year 2017

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- Nevada admitted 2,975 individuals
- During this period there were 797 graduates
- There were 9 drug free babies born
- The graduation rate was 65%

# Drug Abuse History

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- Previous Substance Abuse

- 78% acknowledge previous abuse
- 21.4% no previous drug abuse

- Prior Treatment

- 37.45% have had treatment
- 63% have not been treated

During the initial evaluation 78% (or 10,624) participants acknowledged they had previous substance abuse history. 21.4% (or 2,901) participants stated they had not abused drugs prior to this sentencing.

The number of participants that had been to a previous treatment program was 5,065 with 8,460 acknowledging they had not attended any type of treatment program.

# Adjudication

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Participant data since the inception of the program shows:

- 69% are discharged from the court's jurisdiction with 6,447 graduating
- 13% continued on probation by discharge (does not mean they completed program).
- 19% had other types of supervision that are not itemized within the system.