ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE
(Nevada Revised Statutes 176.0123)

FINAL REPORT

JANUARY 2021

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Advisory Commission on the Administration of Justice
[Nevada Revised Statutes 176.0123]

January 2021

The following "Final Report" was prepared by staff of the Advisory Commission on the Administration of Justice ("Advisory Commission") (Nevada Revised Statutes "NRS" 176.0123).

The Advisory Commission is charged with evaluating and studying the elements of Nevada's system of criminal justice, and prior to the next regular session of the Legislature must prepare and submit to the Director of the Legislative Counsel Bureau a comprehensive report including the Advisory Commission's findings and any recommendations for proposed legislation.

This report is intended to provide an overview of the Advisory Commission's course of action during the 2019-2020 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. The Advisory Commission does not have any Bill Draft Requests allocated by statute; however, individual legislators or the Chair of an appropriate standing committee may choose to sponsor any Advisory Commission recommendation for legislation.

For purposes of this document, the final recommendations of the Advisory 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; (2) draft a letter; or (3) include a policy statement in the final report.

ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE
SUMMARY OF FINAL RECOMMENDATIONS

The 2019-2020 Advisory Commission held a final work session on November 12, 2020. At that work session, the Advisory Commission considered 18 total recommendations. Ultimately, the Advisory Commission approved 12 recommendations consisting of 8 recommendations for the drafting of legislation, 1 recommendation to draft a letter and 3 recommendations to include a policy statement in the final report. The Advisory Commission does not have any Bill Draft Requests allocated by statute; however, individual legislators or the Chair of an appropriate standing committee may choose to sponsor any Advisory Commission recommendation for the drafting of legislation.

RECOMMENDATIONS TO DRAFT LEGISLATION

1. Draft legislation to facilitate the production of presentence reports that contain standard information.

2. Draft legislation to remove provisions requiring the Division of Parole and Probation of the Department of Public Safety ("Division of Parole and Probation") to make certain sentencing recommendations.

3. Draft legislation to replace references to "intensive", "close" or "strict" supervision with "enhanced" supervision.

4. Draft legislation to repeal statutory provisions related to probable cause inquiries conducted by the Division of Parole and Probation.

5. Draft legislation to remove references to sentences of residential confinement imposed for probation and parole violations that conflict with graduated sanctions adopted by the Division of Parole and Probation.

6. Draft legislation bifurcating certain statutory provisions in order to have separate processes for probation and parole.

7. Draft legislation to revise penalties for certain offenses related to controlled substances.

8. Draft legislation to revise the definition of "record of criminal history."

RECOMMENDATION TO DRAFT A LETTER

9. Draft a letter to the Governor and the Legislature urging support for funding of the Nevada Criminal Justice Information System ("NCJIS") modernization.

RECOMMENDATIONS TO INCLUDE A POLICY STATEMENT

10. Draft a policy statement encouraging information sharing in order to facilitate research regarding specialty courts.

11. Draft a policy statement related to the development of a technological specification to be used by all systems of criminal justice information sharing.

12. Draft a policy statement to encourage the State's use of 12 new disposition codes.

REPORT TO THE 81st SESSION OF THE NEVADA LEGISLATURE BY THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE

I. INTRODUCTION

Criminal justice has been defined as a system of constitutional and statutory laws, policies and practices aimed at upholding social control, deterring and mitigating unlawful behavior and sanctioning those who violate the laws with significant penalties and rehabilitation efforts. Since Nevada's early territorial days and the punishment of stage robbers and claim jumpers, criminal justice has had a lasting and significant role in the formation and history of the State. Given the recent budgetary constraints facing both Nevada's state and local governments in the face of a global pandemic, even greater emphasis has been placed on the proper allocation of the government's limited resources. At the same time, Nevada's criminal justice system must ensure the safety of its citizens, the rights and respects of the victims and the constitutional rights of the accused. Throughout the interim period between Legislative Sessions, the Advisory Commission is charged with considering numerous policy decisions with an eye towards public safety, rehabilitation and cost effective criminal justice.

II. ADVISORY COMMISSION DUTIES AND MEMBERS

The current incarnation of the Advisory Commission arose out of the former Advisory Commission on Sentencing ("Sentencing Commission"). The Sentencing Commission 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 Sentencing Commission, whose membership was limited, laid largely dormant for many years. Then in 2007, the Legislature enacted Assembly Bill No. 508, which reconstituted and broadened the membership, duties and scope of the original Sentencing Commission to combine it under the auspices of the Advisory Commission. In 2017, a new Sentencing Commission was established and statutorily bifurcated from the Advisory Commission, thereby leaving the Advisory Commission as a stand-alone statutory body solely focused on criminal justice.

NRS 176.0125 directs the Advisory Commission to evaluate and study the elements of the State's system of criminal justice at the discretion of the Chair. NRS 176.01248 also prescribes the formation of the Subcommittee on Criminal Justice Information Sharing, which remains as the lone statutory subcommittee of the Advisory Commission.

Members of the Advisory Commission are appointed each interim and serve for a two-year term between biennial sessions of the Legislature. Throughout the interim, the Advisory Commission holds numerous public meetings to review the criminal justice system in Nevada.

The following members were appointed to and served on the Advisory Commission for the 2019-2020 interim:

Assemblywoman Rochelle Nguyen, Chair
(Appointed by the Speaker of the Assembly)
Senator Melanie Scheible, Vice Chair
(Appointed by the Majority Leader of the Senate)
Senator Keith Pickard
(Appointed by the Minority Leader of the Senate)
Assemblywoman Lisa Krasner
(Appointed by the Minority Leader of the Assembly)
Paola Armeni, Esq.
(Appointed by the State Bar of Nevada)
Judge Sam Bateman, Henderson Justice Court
(Appointed by the Nevada Judges of Limited Jurisdiction)
Kendra Bertschy, Deputy Public Defender, Washoe County
(Appointed by the State Bar of Nevada)
Judge Jacqueline Bluth, Eighth Judicial District Court
(Appointed by the Nevada District Judges Association)
Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department ("LVMPD")
(Appointed by the Governor)
Anne Carpenter, Chief, Division of Parole and Probation (Resigned)
(Appointed by the Governor)
Charles Daniels, Director, Nevada Department of Corrections ("NDOC")
(Appointed by the Governor)
Christopher DeRicco, Chairman, Board of Parole Commissioners ("Parole Board")
(Appointed by the Parole Board)
Aaron Ford, Attorney General
(Ex officio voting member pursuant to NRS 176.0123)
Justice James Hardesty, Supreme Court of Nevada
(Appointed by the Chief Justice of the Supreme Court of Nevada)
Mark Jackson, District Attorney, Douglas County
(Appointed by the Nevada District Attorneys Association)
Mindy McKay, Division Administrator, Records, Communications and Compliance Division of the Department of Public Safety ("Division of Records, Communications and Compliance")
(Appointed by the Governor)
Corey Solferino, Lieutenant, Washoe County Sheriff's Office
(Appointed by the Nevada Sheriffs' and Chiefs' Association)
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada, Inmate Advocate
(Appointed by the Governor)

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

III. ADVISORY COMMISSION MEETINGS

Over the course of the 2019-2020 interim, the Advisory Commission held three full committee meetings and a work session. The first meeting was held at the Grant Sawyer Office Building in Las Vegas and simultaneously videoconferenced to the Legislative Building in Carson City. The two subsequent meetings and the work session were held in a virtual format and did not have a physical location pursuant to Governor Sisolak's Emergency Directive 006 and sections 2-9 of chapter 2, Statutes of Nevada 2020, 32nd Special Session.

During the course of the interim, the Advisory Commission received extensive testimony from a wide range of individuals including national experts, State government officials and local criminal justice practitioners. Many individuals testified about the impacts of Assembly Bill No. 236 (2019) ("A.B. 236"), the comprehensive criminal justice reform bill which was passed during the 2019 Legislative Session. Discussion topics included: (1) presentations on the statutory duties, caseloads, recent legislative changes for, and staffing and budgetary issues of, the Administrative Office of the Courts, the Parole Board, the Division of Parole and Probation and the Division of Records, Communications and Compliance; (2) a presentation on A.B. 236 as it relates to controlled substances and possible future legislation relating to controlled substances by the Crime and Justice Institute; (3) a presentation on national legislative trends relating to controlled substances by the National Conference of State Legislatures ("NCSL"); (4) a presentation on the Justice and Injustice Panels held by the Office of the Attorney General; (5) a presentation on possible amendments to A.B. 236 concerning retroactivity by the Crime and Justice Institute; (6) presentations on potential technical corrections to A.B. 236 by the Clark County District Attorney's Office, the Clark County Public Defender's Office, LVMPD, NDOC and the Division of Parole and Probation; and (7) presentations on NCJIS and the NCJIS Modernization Program by the Division of Records, Communications and Compliance. The Advisory Commission also heard from numerous concerned members of the public and other interested persons.

A. FIRST MEETING

At the first meeting of the Advisory Commission held on February 13, 2020, the Advisory Commission addressed organizational matters and selected Assemblywoman Rochelle Nguyen as Chair and Senator Melanie Scheible as Vice Chair. Chair Nguyen said that she had worked with many members of the Advisory Commission during the previous legislative session on A.B. 236, and she noted that A.B. 236 arose out of the work that the Advisory Commission undertook during the 2017-2018 interim. She said that A.B. 236 provides a good starting point for the Advisory Commission since the bill accomplished a lot but there are nonetheless some known problems with the bill. She then stated that she would like to see the position of Chair of the

Advisory Commission be rotated between the Senate and the Assembly like some other committees.

The Advisory Commission then proceeded with an overview of statutory duties and a review of the 2019 legislation impacting the responsibilities of the Advisory Commission. Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legislative Counsel Bureau, explained that the duties of the Advisory Commission are provided by NRS 176.0125, and Mr. Anthony noted that A.B. 112 from the 2019 Legislative Session altered the duties of the Advisory Commission substantially. A.B. 112 removed all of the subcommittees of the Advisory Commission except for the Subcommittee on Criminal Justice Information Sharing. He stated that the statutory duties now permit the Advisory Commission to address anything impacting the criminal justice system at the discretion of the Chair.

Mr. Anthony explained that the Advisory Commission is made up of 19 individuals from different areas related to criminal justice, that a quorum of 10 members is necessary for the Advisory Commission to conduct business and that the Advisory Commission requires a majority of those present to carry any action. He stated that the Advisory Commission does not have the authority to submit any Bill Draft Requests but that members of the Advisory Commission who are legislators may submit Bill Draft Requests on behalf of the Advisory Commission. He then explained that the Advisory Commission has a budget that will allow for approximately six meetings including a work session where the Advisory Commission will vote on recommendations. He said that the one remaining statutory subcommittee, the Subcommittee on Criminal Justice Information Sharing, consists of one member appointed by the Department of Public Safety and the remaining members appointed by the Chair of the Advisory Commission. He indicated that the Subcommittee on Criminal Justice Information Sharing is authorized to appoint working groups.

Mr. Anthony then reviewed the Final Report of the Advisory Commission submitted to the previous session of the Legislature. He said that the Advisory Commission was chaired by Assemblyman Yeager and vice chaired by Justice Hardesty, that the Advisory Commission had over six meetings plus additional subcommittee and working group meetings and that the Advisory Commission worked extensively with the Crime and Justice Institute. He said that the Advisory Commission voted to approve two recommendations for legislation which were both passed during the 80th Legislative Session: A.B. 107, which requires electronic recording of custodial interrogations in places of detention under certain circumstances; and A.B. 112, which made changes to the Advisory Commission as discussed above. He explained that the Advisory Commission also voted to approve the Final Report of the Crime and Justice Institute, which contained 25 recommendations which led to the omnibus bill A.B. 236, which aimed to greatly change the criminal justice system and sought to save the State over $600 million, which would be reinvested in social services.

Presentation by the Administrative Office of the Courts

John McCormick, Assistant Court Administrator, Administrative Office of the Courts, presented on the court system in Nevada, the impact of the legislation enacted in 2019 on the courts, criminal caseloads, criminal sentencing trends and staffing and budgetary issues of the courts. Mr. McCormick began by explaining that there are 11 judicial districts which span Nevada's 17 counties. He displayed an overview of the relationships between the trial courts—the justice courts, municipal courts and district courts—and the Supreme Court of Nevada and the Court of Appeals, and he noted that Nevada has a non-unified judiciary which means that various components are paid for by the State, counties and cities and that there is a certain level of autonomy inherent in the trial courts. He explained that Article 3, Section 1 of the Nevada Constitution provides that the judiciary is one of the three separate and coequal branches of government and that Title 1 of the NRS contains the statutory framework for the judicial branch.

Mr. McCormick explained that the Supreme Court of Nevada has the final say over all matters regarding Nevada law and that the Supreme Court of Nevada also serves to correct errors at the trial court level. He said that there are seven justices on the Supreme Court of Nevada and that the Chief Justice of the Supreme Court of Nevada has administrative authority over the judicial branch pursuant to Article 6, Section 19 of the Nevada Constitution. He then explained that the Court of Appeals is relatively new, having begun hearing cases in January 2015, and that it is made up of three judges. He said that the appellate process in Nevada follows a somewhat unique deflective model whereby all appellate matters are filed with the Supreme Court and then may be heard either by the Supreme Court or the Court of Appeals as determined by Rule 17 of the Nevada Rules of Appellate Procedure.

Mr. McCormick then explained the district courts and the limited jurisdiction trial courts. He testified that the district courts are called courts of general jurisdiction and they hear all felony and gross misdemeanor criminal cases as well as civil cases concerning damages over $15,000. He said that the 11 judicial districts host a total of 82 district court judges and that there will be 8 additional district court judges added in January 2021 as a result of legislation from the 2019 Legislative Session, along with 6 family jurisdiction judges in Clark County, 1 in Washoe County and 1 general jurisdiction judge in Elko County. He noted that the district court judges are paid by the State while the rest of the costs of the district courts are paid by the county. He then discussed the limited jurisdiction courts, starting with the justice courts. He said that justice courts hear misdemeanor criminal matters, including traffic matters, and conduct preliminary hearings for felony and gross misdemeanor cases, and they also hear civil cases with damages under $15,000. He stated that there are 42 justice courts which host 68 justices of the peace and that the district courts have appellate authority over the justice courts. He then explained that municipal courts are courts that have limited jurisdiction within the boundaries of an incorporated city. He stated that there are 17 municipal courts with 30 judges, 9 of which also serve as justices of the peace, and that for civil cases, municipal courts have very limited jurisdiction. He noted that the Supreme Court of Nevada's recent decision in *Andersen v. Eighth Judicial District Court*, 135 Nev. 321 (2019), which requires misdemeanor domestic violence cases to be tried by jury,

has posed a challenge for the justice and municipal courts, which did not typically host jury trials.

Mr. McCormick then addressed the impacts of legislation passed in 2019, beginning with bills which impacted the limited jurisdiction courts, namely A.B. 110, A.B. 236, A.B. 416 and A.B. 434. He testified that there was an overall theme of ceasing to incarcerate people for misdemeanor traffic violations. He explained that A.B. 110 allows for the creation of an electronic system to accept pleas and mitigating statements in traffic misdemeanors, A.B. 416 clarifies that all fines and fees may be converted to community service and A.B. 434 makes numerous changes to collections, license suspensions and incarceration of traffic misdemeanants. He noted that a current issue in this area which the Advisory Commission could consider is whether to incarcerate people pursuant to failure to appear warrants which are issued when someone does not appear for the court date on their citation.

Mr. McCormick then turned to the gross misdemeanor and felony level and testified that the most significant impacts came from the omnibus criminal justice bill A.B. 236. He said that A.B. 236 makes significant changes to sentencing including removing the sentencing recommendation from the presentence investigation report and requiring district court judges who have a criminal calendar to get training on use of the information in the presentence investigation report. He said that A.B. 236 expands the district courts' abilities to send defendants to specialty court programs and adds requirements for and expands judicial discretion on parole and probation revocation. A.B. 236 also modifies the crime of burglary to create four categories at different felony levels and increases monetary thresholds for theft and fraud crimes to $1,250 for a felony, which Mr. McCormick suggested could result in more of these cases being heard in justice and municipal courts. The bill also creates the crime of low-level drug trafficking, amends the possession of controlled substance thresholds for felony category eligibility and reclassifies the categories for certain felonies.

Mr. McCormick then addressed other bills of the 2019 Legislative Session and stated that A.B. 439 eliminates the ability to charge parents a number of fees related to a juvenile in the juvenile justice system. He said that A.B. 291 creates high-risk protection orders and that there were numerous changes to domestic violence cases in A.B. 19, A.B. 60 and S.B. 218 and that A.B. 410 increases temporary protection orders from 30 days to 45. He said that driving under the influence ("DUI") continues to be an area of interest, especially regarding the use of interlock devices in controlled substances cases, including marijuana. He said that A.B. 81 created the Department of Indigent Defense Services and the Indigent Defense Oversight Board. He noted that Senate Concurrent Resolution No. 11 created an interim study committee to consider changes in pretrial detention and bail and that the Supreme Court of Nevada has required the courts in the State to use the Nevada Pretrial Risk Assessment tool in making pretrial custody determinations.

Mr. McCormick then discussed criminal caseloads in the trial courts. He testified that criminal caseloads in the district courts have been relatively flat since 2010 and that family cases make up the greatest proportion of the district court caseloads. He said that criminal caseloads in the

justice courts have shown a small decline but overall remain relatively flat since 2010. He said that traffic and parking cases have declined notably since 2010 and that this is noteworthy because 80% of misdemeanors are traffic misdemeanors and misdemeanor administrative assessments are used to fund part of the judiciary, so there has been a decline in available funding for certain programs including judicial education.

Mr. McCormick addressed sentencing trends and testified that sentencing trends are difficult to evaluate because there is no aggregate data available from the Uniform System of Judicial Records. He said that nonetheless there has been a clear trend of increased use of specialty court programs which address societal issues such as substance use and mental health, and he related that specialty court admissions spiked in 2016 following the receipt of approximately $3 million in General Fund support, but new admissions then fell after the programs quickly reached capacity. He testified that there is a lack of treatment infrastructure for mental health and substance use issues in Nevada, which limits the abilities of specialty courts to serve clients and forces them to make difficult decisions such as whether to incarcerate someone as they wait for a substance use treatment spot to open up. He also testified that there may be a correlation between severity of sentencing and the continued increase in prison population of 6% over the last decade while criminal filings remained relatively flat at the district court level.

Mr. McCormick concluded his presentation by discussing staffing and budgetary issues. He noted that the Legislature considered a bill last session to give State judicial officers a pay raise for the first time since 2009 but the bill was not adopted. He testified that the Supreme Court of Nevada and the Administrative Office of the Courts have been having difficult recruiting staff in part due to the level of pay since the counties and cities generally offer higher pay than State positions. He said that this issue was included in the court's budget request but the request was not ultimately included in the final budget. He also noted that additional funding will be required to follow through on A.B. 236's expansion of specialty court programs as alternatives to incarceration. He reiterated that there is a problem with the court's budget depending on administrative assessments for misdemeanors pursuant to NRS 176.059, and he noted that there was a ruling from the U.S. Fifth Circuit Court of Appeals regarding the system in New Orleans that funding the courts through levying bail, fines and fees creates a constitutional problem.

On the issue of pretrial release reform, Mr. McCormick testified that many justice and municipal courts outside of Clark and Washoe Counties do not have pretrial release or alternative sentencing departments. He explained that there are varying procedures for use of the Nevada Pretrial Risk Assessment: in some jurisdictions, the sheriff's office does it, while in others the judge does it. He said that these departments will likely need to be expanded.

Mr. McCormick stated that there is a continued need for improvement in Nevada's electronic data systems to communicate criminal justice information, and he noted that the Advisory Commission has frequently considered this issue in recent years. He concluded by testifying that increased funding for the Office of Indigent Defense Services would be beneficial as the Office implements statewide standards for constitutionally sound indigent defense.

Chair Nguyen asked if Mr. McCormick could contextualize the data about caseloads with data about overall population growth, and Mr. McCormick replied that he would provide that data. Chair Nguyen also asked about the status of the implementation of an integrated criminal justice information sharing system. Mr. McCormick said that data can be transferred between the courts, the Department of Public Safety and the Department of Motor Vehicles through a system called the Multi-County Integrated Justice Information System, but he noted that they are still working on disposition transmission and that there is somewhat of a backlog.

Senator Pickard asked whether the data for district court criminal caseloads includes hold-opens and post-decree filings or whether the data represents only new filings, and Mr. McCormick replied that it represents only new filings and that he can provide data on reopened cases and post-decree hearings as well. Chuck Callaway asked about Mr. McCormick's statement that stricter penalties may be driving prison population growth given that criminal caseloads have remained flat and inquired whether there is data on how many cases are plea bargained, how many are repeat offenders, how many are violent crimes versus property crimes, noting that if there has been an increase in the proportion of violent cases, then increased prison time may be warranted for the offender. Mr. McCormick said that his statement on the cause of the prison population increase was just his conjecture but that the data for cases by crime type is available in the Supreme Court of Nevada's Annual Report of the Nevada Judiciary, and he noted that approximately 1.5-1.8% of felony criminal cases are disposed by jury trial.

Presentation by the Parole Board

Christopher DeRicco, Chairman, Parole Board, presented on the statutory duties and regulatory procedures of the Parole Board and the Board of Pardons Commissioners ("Pardons Board") (together "the Boards"), the case load of the Boards, the impacts of legislation enacted in 2019 on the Boards and staffing and budgetary issues of the Boards. Mr. DeRicco began by noting that he will be speaking of the Parole Board and the Pardons Board separately and that the Parole Board has little interaction with or control over the Pardons Board. He explained that the Parole Board consists of one Chairman and six Commissioners, all appointed by the Governor for staggered 4-year terms. He then said that the Parole Board is organized under the Department of Public Safety, receiving its administrative services, but the Parole Board is nonetheless a largely independent agency with little connection to the rest of the Department of Public Safety. He explained that the Chairman of the Parole Board oversees the operations of the office but that the Commissioners work for the Governor. He noted that there is not a deputy administrator or administrative officer position directly underneath the Chairman, which is typical of other agencies, and he said that this could be an area for change in the future.

Mr. DeRicco addressed the role and duties of the Parole Board. He explained that the Parole Board is an independent body which reviews eligible inmates for possible release into the community prior to the end of a custodial term. He said that the Parole Board is responsible for deciding whether to grant or deny parole, but explained that when the Parole Board makes a favorable decision, the Division of Parole and Probation investigates and ultimately approves or denies a release plan. He said that the Parole Board also orders parolees to be returned to prison

through the parole violation hearing process if they violate the terms of their supervised release, and he noted that the Parole Board can decide after a parole violation hearing to retain someone on supervised release if the violations are minor or unsubstantiated.

Mr. DeRicco explained that parole is the conditional release of an offender from prison during which the offender continues to serve their sentence in the community. He stated that by statute, parole is not a right and no person should expect to be released on parole (NRS 213.10705). He explained that initial parole eligibility is based on the minimum sentence imposed by the court, which can be reduced by good time credits, often referred to as A.B. 510 credits. He testified that the Parole Board is a part of the judicial system, is governed by statute and is designed to give the system some flexibility by performing the work necessary to carry out an indeterminate sentence—for example, a sentence of a minimum of 2 years and maximum of 20 years. He explained that there are discretionary hearings, which may be held at any point after the inmate becomes eligible for parole, and mandatory hearings, which occurs when an inmate has approximately one year left on his or her sentence. He said that because of good time credits, an inmate is generally eligible for mandatory parole release about six months prior to the expiration of his or her sentence and that the role of the Parole Board is to determine whether the inmate would be a danger to public safety.

Mr. DeRicco stated that the Parole Board also conducts lifetime supervision hearings for sex offenders who have met the statutory requirements of the underlying offense but are subject to a mandatory additional term of supervision of at least 10 years and up to life. He said that when a sex offender violates a term of lifetime supervision, the district court, not the Parole Board, evaluates the consequences, and he testified that this particular element of the system may be worth reconsidering. He then explained that the Parole Board also conducts reconsideration hearings when an offender was granted parole but then committed a major violation of prison rules before his or her release from prison, and the Parole Board can either continue with the grant of parole or rescind the grant.

Mr. DeRicco then addressed the caseload of the Parole Board. He testified that the Parole Board made 8,331 final decisions in fiscal year 2019, which represents an increase of approximately 500 over the previous year. He explained that Nevada law requires a majority of the Parole Board to vote to create a final action, which amounted to each Commissioner considering over 4,100 cases during fiscal year 2019. He stated that the Parole Board held over 9,400 hearings in that time. He discussed projections for fiscal year 2021 by the JFA Institute which posit that: (1) hearings plus no actions will increase slightly in 2020 and go down in 2021; (2) total hearings will increase over the next two years; (3) discretionary hearings will increase; and (4) mandatory hearings will decrease.

Mr. DeRicco presented figures of parole considerations by general offense type. In fiscal year 2019, there were hearings for 546 sex crimes, 2,471 violent crimes, 1,169 drug crimes, 2,020 property crimes, 243 DUI and 800 other offenses. He stated that in comparison with 2018, there were about 200 more hearings for violent offenses and reductions for drug, property and DUI offenses. He then presented a figure showing the percent of paroles granted by offense type

which showed for fiscal year 2019 percentages of 45% for sex crimes, 51% violent crimes, 83% drug crimes, 75% property crimes, 81% DUI and 64% other offenses.

Mr. DeRicco then discussed the statutory duties of the Parole Board. He explained that under NRS 213.10885, the Parole Board shall adopt standards for granting or revoking parole. He said that the Parole Board uses a validated risk assessment instrument which uses a combination of factors which predict recidivism when considering release, but he said that the instrument does not consider risk factors beyond those that predict new felony offenses and that the instrument is not valid for sex offenders. For sex offenders the Parole Board relies on additional information from the Department of Corrections and they provide an additional Static-99 assessment. He said that the Parole Board has adopted additional factors related to discretionary and mandatory parole and is required to comprehensively review the standards adopted by the Parole Board before January 1 of each odd-numbered year. He stated that the Parole Board is statutorily required to compile and maintain detailed information considering all decisions regarding parole, including the reasons for each decision, and he said that this information is published online and presented to the Legislature each session (NRS 213.10887).

Mr. DeRicco turned to the statutory considerations for parole. He said that the Parole Board is required to consider the reasonable probability that an inmate will remain at liberty without violating further laws, taking into account the seriousness of the offense and the history of criminal conduct of the prisoner and any documents or testimony submitted by the victim. He explained that initial eligibility for parole is determined by the NDOC, not the Parole Board (NRS 213.120) and that if a prisoner is to serve two or more consecutive sentences, the prisoner is eligible for parole after serving the minimum aggregate term (NRS 213.1212). He stated that NRS 213.1215 provides that mandatory parole may be granted to a prisoner sentenced to a term of 3 years or more and has not been released by discretionary parole, and he noted that A.B. 236 provided that mandatory parole can be granted without a hearing in cases without victim notification requirements, but mandatory release cannot be denied without a hearing. He stated that a new statute which came from A.B. 236, NRS 213.12155, provides for geriatric parole for prisoners 65 years of age or older who have served at least a majority of their maximum term and meets other statutory criteria, and he opined that this would not greatly impact the Parole Board. He said that A.B. 236 also provided for early discharge from parole, which would be determined by the Division of Parole and Probation and which the Parole Board is currently finalizing through regulation. He said that A.B. 236 authorizes the Parole Board to send someone back to prison for 30 days for a first technical violation and 90 days for a second. He noted that sex offenders are treated the same as other offenders under this provision and he opined that this may be worth reconsidering. He then explained that pursuant to NRS 213.1243, the Parole Board sets the conditions of release for lifetime sex offenders, but the Parole Board does not review violations of those conditions.

Mr. DeRicco then discussed the risk instrument used to make parole decisions. He displayed the results of the most recent revalidation study which examined inmates who were released in 2013 and tracked whether they returned to prison within a 3-year period for any reason. He stated that changes following the revalidation were incorporated in March 2019 and included reducing

employment history to 2 categories from 3, adding a category for number of prior felony convictions, adding an age category to subtract points for inmates 59 years of age and older, reducing the current custody level category from 3 categories to 2 and reducing the disciplinary categories from 4 to 2. He noted that the Parole Board seeks to perform a revalidation of the revised instrument sometime after March 2022. Mr. DeRicco discussed the frequency of parole being granted based on the recommendations of the risk assessment instrument. He showed a figure which demonstrated that in fiscal year 2019, 90% of those for whom the instrument recommended the grant of discretionary parole at their initial hearing were in fact granted parole at their initial hearing, 72% of those recommended for grant at first or second hearing were granted at that time, 53% of those recommended for additional consideration were granted and 6% of those for whom the instrument recommended denying parole were granted parole.

Mr. DeRicco turned to the staffing and budgetary issues of the Parole Board and began by noting that the Parole Board is a very small agency with only 27 employees. He testified that the Parole Board does all of their hearings except parole violation hearings by way of video, but the Parole Board does not have an audiovisual technician or IT technician on staff. The Parole Board depends on Enterprise Information Technology Services ("EITS") for those functions, and EITS also lacks an audiovisual technician. He said that the Parole Board can have upwards of 100 hearings a day between their northern and southern offices which could result in massive delays if the video equipment were to fail. He testified that an audiovisual technician, even a part-time one, would be very good for the Parole Board.

Mr. DeRicco reiterated that there is not a deputy administrator or administrative services officer which oversees the day-to-day duties directly beneath the Chairman and stated that this would be beneficial. He concluded by stating that the Parole Board is staffed in statute for an executive secretary but the position is funded as an executive assistant.

Mr. DeRicco then discussed the Pardons Board, noting that he will be presenting only a high-level overview. He explained that the Pardons Board is comprised of the Governor, the Attorney General and the Justices of the Supreme Court of Nevada, and that there are pardons and there are conditional pardons. A pardon is an unconditional pardon which restores civil rights and the right to bear arms, whereas a conditional pardon may or may not restore either of those, but no type of pardon overturns a judgment or erases the fact that the person was once convicted, nor do they relieve a sex offender from the requirement to register. He said that anyone who has committed a crime under the laws of Nevada may apply to the Pardons Board for a pardon and/or restoration of their civil rights. He explained that there are three types of pardon cases: (1) community cases, from applicants who are not in custody; (2) inmate cases; and (3) consent agendas, which are expedited processes without holding a meeting to restore civil rights. He displayed a figure which demonstrated that for fiscal year 2019, the Pardons Board received 97 applications for community cases, of which 25 were placed on agendas and 22 pardons were granted; and 1,577 applications for inmate cases, of which 15 were placed on agendas and 2 pardons were granted.

Mr. DeRicco concluded by discussing Senate Joint Resolution No. 1 ("S.J.R. 1"), which was passed during the 2017 Legislative Session and will appear on the 2020 ballot. S.J.R. 1 proposes an amendment to the Nevada Constitution which would result in the following changes: (1) the Pardons Board would hold at least four quarterly meetings per year instead of the current minimum of two; (2) the requirement that the Governor vote with the majority for the granting of a pardon would be eliminated; (3) any member of the Pardons Board would be authorized to submit matters for consideration; and (4) a majority of the members of the Pardons Board would be a sufficient quorum to take action. He testified that if S.J.R. 1 passes, the staffing needs of the Pardons Board would increase.

Assemblywoman Krasner asked who it is that evaluates an applicant with respect to the various categories on the risk assessment tool used in making parole decisions. Mr. DeRicco replied that the assessment tool is first scored by a caseworker at NDOC using information contained in the presentence investigation report and post-conviction report and is then reviewed for accuracy by the Parole Board. Assemblywoman Krasner then asked who it was that decided what the exact criteria and score values for the criteria would be, and Mr. DeRicco replied that these criteria were provided by the JFA Institute, which developed the criteria using statistical validation. Assemblywoman Krasner then inquired about the specific criterion for age at first arrest and asked whether the assessment tool differentiates between different types and severity of offenses for the first arrest. Mr. DeRicco replied that traffic violations such as speeding are not included for consideration and that the criterion for age at first arrest comes from the statistical validation process and has been shown to predict recidivism. Assemblywoman Krasner said that it was disturbing that the mere arrest of a minor for a potentially non-serious crime could result in that person having two more points on the risk assessment tool. Chair Nguyen remarked that the role of risk assessment tools broadly is something that the Advisory Commission will discuss further.

Vice Chair Scheible asked whether people who receive restoration of their civil rights as part of a pardon are eligible to serve on a jury and whether people on parole are eligible to serve on a jury. Mr. DeRicco replied that he is unsure whether a pardoned person is eligible and that a person on parole is not eligible. Justice Hardesty asked if Mr. DeRicco could provide information on the recidivism rates for parolees from five years prior to the information previously presented, noting that the Advisory Commission has received testimony that the Parole Board functions as a significant release mechanism to mitigate prison overcrowding and that this role should be contextualized within the recidivism data, and Mr. DeRicco provided that data.

Presentation by the Division of Parole and Probation

Anne Carpenter, Chief, Division of Parole and Probation, presented on the statutory duties and regulatory procedures of the Division, current supervision caseloads, the impact of legislation enacted in 2019 and staffing and budgetary issues of the Division. Ms. Carpenter began by saying that the Division of Parole and Probation has recently spent time re-envisioning the Division's processes and image and that the Division's new motto is "Inspire, Empower, Protect" and new mission statement is "Safeguarding Nevada, Offering Solutions and Reshaping Lives." She noted that parole was previously discussed, and she explained that probation is when a person has been

convicted of or pled guilty to a gross misdemeanor or felony and receives a suspended sentence from a district court judge and is given a chance to prove themselves under community supervision.

Ms. Carpenter said that the Division of Parole and Probation's first involvement with a person occurs when a person is convicted of or found guilty of a gross misdemeanor or felony, at which time a presentence investigation report is completed, and she noted that after June 30, 2020, the Division will no longer be responsible for providing district court judges with sentencing recommendations in the presentence investigation reports. The Division of Parole and Probation then monitors and enforces compliance with the terms of their probation and ensures that offenders receive the services and resources they need. The Division of Parole and Probation also collects restitution and disburses the money to victims. If a parolee or probationer violates his or her terms of release, the Division of Parole and Probation reports that to the district court and/or the Parole Board. The Division of Parole and Probation also conducts investigations for parole release and for interstate compact investigations. She testified that the main goal is to help parolees and probationers reenter society successfully, with the understanding that these people often face many challenges and may take several tries to get it right. After certain criteria and timeframes are met, felons and certain misdemeanants may request a pardon, and the Division of Parole and Probation investigates and makes recommendations to the Pardons Board.

Ms. Carpenter then discussed the caseloads of the Division of Parole and Probation. She said that the State has a contract through the Governor's Finance Office with the JFA Institute to provide caseload projections. She displayed a figure showing the offender to staff caseload ratios which were imposed during the 2017 Legislative Session which showed, for sworn staff, 150:1 for low risk offenders, 80:1 for medium risk, 60:1 for maximum risk, 30:1 for intensive supervision, 25:1 for sex offenders and 75:1 for miscellaneous; and for unsworn staff, 250:1 for specialist II, 12:1 for specialist III and 8:1 for specialist IV. She related that in 2017 the Legislature also granted funding for new programs such as Effective Practices in Community Supervisions, Nevada Risk Assessment System, indigent funding, the Day Reporting Center, an embedded specialist and new building space; but the implementation of these programs took a significant amount of time away from staff. She testified that while the population of Nevada has been growing at a rate of approximately 4.5% each year, the supervision population of the Division of Parole and Probation rose approximately 10% from January to September 2019; the presentence investigation report requests are also outpacing the general population growth.

Ms. Carpenter turned to the recent legislation which impacted the Division of Parole and Probation. She said that the Division of Parole and Probation adopted the Nevada Risk Assessment System which is being validated, and she said that A.B. 8 (2019) now requires risk assessments to be performed in accordance with the Nevada Risk Assessment System. S.B. 8 (2019) amended NRS 213.1243 to add additional requirements for sex offenders on lifetime supervision. She noted, however, that the Division of Parole and Probation can only enforce the conditions enumerated in NRS 213.1243, which means that the Division has no authority to search their homes and that they can travel without permission from the Division. She stated that S.J.R. 1 will double the annual pardons hearings if passed by the voters, which will increase the

workload and staffing needs of the Division of Parole and Probation. She testified that Marsy's Law has significantly impacted the Division of Parole and Probation because there has been an increased workload without an updated records management system, and she noted that under Marsy's Law money paid by offenders under supervision must go first to restitution for victims before it can be applied to the cost of supervision and court fines.

Ms. Carpenter stated that A.B. 236 made great changes to the criminal justice system as a whole and has impacted the Division of Parole and Probation substantially. She said that the Division of Parole and Probation is working with Victoria Gonzalez, Director, Sentencing Commission, to implement the reporting requirements of section 6 of A.B. 236. Pursuant to section 13 of A.B. 236, the presentence investigation report is being revised, the Division of Parole and Probation will no longer submit a sentencing recommendation in that report, and the Division will be providing training to district court judges on the revised report on April 30, 2020 at the judges conference. Under sections 18 and 33 of A.B. 236, graduated sanctions are being revised. Under sections 19, 22 and 23 of A.B. 236, records in diversion courts like drug courts shall be sealed without a hearing unless the Division of Parole and Probation or a prosecutor petitions otherwise. Section 24 of A.B. 236 deleted the exceptions to mandatory probation for category E felonies, and section 34 of A.B. 236 reduced probation terms. Sections 35 and 101 of A.B. 236 added certain conditions for revocation of parole and probation and introduced the option of temporary revocations. Section 93.7 of A.B. 236 provided that if a parolee has served at least 1 year in the community in full compliance with all conditions and fees, the Division of Parole and Probation shall recommend early discharge from parole. Under section 95 of A.B. 236, individualized case plans drafted pursuant to the risk and needs assessment are now required, and under section 105 of A.B. 236, the Division of Parole and Probation is required to provide additional behavioral health training to peace officers of the Department of Public Safety.

Ms. Carpenter then addressed the staffing and budgetary concerns of the Division of Parole and Probation. She testified that the Division of Parole and Probation uses projections from the JFA Institute to project staffing needs. She presented a figure showing that the Division of Parole and Probation has a total of 600 positions with a vacancy rate of 11.3%, but she noted that the effective vacancy rate is higher because, for example, a cadet will receive a conditional job offer which marks the position as filled, but does not start work until 10 months later when they have completed academy and field training. She said that the Division of Parole and Probation received positions in the last legislative session but the process of receipt and approval is very lengthy—the Division of Parole and Probation has not been able to recruit or hire in the eight months since that session ended and the Division continues to experience significant attrition due to retirements and other job opportunities. She testified that the JFA Institute staffing projections do not take into account Family and Medical Leave Act leave, annual and sick leave or military leave. She said that the State 2-year budgeting process is difficult for agency planning and that the needs of the Division of Parole and Probation can change within a budgeting period, as recently happened with the indigent funding and Day Reporting Center programs. She testified that the increased technological, social and emotional expectations placed on officers has increased the difficulties with recruitment and retention of the Division of Parole and Probation, and she noted that while the Department of Public Safety recruits for the whole Department, the role of a parole and

probation officer is unique and multifaceted. She also said that the Division of Parole and Probation is the largest agency within the Department of Public Safety, and she said that the Division would be more successful if appropriate resources were appropriated.

Ms. Carpenter stated that the Division of Parole and Probation has three command areas: Northern Command, covering Reno, Carson City, Elko, Ely, Fallon and Winnemucca; Southern Command, with two offices in Las Vegas and one in Pahrump; and the Headquarters in Carson City. She said that the rural areas in Northern Command present the challenge of significant driving times for officers and investigators, and she said that driving times can also be complicated in the urban areas due to traffic. Driving times have not been taken into account when the JFA Institute has budgeted staffing needs. She also said that vehicle availability has been a challenge for the Division of Parole and Probation: presentence investigation report writers and administrative staff do not have vehicles assigned to them and are thus required to borrow a vehicle from an officer, which impacts the officer's field duties. She concluded by stating that the Division of Parole and Probation is awaiting its new records management system as well as funding for VPNs and air cards to increase the field functionality of the laptops the Division recently received, and she noted that rural areas also face the challenge of slower internet in general. Chair Nguyen asked if, in rural areas, the Division of Parole and Probation has ever entered into Memoranda of Understanding with local law enforcement so that they could perform some of the functions of the Division, and Ms. Carpenter replied that the Division has not done that but is considering partnering with Highway Patrol.

Presentation by the Division of Records, Communications and Compliance

Mindy McKay, Division Administrator, Division of Records, Communications and Compliance, presented on the statutory duties and regulatory procedures of the Division; the impact of legislation enacted in 2019 on the Division; standards, policies and procedures for integrated criminal justice information sharing; and staffing and budgetary issues of the Division. Ms. McKay began by noting that the Division of Records, Communications and Compliance performs many functions and that this will be a brief overview, and she encouraged members of the Advisory Commission to schedule further meetings.

Ms. McKay stated that the Division of Records, Communications and Compliance has three budget accounts but that she will focus on two. She said that budget account 4709 accounts for 137 full-time equivalent ("FTE") positions and 110 of those are currently filled, and budget account 4702 accounts for 63 FTE positions and 51 of those are currently filled, making approximately 200 FTE positions for the Division of Records, Communications and Compliance. She said there are an additional 23 contracted staff and some more being brought on. She testified that the Division of Records, Communications and Compliance has 6 locations and administers 20 different programs. Funding for the Division of Records, Communications and Compliance comes from the General Fund, cost allocation, court assessments, fees and federal grant funding.

Ms. McKay testified that the Division of Records, Communications and Compliance has faced a consistent budgetary issue due to a shortfall of court assessments. She said that expensive

unfunded initiatives quickly deplete the fee-funded reserves and that the fact that the budget of the Division of Records, Communications and Compliance is cost-allocated. She said that the Division of Records, Communications and Compliance faces staffing issues such as recruitment and retention issues exacerbated by uncompetitive pay, a lengthy and complex State hiring process and a lack of a budget to support additional position requests. She said that on the positive side, the Division of Records, Communications and Compliance has received several federal grants in recent years which, for example, helped eliminate the backlog of dispositions: 1.2 million records were updated which brought the completion rate of the Division of Records, Communications and Compliance from 26% to 60%, which is the national average. She testified that her staff are hardworking and dedicated and carry the Division of Records, Communications and Compliance despite budgetary hardships. She also said that the NCJIS Modernization Program is moving forward.

Ms. McKay then summarized some of the services of the Division of Records, Communications and Compliance. She stated that the Fiscal Unit manages accounts payable, accounts receivable, budget, contracts, building tasks and staffs the reception desk. The Information Security Unit ensures the Department of Public Safety is in compliance with state and federal security laws and policies through trainings, audits and site security checks. The Communications Bureau, which is under budget account 4702, hosts the Department of Public Safety's dispatchers who receive and respond to calls for service. Ms. McKay testified that the dispatchers are highly competent and able to respond productively in chaotic and emotional situations. They analyze multiple ongoing incidents, contextualize them within jurisdictional boundaries and quickly coordinate between local public safety agencies. They are experts in telecommunications and computer databases.

She then explained the Records Bureau of the Division of Records, Communications and Compliance, which is under budget account 4709. The Records Bureau hosts 14 different programs, and she stated that while some of these programs are funded by fees, others have been placed on the Division of Records, Communications and Compliance through unfunded mandates and are currently maintained through the Division's reserves. She said that the Division of Records, Communications and Compliance hosts the Nevada Criminal History Records Program; the Fingerprint Support Unit; criminal history record sealing; fingerprint-based background checks for employment, licensing, concealed carry weapons permits, which are fee-based; the State Sex Offender Registry; the Brady Point of Contact Firearms Program, which is fee-based; name-based civil background checks, which is fee-based; the criminal justice information training and audit program to assist agencies who seek to access criminal justice information systems; the Uniform Crime Reporting Program; the Nevada Offense Code Program, which creates codes for crimes for use by law enforcement; the Protection Order Repository, which was expanded beyond domestic violence last session; the Sexual Assault Forensic Evidence Kit Tracking and Reporting Program, which is funded by the General Fund; and the concealed carry weapons recognition program, which concerns recognition of other states' concealed carry permits.

Ms. McKay then discussed the impact of 2019 legislation on the Division of Records, Communications and Compliance. She said that each legislative session, the Division of Records, Communications and Compliance starts out tracking about 400 bills which could potentially impact the Division and ends up with about 100 passed which impact the Division. She testified that A.B. 19 (2019) and A.B. 291 (2019), which concerned protection orders, impacted the Division of Records, Communications and Compliance by adding protection orders to the Repository, which required time and money to modify the current system. She provided members of the Advisory Commission with a pamphlet which explained each program and its statutory basis and reiterated that there were about 100 bills passed during the 2019 Legislative Session which impacted the Division of Records, Communications and Compliance.

Ms. McKay further explained the standards, policies and procedures for criminal justice information sharing and NCJIS. She explained that information collected for State purposes includes criminal records, warrants, concealed carry permits, protection orders, crime statistics, and parole and probation information; and information collected for federal purposes includes missing and stolen property, warrants, sex offenders and gang information. This information is collected both manually and electronically. She explained that one challenge is that there are multiple systems which are antiquated and do not interface with one another properly, and she said that she hopes the system modernization effort will allow for compatibility with future improvements.

Ms. McKay testified that although there are statutory mandates for agencies to submit criminal justice information to the Division of Records, Communications and Compliance, there are no consequences for failure to comply with such mandates. She also said that a lot of the information is not subject to training and audit. She stated that she had worked with Senator Heidi Gansert during the 2019 Legislative Session to enact a bill to allow the Division of Records, Communications and Compliance to monitor agencies' submissions, which ultimately did not pass but which she hopes to reintroduce in the coming 2021 Legislative Session. She also said the Division of Records, Communications and Compliance worked on a BDR with the Advisory Commission's Subcommittee on Criminal Justice Information Sharing prior to the 2019 Legislative Session and is considering submitting it for the 2021 Legislative Session.

Ms. McKay presented a diagram of the current NCJIS which had many arrows and nodes depicting the sources and repositories of information and which she described as "hodge-podge [and] eye-crossing." She said that the current system is the way it is because it was developed one fix at a time due to budgetary constraints. She then presented a figure representing the goal for NCJIS which had substantially less arrows and nodes, and she said that this system would be much more easily maintained and enhanced. She then described the NCJIS Modernization Program in more detail. The program began in 2012 with the commission of a study by the Management Technology Group, LLC, which recommended separating all applications from the law enforcement message switch and replacing them with off-the-shelf software where possible. Phase I occurred during the 2012-15 biennium with a $2.3 million investment which established new system architecture, migrated data for the Investigation Division of the Department of Public Safety and began an upgrade of the law enforcement message switch (JLink). Phase II in the

2015-17 biennium used another $2.3 million investment to replace the Computerized Criminal History system ("CCH") for the Repository and the Division of Parole and Probation. In the 2017-2019 biennium, the Division of Records, Communications and Compliance used approximately $4.3 million of its reserves to continue with the CCH upgrade, upgrading the accounting system, replacing the domestic violence protection order system, upgrading Oracle and gathering requirements for the next phase—all items recommended by the Management Technology Group study.

Ms. McKay explained the upcoming actions for the NCJIS Modernization Program. She said that the Division of Records, Communications and Compliance will replace JLink with a commercial message switch and hot files management system, replace other applications, implement an indexed information model and introduce a portal and electronic content management system. She noted that they are currently finalizing vendor selection. She said that they have hired permanent staff for the NCJIS program management office and are working to fill some contracted staff positions. She stated that the Division of Records, Communications and Compliance is required to provide a letter of intent to the Interim Finance Committee each quarter, and she noted that there will be more to report once a vendor has been selected.

Ms. McKay concluded by discussing the consequences of failing to fund the modernization effort. She testified that technology is evolving fast and that the backlog of changes will continue to increase. Systems will become unsupported and some already are unsupported by the current systems. She said that modernization will become more costly the longer it is postponed, and she testified that if the original plan from 2012 was implemented, it would have cost $18 million whereas now the cost is estimated at about $59 million. She testified that capabilities will continue to diminish, as explained earlier by the Division of Parole and Probation, for example. She said that there is often talk about more data and increased reporting but that this is difficult to provide with antiquated systems. She stated that ultimately, officer safety and public safety will diminish. She concluded by stating that she looks forward to the appointment of members of the Advisory Commission to the Subcommittee on Criminal Justice Information Sharing. Chair Nguyen invited questions for Ms. McKay but there were none.

B. SECOND MEETING

The second meeting of the Advisory Commission was held on June 11, 2020. The meeting was held virtually and did not have a physical location pursuant to Governor Sisolak's Emergency Directive 006 issued as a response to the COVID-19 pandemic.

Presentation by the Crime and Justice Institute

Leonard Engel, Director of Policy and Campaigns, Crime and Justice Institute, presented on A.B. 236 as it relates to controlled substances and possible future legislation relating to this topic. Mr. Engel began by recounting the development of A.B. 236 and how the Crime and Justice Institute came to be involved in this policy development. He said that in 2018, State leaders from the three branches of government requested justice reinvestment technical assistance

from the Justice Reinvestment Initiative, which is a public-private partnership between the U.S. Department of Justice's Bureau of Justice Assistance and the Pew Charitable Trust. When the request for technical assistance was approved, State leaders directed the Advisory Commission to lead the effort towards comprehensive crime and recidivism reduction alongside cost-saving strategies, which resulted in 25 recommendations which were drafted into a final report and submitted to State leadership. He said that the Crime and Justice Institute was the technical assistance provider to the Advisory Commission during this time.

Mr. Engel reviewed the three drug offense and sentencing changes which resulted from the 2019 effort. He said that one established tiered penalties for drug possession based on the weight of the substance, one required the court to defer sentencing for an offender's first two drug possession convictions pending completion of conditions and treatment programs, if necessary, and one expanded judicial discretion by allowing judges to impose a probation sentence for certain commercial drug offenses.

Mr. Engel then discussed the data reviewed by the Advisory Commission during the 2017-2018 interim, which came from NDOC, the Division of Parole and Probation and the Parole Board and spanned the period of 2008-2017. First, Mr. Engel reviewed the categories of drug offenses and corresponding sentencing ranges in place during that time. He said that drug trafficking is the most serious offense and is split between being a category A felony, with a sentence of 25 years to life with parole, for controlled substances greater than 28 grams; and a category B felony, with a sentence of 1-15 years, for controlled substances between 4 and 28 grams; and he noted that drug trafficking does not require a finding of intent to sell, but is simply based on the weights of the substance. Conspiracy to violate the Uniform Controlled Substances Act is a category C felony with a sentence of 1-5 years, possession of a controlled substance for sale is a category D felony with a sentence of 1-4 years, and possession or being under the influence of a controlled substance is a category E felony with a sentence of 1-4 years and presumptive probation.

Mr. Engel testified that the two factors which drive prison population growth are the number of prison admissions and the length of time offenders stay in prison, and he said that both of these factors increased in Nevada during the 2009-2017 period of examination. Specifically, admissions increased 6% and time served increased 20%, resulting in an overall prison population increase of 7% since 2009. He stated that the prison population as of last month [May 2020] was 12,500 individuals. He said that the biggest driver of the increase in admissions was an increase in revocations of parole and probation. He also said that non-person offenses in the aggregate account for two-thirds of the growth in admissions. He said that the admission of females increased nearly 40%, with 70% of these being admissions for a drug or property offense, and he noted that females are typically less violent than males.

Mr. Engel then explained the increase in time served. He testified that both the minimum sentences and maximum sentences provided by statute have increased, which has had an impact on the prison population growth. He stated that those coming in on new offenses served

approximately 31% longer from 2012 to 2017 and that the time served for category B felony offenses, the largest category, increased by 10 months.

Mr. Engel displayed figures showing drug admissions by offense type and by felony class and offense type from 2017. These figures showed that 32% of admissions were for possession, 27% trafficking, 18% possession for sale, 15% sale and transport, and 8% conspiracy. Forty percent of drug admissions are category B felonies, which consist of trafficking and sale and transport. He said that the Advisory Commission examined criminal history to investigate the impact of criminal history in sentencing. For drug possession punishable as a category E felony, more than 40% had no prior felony convictions, including convictions from other states, and he noted that 63% of the possession offender admissions came in as a result of revocation of parole or probation. He said that more than 40% of those imprisoned for a drug trafficking offense also had no prior felony convictions. He then displayed a figure which showed the circumstances surrounding drug trafficking convictions, which demonstrated that 46% were based on the weight alone, 31% were based on observed sale and 23% had circumstances of sale present; and Mr. Engel remarked that the majority of lower-weight cases arose from routine traffic stops while higher-weight offenses came from police investigations. He also noted that 74% of drug trafficking convicts showed evidence of personal substance abuse at the time of arrest, and he noted that methamphetamine accounted for about two-thirds of drug trafficking cases.

Mr. Engel stated that between 2012 and 2017, time served for drug offenses grew by 28%, and he noted that time served for all offense types grew during that period. By specific offense type, time served for trafficking increased by more than 30%, sale and transport by 23%, possession for sale by 16%, possession by 10% and conspiracy by 1%. He explained that time served is a function of the sentence imposed, the amount of credit earned and parole consideration. He said that for category E, D and C felonies, prison credits reduce their minimum sentence, while for category B and A felonies, prison credits only reduce their maximum sentence, meaning that their parole eligibility date effectively does not readjust with good behavior. The maximum sentences for category B felonies increased by 16% between 2008 and 2016 and the minimum sentences increased similarly.

In 2017, trafficking of a controlled substance punishable as a category B felony was the largest source of new prisoner admissions, at 225 new admissions for that year, followed by burglary with 201, Mr. Engel said. The figure he showed demonstrated that the mean minimum sentence for category B drug trafficking was 29.1 months, which is higher than assault with a deadly weapon which had a mean minimum sentence of 18 months. He reiterated the following key takeaways: (1) drug possession accounted for nearly one-third of drug admissions, and 41% of those had no prior felony conviction; (2) 40% of drug admissions were for offenses punishable as a category B felony, a high range of conduct in felony B trafficking cases was observed and 46% of the cases reviewed were charged on weight alone; (3) time served increased 28% for all drug offenses; and (4) the average maximum sentence for felony B offenders increased by 16 months.

Mr. Engel then turned to policy themes and developments discussed by the Advisory Commission during the 2017-2018 interim in response to the above findings. He testified that, at a high level, the discussion focused on the following themes: (1) the impact of a felony conviction on an individual; (2) the need for and availability of behavioral health interventions in lieu of incarceration; (3) the impact of incarceration on recidivism; (4) the proportionality of punishment to conduct; (5) whether trafficking weight thresholds actually track true traffickers versus mere users and low-level dealers; (6) the role of conduct in determining whether an individual is a trafficker; (7) the severity of punishments in relationship to the severity of the drug; and (8) the lack of judicial discretion in imposing an appropriate sentence.

Mr. Engel explained that the Advisory Commission considered three options regarding the offense of drug possession, meaning possession of less than 4 grams. The first was to make all such convictions misdemeanors. The second was to make the first three convictions misdemeanors and the fourth or greater conviction, a gross misdemeanor, punishable by up to 1 year. The third was to make the first two convictions misdemeanors, the third and fourth convictions gross misdemeanors and the fifth or greater conviction a category D felony punishable by a 1-4 year sentence. Regarding policy options for drug trafficking, the Advisory Commission considered three options which treated weights and conduct differently. The first was to make weights of 28-100 grams alongside conduct evincing sale a category B felony punishable by 1-10 years, 100-400 grams with conduct a category B felony punishable by 2-20 years and 400+ grams with conduct a category B felony punishable by 3-20 years and not probation eligible. The second, which did not consider conduct, was to make 56-100 grams a category B felony punishable by 1-10 years, 100-300 grams a category B felony punishable by 2-15 years and 300+ grams a category B felony punishable by 2-20 years and not probation eligible. The third was to retain the current treatments of weight and conduct but eliminate the prohibition on probation and specialty court eligibility.

Mr. Engel related that the Advisory Commission finalized 25 recommendations, 3 of which were drug-related, and noted that they were not unanimously approved by the Advisory Commission. The 3 drug-related recommendations were: (1) reclassify simple possession from a category E felony to a misdemeanor for the first and second offense; (2) increase trafficking weights to distinguish drug sellers from drug traffickers and require evidence of intent to sell or manufacture; and (3) increase judicial discretion in sentencing for commercial drug offenses. A.B. 236 was passed which incorporated those recommendations with certain amendments.

Mr. Engel concluded by describing the law after A.B. 236 and the current tiered penalty structure, effective July 1, 2020. Simple possession is possession of less than 14 grams, for which the first and second offenses are a category E felony with mandatory deferral—if the conditions of deferral are met, the court must dismiss the charges. For the third and subsequent offenses, it is a category D felony punishable by 1-4 years. Possession of 14-28 grams is a category C felony punishable be 1-6 years; 28-42 grams is a category B felony punishable by 1-10 years; and 42-100 grams is a category B felony punishable by 2-15 years. Possession of over 100 grams becomes a trafficking offense, which remains ineligible for probation. Possession of 100-400 grams is a category B felony punishable by 2-20 years, and possession of more than

400 grams is a category A felony punishable by 10 years to life with parole eligibility at 10 years.

Mr. Jackson said that he along with Chuck Callaway of LVMPD, Washoe County District Attorney Chris Hicks and Clark County District Attorney Christopher Lalli led the opposition to A.B. 236 and remarked that it will take a few years before the effects of A.B. 236 will be known. Mr. Jackson referred back to Mr. Engel's slide which showed the 2017 new prisoner admissions as well as mean minimum and maximum sentences by offense type and, pointing to the entry for possession of a controlled substance, remarked that many of these cases are often charged as category E felony possession as a result of plea bargaining where the initial charge was, for example, burglary, grand theft or trafficking. Mr. Jackson asked if he could review the 86 cases corresponding to the 86 new prisoner admissions listed on the slide to confirm this, stating that he did not want the public to think that these 86 cases were merely for possession and nothing more. Mr. Engel noted that the review which produced that slide was for trafficking, not possession, so he had not examined the 86 possession cases in detail. Mr. Jackson said that when someone is truly guilty of simple possession, meaning they have possessed 4 grams or less of a drug like cocaine or heroin, the charge is often reduced to a misdemeanor.

Justice Hardesty remarked that criminal liability and sentencing is based solely on weight without taking into account the seriousness of the drug itself. For example, fentanyl is much more dangerous per gram than most other drugs. He stated that the Advisory Commission should consider an approach which accounts for this.

Presentation by NCSL

Amber Widgery, Senior Policy Specialist, NCSL; and Alison Lawrence, Program Director, NCSL, presented on national trends in legislation relating to controlled substances. Ms. Lawrence began by introducing the NCSL. She said that NCSL is a nonprofit, bipartisan organization which serves all U.S. states and territories. NCSL facilitates communication between states and promotes policy innovation and does not advocate for any particular positions.

Ms. Widgery presented a figure showing data from the FBI's Uniform Crime Reporting Program demonstrating that arrests for drug offenses almost tripled from 1980 to 2018. She stated that most of these arrests are for possession-related offenses and not offenses designated by the FBI as sale or manufacturing offenses. Ms. Lawrence stated that 1 in 5 people incarcerated in the U.S., be it pretrial, local jail, state prison or federal prison, are incarcerated for a drug-related offense. She testified that states have been reevaluating their prison populations and have enacted reforms meant to increase the number of violent offenders and decrease the number of nonviolent offenders, and she noted that there has been a slight shift from 17% to 15% of the prison population incarcerated for a drug offense from 2010 to 2018 according to the Bureau of Justice Statistics. Ms. Widgery then turned to local jails and said that approximately 23% of the convicted population and 25% of the pretrial population are there for a drug offense. She noted that these figures represent only the charges associated with an individual and do not capture, for example, property crimes motivated by substance abuse. She presented a figure showing that

66% of the jail population are pretrial detainees, and she remarked that the pretrial detainee population has held steady over the past 10 years while the convicted population has decreased.

Ms. Widgery said that local jails admit over 10 million people annually and that an estimated 2 million have a serious mental illness, often with co-occurring drug and alcohol issues. Ms. Lawrence testified that the approach to drug policy has shifted to recognize that addiction is a medical disorder which changes the brain and affects behavior, while nonetheless holding people accountable for crimes. She explained that this overall approach can be described by four specific policy strategies: (1) greater focus on prevention and reducing justice-system involvement; (2) prioritizing treatment and recovery over incarceration; (3) differentiating users from distributors; and (4) holistic and substance-based approaches. She noted that Colorado, Indiana, Kentucky, Idaho and Utah are some of the states which have enacted laws which represent these approaches.

Ms. Widgery explained the first policy point in greater depth. She displayed a slide which listed specific policies and programs aimed at prevention and reduction of justice-system involvement, which were as follows: (1) deflection and pre-arrest diversion; (2) creation, expanded access and best practices for pretrial diversion programs; (3) screening and assessment to identify candidates for diversion; (4) expanding availability and access to naloxone; (5) Good Samaritan laws and laws providing immunity for reporting overdoses; and (6) other immunity laws such as for drug and paraphernalia checking. On the topic of deflection and pre-arrest diversion, she explained that these programs reroute individuals before they enter the justice system. She said that these programs have developed at the local level but are beginning to see more state-level legislative support and regulation. The Law Enforcement Assisted Diversion ("LEAD") program, which originated in Washington, is the best-known of these programs, and legislation in California, Colorado and New Mexico has appropriated funding for LEAD programs, while other legislation in Florida, Illinois, Kentucky and New Jersey has authorized or encouraged adoption of other diversion models.

Ms. Widgery then explained pretrial diversion programs, noting that these programs divert individuals after arrest, but before trial, instead of at or before arrest. These programs include probation in lieu of judgment, deferred entry of judgment, pretrial diversion and intervention and specialty and treatment courts such as drug courts, mental health courts and veterans courts. She then explained that there has been an expansion of deflection programs which take the form of collaborations between law enforcement and behavioral and medical health professionals. She described the example of Charleston, South Carolina, which opened its Tri-County Crisis Stabilization Center. Law enforcement can drop off individuals at the Center instead of jail, where the individuals are then offered a range of services from inpatient psychiatric treatment to detox and are connected with ongoing treatment resources including medication-assisted treatment.

Ms. Widgery testified that every state has enacted a law to make it easier for individuals to access naloxone, and most laws provide some kind of legal immunity regarding naloxone. She said that essentially every state has also enacted some version of a Good Samaritan or overdose immunity law which applies when an individual calls for medical assistance, and she noted that Nevada is

a pioneer in this area. Other states have recently been expanding the scope of the immunity to include probation and parole violations, immunity from protective orders in certain instances and immunity to other controlled substance offenses, as well as reducing the number of requirements which must be met for immunity to apply. She said that immunity laws have expanded in other areas such as drug paraphernalia, particularly hypodermic needles and fentanyl testing products.

Ms. Widgery then turned to treatment and recovery programs. She testified that outside of self-referrals, the criminal justice system is the largest source of referrals to treatment with about 34.4% of referrals, according to Substance Abuse and Mental Health Services Administration data. She stated that even where individuals are not deflected or enrolled in a diversion program early in their contact with the criminal justice system, screening for mental health and substance use disorders on arrest or booking can identify individuals who may benefit from treatment. She explained that Vermont has incorporated a needs screening as part of their pretrial process for select defendants, and courts then have opportunities to connect those defendants voluntarily to appropriate treatment through their pretrial services programs.

Ms. Lawrence said that legislatures have made a continuum of community-based sentencing and corrections options available to courts and corrections agencies, including electronic monitoring and halfway houses. She said that at least a quarter of the states have provided an instruction to their sentencing courts to consider the results of a needs and risk assessment when ordering community-based options. She said that some states use presumptive probation, which is a law that directs the court to order probation instead of prison unless certain findings are made by the court. She explained that some states have created oversight bodies to monitor specialty courts like drugs courts and, in some cases, have conditioned funding and certification on following best practices. She testified that there has also been legislation on plans for the reentry of an inmate from prison into the community, which includes a risk and needs assessment leading to the development of a reentry plan three to six months before release, ideally. Ms. Widgery stated that medication-assisted treatment ("MAT"), e.g. the use of prescription drugs like methadone or suboxone to treat opioid dependence, has been introduced and funded by states at all stages of the justice system, and some states have lifted restrictions on the use of MAT such as prohibitions on the use of MAT in correctional facilities, and she noted that there has also been litigation successfully challenging MAT prohibitions on Eighth Amendment of the U.S. Constitution and Americans with Disabilities Act grounds.

Ms. Lawrence addressed the policy theme of differentiating users from distributors. She noted that marijuana has been legalized for recreational use in 11 states, D.C. and the Northern Mariana Islands, and decriminalized—meaning that possession of a small amount is a civil infraction or low-level misdemeanor not punishable by jail—in an additional 16 states, Guam and the Virgin Islands. She said that 12 states have enacted laws reducing possession of small, personal amounts of other drugs from a felony to a misdemeanor. On the other side of the spectrum, some states have also increased penalties on nonviolent drug trafficking offenses and have added new kinds of trafficking and criminal enterprise offenses as well as targeting criminals who provide financial backing for crimes and creating specialized penalties for drug-related homicides. States have redefined possession and dealing in order to differentiate between

people who are addicted to drugs and may therefore possess a somewhat larger amount and true high-level commercial dealers.

Ms. Lawrence said that mandatory penalties are in place in every state, though not every state uses them for drug crimes. She said that some legislatures have found that their mandatory minimum sentences do not match with the original intentions of the law because they are being applied to too many people rather than just dangerous offenders. For example, in 2015, North Dakota enacted language allowing the sentencing judge to deviate from most mandatory minimum sentences in drug crimes if the sentence would impose a manifest injustice, and several more states have since adopted similar language. She said that states have also expanded their parole board's authority to review sentences, such as Colorado which created a presumption of release on parole for drug offenders sentenced under their old laws. She also said that many states have enacted laws allowing people to have their records cleared of prior drug convictions, especially marijuana-related convictions in states that have legalized it.

Ms. Widgery turned to the shift in strategy from substance-specific approaches to a more holistic approach based on treatment. She testified that historically, many states have focused their laws on enhancing penalties for particular substances that were of public concern at the time, such as different types of cocaine, then methamphetamine, then synthetic drugs, and now some states have enhanced penalties for opioids and fentanyl. She said that although there is a role for substance-specific legislation, such as MAT for opioids, there has been a general acknowledgment that many people use multiple drugs so as to focus on the core issue of addiction rather than increasing penalties each time a new substance emerges.

Ms. Lawrence concluded by discussing strategies for collaboration between the criminal justice system and other entities. She said that increasing lines of communication and data sharing between state and local entities creates efficiencies and minimizes duplication of efforts. She said that faith-based organization have been strong supporters for justice-system-involved people and have connected them to necessities like clothing and housing. She said that peer support services are also powerful tools for justice-system-involved individuals. She stated that technology can support partnerships and permit various stakeholders to use the same language and understand one another.

Chair Nguyen asked if NCSL could provide information about how Washington redistributed funds from enforcement to treatment as part of its LEAD program. Ms. Widgery provided information about Washington's H.B. 1767 (2019) which established a grant program through which localities could receive funding to implement LEAD programs. Chair Nguyen then asked if NCSL could provide information about whether other states approach controlled substances differently regarding purely weight-based approaches versus approaches that differentiate between substances of different potencies. Ms. Widgery replied that some states do differentiate between weights of different types of drugs and some states employ a dose-based model, and she provided a table explaining drug threshold enactments for each state. Justice Hardesty asked if NCSL could provide him with information on pardoning or commuting the sentences of low-

level marijuana users, noting that this is relevant to an upcoming Pardons Board agenda item, and Ms. Lawrence provided a link to the NCSL's webpage for that issue.

C. THIRD MEETING

The third meeting of the Advisory Commission was held on September 30, 2020. The meeting was held virtually and did not have a physical location pursuant to sections 2-9 of chapter 2, Statutes of Nevada 2020, 32nd Special Session.

Presentation by the Office of the Attorney General on the Virtual Town Hall Meetings on Criminal Justice

Attorney General Aaron Ford, Christine Jones Brady, Second Assistant Attorney General, Office of the Attorney General, and Theresa Harr, Special Assistant Attorney General, Office of the Attorney General, presented on the Justice and Injustice Panels hosted by the Office of the Attorney General beginning in May 2020. Attorney General Ford began by saying that his office began the Justice and Injustice Panels six days after the death of George Floyd in Minneapolis. He testified that there was a clear disconnect between existing civil rights, criminal justice policies and law enforcement practices, and he said that he hoped to bring stakeholders together to discuss the issues and what meaningful changes could be made.

Ms. Jones Brady said that Attorney General Ford has been working on criminal justice issues with the Advisory Commission both as the Attorney General and when he was a legislator. Ms. Jones Brady said that Ms. Harr took the lead on organizing the panels with community members and coordinating with IT staff of the Office of the Attorney General, and she noted that the full recordings of the town halls are available on the Attorney General's YouTube channel. She presented a video clip in which Attorney General Ford introduced the town hall meetings after the killing of George Floyd. In that video, Attorney General Ford said that he sees the members of the community, that he was an African American before he took office as Attorney General and will be when he leaves and, acknowledging his unique role as a black law enforcement official, said that he wants to amplify the voices of community members and create an opportunity for dialogue with law enforcement through the virtual town hall meetings.

Ms. Harr said that the first town hall was a panel discussion regarding the protests which occurred around the country following the death of George Floyd. She stated that Clark County Sheriff Lombardo, Washoe County Sheriff Balaam, National Association for the Advancement of Colored People ("NAACP") President Roxann McCoy, Reno community leader Dr. Norris Dupree, Jr. and Pastor Dr. Edward Cheney attended the town hall. A second video clip showed highlights of that virtual town hall meeting where several law enforcement leaders presented their perspectives. Law enforcement officers testified that they believe in leaving people with dignity after every police contact and that this is necessary to building the legitimacy the police need to perform properly; that law enforcement likes to allow people to have protests; that law enforcement utilizes social media to keep the public informed; and that community members deserve open, transparent and safe interactions with law enforcement. Attorney General Ford

testified that Sheriff Lombardo in particular reached out directly to be part of the conversation and that the conversation was fruitful.

Ms. Harr said that the second virtual town hall was focused on legislative leaders, and she said that Senate Majority Leader Cannizzaro, Assembly Speaker Frierson, Senator Kieckhefer and Assemblyman Roberts were in attendance. A third video clip showed highlights of that virtual town hall meeting in which Attorney General Ford stated that Assemblyman Tom Roberts and Senator Ben Kieckhefer had reached out to him personally to begin a dialogue about police reform. Attorney General Ford said that it is very important to have state legislators in these conversations and that many legislators and other entities, including the Office of the Attorney General, will be presenting criminal justice-oriented BDRs this session.

Ms. Harr said that the third virtual town hall focused on law enforcement and community relations, and she said that a lieutenant from the Elko Police Department, the Chief of the Henderson Police Department, the Chief of the North Las Vegas Police Department, the Pershing County Sheriff, the Chief of the Reno Police Department and a member of the Peace Officer Standards and Training Academy were in attendance. Attorney General Ford said that it was important to have both urban and rural leadership at the table and he remarked that he was pleased to see enthusiastic affirmative responses to his invitation.

Ms. Harr said that the fourth panel focused on the perspectives of police union representatives. She said that representatives from the Nevada Police Union, the National Organization of Black Law Enforcement Executives, the Nevada Association of Public Safety Officers, the Latino Officers Association, the Las Vegas Police Protective Association and the Nevada Sheriffs' and Chiefs' Association were in attendance. Attorney General Ford said this was a very important panel because it presented an opportunity to hear from rank-and-file officers themselves. He said that he had received emails and texts from many members of the Legislature on both sides of the aisle about how they can be allies, and he testified that the best way is to be there when the fervor dies down, to resist conflating those who are peacefully protesting with those who co-opt protests with violence and to continue to speak out and advocate. Regarding the town hall meeting, he said that the police union representatives were receptive to making changes and acknowledged that there needs to be improvement in transparency, greater oversight in hiring and training and that community relations need to be rebuilt. He quoted Mr. Grammas of the Police Protective Association, who said that "if the only time that we engage our community is when we are taking them to jail, that's a problem." He also quoted Regina Coward-Holman of the National Organization of Black Law Enforcement Executives, who said that "we have almost completely lost the trust of our communities because of a few bad apples. If there was something in place that could make our transparency better, why wouldn't we take that?"

Ms. Harr said that the fifth panel focused on community organizations, the changes that were made in the short time following the death of George Floyd and the changes that are still ahead. She said that Mujahid Ramadan of MR Consulting, Laura Martin from the Progressive Alliance of Nevada, Holly Welborn from the ACLU, Craig Knight from the radio station KCEP, Monique Normand from Black Lives Matter, Leslie Turner from the Las Vegas Freedom Fund and Athar

Haseebullah from Opportunity 180 were in attendance. Attorney General Ford first stated that there was a misleading media report concerning a list of potential legislative changes which came out of these meetings. He said that he had been keeping an ongoing brainstorming list of ideas for changes through these meetings, which had 74 items but which had not been thoroughly reviewed or vetted by his team, yet a local media agency, which obtained the list through a public records request, reported that "they want to change 74 things," which was inaccurate because the list was purely for brainstorming purposes, and he remarked that he should have kept the brainstorming list to himself. Regarding the town hall meeting, Attorney General Ford said that there was positive open dialogue between the ACLU and LVMPD regarding the policies of LVMPD on protests and dispersal orders, but noted that there are many things to be addressed such as arrest practices, transparency, bail reform and equitable sentencing. He stated that the panel speakers and he believe that more panels should be done, which he intends to do, because reform of the criminal justice system must go beyond policing and address prosecutors and public defenders and the different treatments that certain individuals receive in the discretionary decision points in the criminal justice system. He reiterated that those who wish to be allies should sustain their efforts now and resist becoming distracted now that the fervor is beginning to die down. Attorney General Ford concluded by saying that he was happy to see some changes made during the last Special Session.

Presentation by the Division of Parole and Probation on Potential Technical Corrections to A.B. 236

Anne Carpenter, Chief, Division of Parole and Probation; Ryan Osborn, Lieutenant, Division of Parole and Probation; and Aaron Evans, Lieutenant, Division of Parole and Probation, presented on potential technical corrections to A.B. 236. Lieutenant Osborn began by describing the general areas which the Division of Parole and Probation identified for improvement as the following: (1) language in A.B. 236 which contradicts other areas of statute or lacks clarity; (2) areas which create operational concerns for the Division; (3) areas which need to be updated to comport with A.B. 236; and (4) the need to separate the parole and the probation statutes.

Lieutenant Osborn addressed the issue of presentence investigation reports, which are prepared by the Division of Parole and Probation. He testified that NRS 176.145(1)(h) creates the possibility for work product from the Division of Parole and Probation which is dissimilar between cases because under that section one court may request records which another court does not. He also noted that while NRS 176.145 no longer requires the Division of Parole and Probation to make a sentencing recommendation, NRS 176A.100(3) provides that the courts shall consider, inter alia, "the recommendation of the Chief Parole and Probation Officer, if any, in determining whether or not to grant supervision," and he suggested that this language be cleaned up to resolve this tension. Describing other areas where terminology could be modernized, he said that NRS 213.1078 now requires the Division of Parole and Probation to use a risk and needs assessment tool. This tool does not use the term "intensive" as a risk category, yet the term "intensive" is used throughout the statutes, and he suggested that all instances of "intensive", "close" and "strict" supervision in the statutes relating to supervision be changed to "enhanced" supervision.

Lieutenant Osborn then discussed the operational concerns of the Division of Parole and Probation. First, he explained that NRS 213.1078(3)(a) and 213.1078(5) create the possibility for a supervision level to be set by the Parole Board or by a court, and he testified that the Division of Parole and Probation proposes that supervision levels should be established by the Division's risk and needs assessment tool, not by the Parole Board or the court. He said that determining supervision levels is the area of expertise of the Division of Parole and Probation. Second, he said that currently NRS 176A.660(2)(b) and 213.152(2)(b) allow for a judge or the Parole Board to sentence a person to a 6-month term of residential confinement for a violation of the terms of their release, which does not appear to be in line with the system of graduated sanctions required by A.B. 236.

Lieutenant Osborn addressed two further areas where statutory language could be cleaned up to comport with A.B. 236. First, he said that the Division of Parole and Probation recommends that NRS 213.10988 be amended to remove language regarding the requirements to make sentencing recommendations. He explained that NRS 213.10988(3) states that the Division of Parole and Probation shall adjust standards to provide recommendations of greater punishment, but because the Division no longer makes sentencing recommendations under NRS 176.145, the Division no longer has the capacity to recommend greater punishments. Second, he said that NRS 176A.100 states that the court shall consider the standards adopted pursuant to NRS 213.10988 regarding granting probation, but if the outdated language is cleaned up in NRS 213.10988, then it would include only revocation recommendations and there would be no need for NRS 213.10988 to be cited in NRS 176A.100.

Lieutenant Evans then provided a detailed explanation of the recommendation of the Division of Parole and Probation to amend the statutes which concern the process for violations of the terms of probation. He began by explaining the overall process for probation violations: when a probationer violates their supervision and the Division of Parole and Probation has exhausted all graduated sanctions, the probationer is arrested and the Division prepares a report detailing the violations while the probationer remains in custody without bail, then the probationer is seen by their sentencing court. He explained that NRS 176A.580 requires the Division of Parole and Probation to hold an inquiry or informal hearing to determine whether probable cause exists that a probationer has violated the terms of his or her supervision, which can occur any time after arrest but must occur within 15 days, and he said that typically this hearing is scheduled near the last allowable day to permit the Division to research all the violations, obtain police reports, communicate with service providers, etc. The Division of Parole and Probation provides the probationer with a copy of the violation report at least 5 days prior to the hearing to allow them to prepare, and the probationer can waive the hearing when served with the report. At the hearing, an uninvolved law enforcement officer determines whether there is probable cause that the probationer violated the terms of their supervision. Lieutenant Evans explained that because technical violations are, after A.B. 236, now defined by statute and there is a requirement that the probationer be heard by the court within 15 days to determine if probable cause for their violation exists, the Division of Parole and Probation recommends that the informal hearing be eliminated in order to eliminate redundancy while maintaining the due process rights of probationers by allowing a judge to determine probable cause. Lieutenant Evans noted that while

the violation process for probationers is generally similar to that for parolees, there is no statutory timeframe for parolees, so the Division of Parole and Probation does not currently recommend similar changes without input from the Parole Board.

Lieutenant Evans turned to the issue of separating the parole and probation statutes. He said that A.B. 236 revised several statutes and combined language for parolees and probationers. He explained that Chapter 176A of NRS governs probationers yet A.B. 236 created a system of graduated sanctions for technical violations within Chapter 176A which applies to both probationers and parolees (NRS 176A.510). He testified that Chapter 176A should only apply to probationers and there should be a similar graduated sanctions system drafted into Chapter 213, which concerns parole. He also noted that NRS 213.10988 refers to the Division of Parole and Probation's recommendations for both parole and probation and said that it would be more clear if the language for parole and probation were separated into their own chapters.

Kendra Bertschy asked if it was correct to understand the recommendation of the Division of Parole and Probation as being to change NRS to make clear that the Division is not to provide any recommendations for sentencing, and Lieutenant Evans replied that this was correct and that it seemed like some instances were missed when sentencing recommendations were taken out of the presentence investigation report. Ms. Bertschy asked if Lieutenant Evans could clarify the recommendation on eliminating the informal hearing for technical violations. Lieutenant Evans explained that because A.B. 236 changed the law to require that a probationer be brought to court within 15 days of an alleged technical violation to determine whether there is probable cause for that violation, and the informal hearing typically occurs at or around the 15-day mark, the informal hearing now duplicates the court hearing and should be eliminated. Chair Nguyen asked if there are ever instances where the informal hearing would happen significantly before the 15-day mark. Lieutenant Evans said that if it is a probationer's first or second violation and the Division of Parole and Probation feels it can work with the probationer, then the probationer will be released administratively without the hearing, but if it comes to a hearing, probable cause is found in almost all cases. He said that the law of supervision has changed so much that the hearing is not necessary anymore. John Piro, Chief Deputy Public Defender, Clark County Public Defender's Office, testified that the proposal to eliminate the informal hearing has the support of the Clark County Public Defender's Office, as well.

Presentation by the Clark County Public Defender's Office on Potential Technical Corrections to A.B. 236

John Piro, Chief Deputy Public Defender, Clark County Public Defender's Office, presented on potential technical corrections to A.B. 236. He began his short presentation by stating that the provisions in A.B. 236 governing sentencing for habitual crime could be made to apply at the time of sentencing, rather than applying the law as it existed when the crime was committed by the individual.

Mr. Piro then stated that after A.B. 236, some probation periods for certain violent gross misdemeanors are now allowed to be set for terms up to five years, where previously the limit

was three years, which is something that could be changed by the Legislature. He also said that there are some justices of the peace who use their 2-year ability to manage an offender's case as a means to keep the offender on a 2-year informal probation, which is longer than the probation period would be for certain gross misdemeanors in district court.

Mr. Piro concluded by remarking that he has reviewed the Clark County District Attorney's Office's presentation and found that their proposed changes are more aptly described as substantive than technical, and he testified that because A.B. 236 has only been in effect since July 1, 2020, the Legislature should wait to gather data and let the law settle in before making major changes. Mark Jackson then said that it should not be that Mr. Piro's changes are described as technical while the Clark County District Attorney's Office's changes are described as substantive.

Presentation by the Clark County District Attorney's Office on Potential Technical Corrections to A.B. 236

John Jones, Chief Deputy District Attorney, Clark County District Attorney's Office, presented on potential technical corrections to A.B. 236. Mr. Jones began by stating that he concurs with Mr. Piro's assessment that A.B. 236 has only been effective for about 90 days and so there may be other issues that arise later, especially when trials resume, since trials have been suspended due to the COVID-19 pandemic. He also stated that the Clark County District Attorney's Office agrees with the Division of Parole and Probation's recommendation to eliminate the informal inquiry hearing for technical violations of probation in NRS 176A.580-176A.610.

Mr. Jones said that the Clark County District Attorney's Office proposes several changes to the definition of a technical violation in order to ensure that similar offenses are treated in similar ways. First, he stated that currently, a violation of the terms of a specialty court program is not considered a technical violation, but a violation of the terms of inpatient treatment is considered a technical violation. He explained that the two are often interchangeable in the sense that defendants apply to both programs and the programs concern similar conduct, so they should be treated similarly. Next, he said that currently possession of a firearm is a technical violation, but certain probationers are on probation for a gross misdemeanor, not a felony, so possession of a firearm should not be a technical violation for gross misdemeanants. Lastly, he testified that there have been instances where sex offenders have been found loitering around parks taking pictures of kids and this should not be treated as a technical violation. He remarked that these three examples illustrate the differences among the kinds of things treated as technical violations, and he said that although part of the goal of A.B. 236 was to prohibit courts from sending people to prison for certain things, judges should have greater discretion when it comes to addressing technical violations.

Mr. Jones then said that there are certain offenses which are eligible for early termination or reduced probation credits of which should not be eligible for early termination or reduced credits. He testified that serious crimes against a person, such as residential burglary, home invasion and discharging a firearm into or from a structure or vehicle, should be added to the list of excluded

offenses. He said that possession of a firearm by a prohibited person and carrying a concealed weapon without a permit should be added to the list of excluded offenses as well, and he said that the Advisory Commission should also look into adding animal abuse offenses to the list of excluded offenses. He also remarked that there are certain offenders who do want to return to prison instead of probation or supervision, and the current language of the statute is ambiguous as to whether this would be allowed.

Mr. Jones said that although specialty court programs like drug court and veterans court are intended for low-level offenders, they are also often used by more serious offenders, so those sections of statute could be revisited by the Advisory Commission. He then said that currently possession of a controlled substance with intent to sell is treated as a lower-level felony, but the fact that the offender intended to sell makes it more serious. He concluded by stating that some of the penalties for marijuana offenses have been inadvertently messed up by A.B. 236. He said that currently, there is a legal amount, then as the weight increases it becomes a category B felony, then there is a window without a penalty assigned, then it drops to a category C felony, which is clearly unintended and nonsensical. He testified that the Clark County District Attorney's Office has been charging possession of over an ounce of marijuana as a category E felony, not a category B felony, because it is clear that the category B classification was inadvertent.

Regarding Mr. Jones's statement about specialty court programs being used by serious offenders, Chair Nguyen said that her understanding is that offenders are screened for suitability for specialty court programs, and she asked if Mr. Jones is recommending changes to that process. Mr. Jones replied that he is not concerned about eligibility, but rather that offenders often enter specialty court programs through probation revocation, which is not how the statutes were intended to be used, and he remarked that an offender who received probation then failed at probation but then is given another opportunity through the drug court program should not be given a dismissal at the end. Chair Nguyen said that there were discussions during the 80th Legislative Session about specialty court programs morphing into conditions of probation and thereby losing the incentive of having the dismissal of the charge as a reward for completion of the specialty court program, and she asked if mandatory diversion to specialty court would be more appropriate at the beginning for these individuals. Mr. Jones replied that each case is distinct but that district attorneys would broadly support the ability for courts to mandate specialty courts earlier in the process, and he remarked that most defendants do not want to get treatment until they are facing a high likelihood of prison.

Ms. Welborn stated that she would like the Crime and Justice Institute, which is providing technical assistance to the Advisory Commission, to provide information on how the Advisory Commission's recommendations would affect the reinvestment goals of A.B. 236. Ms. Bertschy asked about the offenses which Mr. Jones suggested be added to the list of offenses excluded from early termination or reduced probation credits and asked whether Mr. Jones was basing his recommendations on any statistics or findings that increased probation times would improve community safety or if his recommendations were based on his opinion of the charges, and Mr. Jones replied that it is based on the underlying nature and seriousness of the charges. Chair

Nguyen asked those present from the Division of Parole and Probation if they have seen any problems regarding the offenses suggested by Mr. Jones, and Chief Anne Carpenter replied that they do not have statistical information, that A.B. 236 is too new to opine on this, but that the Division of Parole and Probation could see how many cases the Division processed in the past and make a projection. Chair Nguyen remarked that perhaps the Crime and Justice Institute could assist with that projection.

Presentation by NDOC on Potential Technical Corrections to A.B. 236

Charles Daniels, Director, NDOC, and Brian Williams, Deputy Director of Programs, NDOC, presented on potential technical corrections to A.B. 236. Mr. Daniels began by testifying that as of September 30, 2020, NDOC has an inmate population of 11,327, including those held for transfer to local jurisdictions. He said that after the emergency declaration, NDOC immediately transitioned to modified operations by designating all NDOC employees as essential, restricting visitation and restricting access of non-employees to NDOC facilities, as well as implementing emergency procedures such as logging activities to track possible exposures of staff and offenders. He also said that NDOC has implemented travel restrictions and reductions of the number of staff and offenders in group settings. He said that NDOC has had 140 employees test positive for COVID-19, with 26 of those currently positive, and NDOC has had 38 inmates test positive for COVID-19, with only 4 currently positive. He stated that NDOC has presented its strategies to combat COVID-19 to the Sentencing Commission, the ACLU and the federal courts. He noted that NDOC does not have the ability to cease operations and close offices like other agencies.

Mr. Williams stated that NDOC remains resolute in implementing A.B. 236 despite numerous challenges. He displayed figures which showed that more inmates have been released than admitted since January 2020. He testified that this was attributable to the following: (1) safety restrictions on public and private entities to combat COVID-19; (2) courts not processing their normal volume of cases and thereby not sentencing individuals to incarceration; (3) the implementation of graduated sanctions for parole violations by the Division of Parole and Probation; and (4) the continued operation of inmate programs notwithstanding the pandemic due to the designation of all NDOC employees as essential, allowing inmates to continue to receive merit credits. He also said that NDOC expects further reductions due to the implementation of A.B. 236 due to decreases of sentences for drug and property crimes and other miscellaneous crimes, the reduction of certain crimes from category B felonies to category C felonies and the decrease of penalties and increase of thresholds for various theft offenses.

Mr. Williams explained that NDOC is currently changing its classification system. He said that upon implementation of the new measurement variable classification model, NDOC projects close-custody male bed needs will decrease and will be redistributed to medium and minimum-custody beds. He said the majority of the change will come from change in protective segregation from a custody close to a designation allowing for current protective segregation population to be classified according to their corresponding commuted score custody.

Mr. Williams said that NDOC has worked closely with Victoria Gonzalez, Executive Director, Nevada Department of Sentencing Policy, to implement directives required by A.B. 236 and the Sentencing Commission. He said that NDOC has faced several issues related to COVID-19 which have impacted the implementation of A.B. 236, including: (1) the fact that many agencies are operating remotely or have reduced operations, which makes collaboration and information retrieval difficult; (2) the substantial impending budgetary and staff reductions; (3) technological platforms being unavailable or unauthorized for NDOC and other agencies, resulting in frequently mixed technological attendance methods (e.g. phone, video stream) for meetings; (4) the lack of video and audio capability in NDOC's new workstations; and (5) other assorted issues such as bandwidth, human error and outside factors.

Mr. Williams said that NDOC is training its correctional staff pursuant to section 89 of A.B. 236 on principles of effective intervention and case management, yet all these training efforts have been hindered in the short term by COVID-19 because outside instructors cannot access NDOC facilities. He said that although NDOC has successfully trained all staff in core correctional practices, NDOC has yet to initiate the intervention or case management training due to travel restrictions applicable to the University of Cincinnati Correctional Institute and the Crime and Justice Institute, but he said that this training is now tentatively scheduled for November 2020. He also said that training for victims of domestic violence and trauma has been completed with two mental health staff and one training staff, but three trainers is not sufficient and the NDOC is therefore requesting additional trainers. He testified that trauma-informed criminal justice responses increase safety for all, reduce recidivism and support recovery for justice-system-involved people with mental health issues. Regarding individuals with behavioral issues, he said that NDOC is submitting a Bill Draft Request to revise NRS 209.4236 to update language for Therapeutic Communities to reflect current best practices as presented by the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). He also said that NDOC is working with the National Alliance on Mental Illnesses to implement training programs for individuals with both physical and intellectual disabilities.

Mr. Williams said that NDOC has faced the short-term issue of reduction of staff due to both the State hiring freeze and COVID-19 protocol. He stated that in April and May 2020, NDOC incurred 4 vacancies in the Program Officer 2 position and 1 vacancy in the Program Officer 1 position. NDOC has submitted a justification for those positions to be filled with the Governor's Finance Office, but they have yet to be approved. He testified that these positions will be critical to the implementation of the program of individualized plans for inmate reentry into the community, which begin six months prior to an inmate's release. He also said that the collaborative efforts between NDOC and the Division of Parole and Probation to address consistency of statewide reentry, and the sustained and uniform system for continuity of care from incarceration will be long-term issues for the reentry program. He said that NDOC also assumed additional duties from the Department of Health and Human Services regarding Medicaid applications and received no additional staff for this. He stated that NDOC has rearranged resources to conform with all mandates contained in A.B. 236.

Mr. Williams said that every offender released must have a photo ID, clothing, transportation costs, release to a transitional living facility, a completed enrollment application for Medicaid/Medicare and a 30-day supply of any prescribed medication. He said that transitional living facilities were not accepting people during the COVID-19 pandemic, so NDOC had no place to send inmates. He said that NDOC has adhered to the other release requirements by rearranging resources, and he reiterated that getting the five Program Officer positions filled would help with these issues. Regarding the performance data required to be collected under sections 6 and 7 of A.B. 236, he stated that NDOC has also faced issues with COVID-19 and the State hiring freeze because Quality Assurance and Program Officer positions are needed. He said that NDOC was negotiating with the Attorney General's Office regarding contracted positions and had encountered an issue regarding contract language containing statutory provisions. He then said that the risk and needs assessment must undergo a validation study every three years, and he said that this consists of reviewing the outcome of the University of Cincinnati Criminal Institution's revalidation of the Ohio Risk Assessment, which is identical to Nevada's. He also said that NDOC is developing and considering how to incorporate a Women's Risk and Needs Assessment tool. He testified that the administration of a risk and needs assessment for each offender is not facing short-term issues and in the long term will require attention to consistency of utilization and the incorporation and review of the Women's Risk and Needs Assessment. He concluded by noting that currently no inmate qualifies for the medical release program detailed by section 91 of A.B. 236, which is an issue.

Chair Nguyen asked if NDOC has received any funds from the U.S. Coronavirus Aid, Relief and Economic Security Act ("CARES Act") to mitigate COVID-19-related issues, and Mr. Williams replied that they have received funds for items related to the CARES Act, but not for items related to A.B. 236. Justice Hardesty asked whether the positions requested by NDOC are provided for in NDOC's existing budgets or whether those positions are new or enhanced as a result of A.B. 236, and Mr. Williams replied that two of the positions are through contract with the Office of the Attorney General, which is being finalized, and five of the positions are General Fund positions awaiting approval from the Governor's Finance Office. Justice Hardesty noted that the two positions through the Attorney General's Office are funded. He also relayed comments from Victoria Gonzalez, Director, Nevada Department of Sentencing Policy, commending Director Daniels and the NDOC on the good work they have been doing.

Ms. Welborn asked if Mr. Williams could describe in greater detail how reductions in inmate programming due to COVID-19 could impact an inmate's path to release. Mr. Williams said that since all of NDOC's staff are deemed essential workers, the programs run by programming staff have continued, but the challenge is with programming facilitated by outside organizations like school districts and colleges. He said that they have identified three NDOC facilities that will be the pilot for reintegration of non-NDOC-employees into the facilities. Director Daniels said that the NDOC has been meeting regularly and working diligently to ensure that the current circumstances do not deprive offenders of opportunities to get out of their cells and units and to continue with educational and vocational training.

Judge Bluth stated that in Clark County there was a period of time when inmates were unable to be transported for procedures scheduled to occur at the court, and she asked whether transports are regularly available now and whether the NDOC needs time to get inmates to court. Director Daniels said that NDOC has worked with the courts and does things over video as much as possible, and he said that they will transport inmates in extenuating circumstances following appropriate protocols regarding personal protective equipment and isolation.

After Chair Nguyen invited further questions and there were none, Director Daniels took a moment to address the issue raised by many callers in the public comment period at the beginning of the meeting regarding restitution payments being taken from inmates' accounts. He explained that Marsy's Law is in the Nevada Constitution as a result of being approved by Nevada voters directly as well as by the Legislature in the 2015 and 2017 joint resolutions. He said that Marsy's Law prioritizes reimbursement in the following order: (1) court order; (2) child support; and (3) restitution for victims; and he explained that this is not inclusive of fines. He testified that complaints from inmates and families are not going on deaf ears, but he noted that only 18% of the inmate population currently owes restitution. Chair Nguyen noted that it is not part of the agenda to discuss items brought up in public comment and encouraged the callers to contact the Chairs of the Advisory Commission and Sentencing Commission after the meeting.

Presentation by the Crime and Justice Institute on Potential Amendments to A.B. 236 Concerning Retroactivity

Leonard Engel, Director of Policy and Campaigns, Crime and Justice Institute, presented on potential retroactive amendments to A.B. 236 and gave an overview of retroactivity of criminal justice measures from other jurisdictions. Mr. Engel began by stating that the Crime and Justice Institute saw, on a general level, several types of mechanisms to achieve different forms of retroactivity from other jurisdictions, including: (1) applying policies to those currently serving a sentence, e.g. through parole eligibility and revocation terms; (2) authorizing petitions for sentence modification; and (3) authorizing the creation of a commutation docket. Mr. Engel presented a list of offenses impacted by A.B. 236 for which retroactivity could be applied, which was as follows: (1) burglary; (2) theft; (3) drug offenses, including possession of a controlled substance, opening or maintaining a place for unlawful sale, gift or use of a controlled substance, commercial controlled substances offenses, trafficking offenses and knowingly using or being under the influence of a controlled substance; (4) gaming offenses; and (5) motor offenses.

Mr. Engel discussed several other jurisdictions in greater detail. He stated that the Federal First Step Act, which was signed into law in 2018, authorized the Fair Sentencing Act of 2010 to be applied retroactively, meaning that offenders sentenced before the Fair Sentencing Act became effective in 2010 could apply for resentencing under the terms of the Fair Sentencing Act. He noted that the process was not automatic, that a motion for resentencing was required to be filed, and that a judge issued resentencing based on the merits of the case. He related that data on the First Step Act has been collected and a first-year analysis showed that more than 2,000 individuals received sentence reductions averaging 6 years per sentence.

Mr. Engel said that Oklahoma passed a ballot initiative in 2016 which reclassified simple drug possession from a felony to a misdemeanor, and the Oklahoma Legislature passed its House Bill 1269 which made the reclassification retroactive by establishing a process whereby the Pardon and Parole Board would decide whether to approve the commutation, which, if approved, would then be approved or rejected by the Governor. He noted that this resulted in the single largest commutation in U.S. history when 527 people had their sentence commuted when the new law took effect.

Mr. Engel said that Louisiana passed a comprehensive sentencing and supervision bill in 2017 wherein changes were applied automatically to those serving a sentence on the effective date of the act, which allowed them to receive earned compliance credits to reduce their term of probation or parole, as well as permitted the application of new parole and probation revocation terms and alternative sanctions for violations. He said that although it is difficult to distinguish the precise effects of the retroactivity provisions in the data, the supervision caseload sizes have fallen from 149 in 2016 to 123 cases per officer in 2018 and the number of revocations of parole or probation for technical violations fell by more than 55%.

Mr. Engel said that in 2016 Maryland established a "safety valve" which allowed judges to depart from imposing a mandatory minimum sentence for various drug offenses. The following year, the Maryland Legislature applied the safety valve retroactively, allowing judges to review cases which resulted in a mandatory minimum sentence. The law included a presumption in favor of the safety valve which required the state to show that the mandatory minimum would not result in substantial injustice and that the mandatory minimum is necessary to protect the public. He said that he lacks data on the implementation of this policy. He then said that Delaware revised their sentencing policies concerning a mandatory minimum life sentence for a third violent felony, for which drug dealing was counted as a violent felony, and he noted that similar to other states, the judge can modify the sentence or reject the modification. He concluded by explaining that California passed its Proposition 47 in 2014, which reclassified drug possession and certain theft offenses from a felony to a misdemeanor and which was applied retroactively in 2017 through a mechanism which required the court to resentence a person as a misdemeanor unless the prosecutor can prove that doing so would present an unreasonable danger to the public, and he noted that California's law also allows for people who have completed their felony sentences to have the felony removed from their records.

Chair Nguyen asked if Mr. Engel had information from those jurisdictions on the costs of resentencing potentially tens of thousands of people. Mr. Engel said that he would provide that information but did not know about the costs at that time. Mr. Jackson noted that Nevada's Marsy's Law gives victims of crimes a constitutional right to be notified throughout the defendant's criminal justice process, and he asked whether any of those jurisdictions had enacted a similar Marsy's Law which may impact the process of hearings for resentencings. Mr. Engel replied that he did not know.

Presentation by the Division of Records, Communications and Compliance on the NCJIS Modernization Program

Julie Ornellas, NCJIS Modernization Program Administrator, Division of Records, Communications and Compliance, presented on NCJIS and the NCJIS Modernization Program. Ms. Ornellas began by explaining that NCJIS is the current system and is comprised of the Message Switch, known as Justice Link, and is the central highway for criminal justice information sharing for investigations, intelligence, arrests, prosecution, sentencing, record seals, parole, probation, queries from detention centers and more. The records include: (1) Nevada hot files, which are warrants, protection orders, DMV records, registered sex offenders, parole and probation records, concealed carry weapon permits, the Nevada Offense Codes and criminal history records; (2) national files through the National Crime Information Center, which includes warrants, protection orders, DMV records and sex offender information; and (3) a file sharing system with Las Vegas called Shared Computer Operations for Protection and Enforcement ("SCOPE").

Ms. Ornellas explained that the Justice Link system is critical to many of the important duties and services of the Division of Records, Communications and Compliance. She said that the civil background check services are used for many things including employment, licensing, adoptions and foster care and rely on Justice Link to query criminal history records and to receive results from the FBI. She said that the Brady Point of Contact Firearms program is critical and uses the National Instant Criminal Background Check System. She displayed a figure which showed that there were approximately 85 million Justice Link transactions; 4 million Nlets transactions, which are queries to or from other states; 100,000 Brady Point of Contact background checks; 260,000 civil fingerprint background checks; and 50,000 civil name background checks.

Ms. Ornellas addressed the goals and objectives of the NCJIS Modernization Program. She said that the modernization will involve replacing several complex and critical systems. For example, the switch which hosts the Nevada hot files and computerized criminal history will be replaced. She explained that with the current switch, the system was coded not to merely transmit data but to act as applications, so changes to one application can affect many others. The new system will incorporate an enterprise content-management system which will allow for "runs," which are background checks based on character recognition from an inquiry and which will automatically attach supporting documents electronically. She said that there will be improvements to civil processes such as fingerprinting, which currently requires mailing and is therefore quite slow. The new system will have a web-based portal, which will allow account holders to, for example, retrieve criminal history results generated through fingerprint submissions by logging into the portal instead of waiting for mailed results. Similarly, firearms dealers will be able to conduct the Brady Point of Contact inquiry through the web portal instead of by telephone, which will save time for both firearms dealers and Division operators who, in 2019, spent an average of approximately 7 minutes on each call—an amount which has recently substantially increased due to increased volume. She noted that this web-based system will also save costs associated with postage, paper and toner.

Ms. Ornellas then discussed the current progress of the NCJIS Modernization Program. She said that the NCJIS Program Management Office was established in September 2019. She said that the Division of Records, Communications and Compliance has hired eight permanent staff and eight contracted staff, and she said that the contracted staff consists of programmers, project managers and a program manager. She stated that the Division of Records, Communications and Compliance went through the Request for Proposal ("RFP") process for the NCJIS Modernization Program, which was time consuming but encompassed all the technical and functional requirements. She said that the Unisys Corporation was selected to be the NCJIS solutions vendor and that a contract was approved with a start date of July 1, 2020. She said that the RFP also includes a change manager position which will assist the customer and user base in transitioning to the new systems, and she said that MTG Management Consultants were selected to fill the quality assurance senior advisor and change management positions.

Ms. Ornellas explained that the current system was created by and is supported by a small company called Norsoft Consulting. She said that the current system consists of a proprietary code held by Norsoft and that two years ago Norsoft notified the Division of Records, Communications and Compliance of their intent to retire in two to five years. She stated that the Division of Records, Communications and Compliance has recently finished drafting a contract for Norsoft to help with the knowledge transfer and phase-out process, but she testified that time is running out because portions of the current code are nearing end of life and becoming unsupported, and she noted that Norsoft is a very small company with only 2.5 FTE employees. She said that Enterprise Information Technology Services, the current technical service provider, would have great difficulty attempting to take over the system and maintain the proprietary code if the code was purchased from Norsoft and that there would likely be significant problems if this was attempted, such as those which occurred in 2017 and included several weeks of outages and many lasting defects. She testified that the system is Norsoft's proprietary code and that Norsoft is not simply going to give it to the State when they retire, and she reiterated that they will retire in 3 years or less. She said that there will be catastrophic consequences if the State was left without a system. An officer who pulls someone over, for example, would be unable to submit queries such as whether the vehicle is stolen, whether there are outstanding warrants, etc., which poses a great risk to public and officer safety. She also said that Nevada would become uncompliant with the federal Presidential Fix NICS Act, which requires states to increase the information shared for firearms background checks, and she noted that the Nlets system, which allows for criminal history information sharing with other states, would also cease to operate. She also said that civil operations like background checks and sex offender registrations would likewise fail without the NCJIS Modernization Program.

Ms. Ornellas testified that funding for the NCJIS Modernization Program is critical because the systems are very important, though the NCJIS Modernization Program will be costly. She stated that S.B. 514 from the 2019 Legislative Session appropriated $7 million to the NCJIS Modernization Program from the General Fund and authorized an additional $7 million to be used from the fee reserves of the Division of Records, Communications and Compliance for the 2019-21 biennium, but she testified that the cost will amount to almost $40 million over the next two biennia (2021-23 and 2023-25). She said that it will be necessary to obtain appropriations

from the General Fund to support the NCJIS Modernization Program over the next two biennia. She stated that the Division of Records, Communications and Compliance has examined other funding options such as federal grants, and she explained that federal grants are generally very limited in their subject matter and timeframes and noted that the Division has received a Justice Assistance Grant to offset the costs of travel and outreach for training.

Ms. Ornellas concluded by testifying that once the transition to the new system begins, it will be extremely difficult or even technologically impossible to turn back. She explained that the applications and the Cloud-based storage systems of the new system are completely different than the current program environment. She said that for example, criminal history record transactions are logged instantly which would make it extremely difficult to re-sync that information back to the old databases and servers. Because of this, she testified, continued funding through the coming three biennia is absolutely necessary to ensure the success of the NCJIS Modernization Program.

Justice Hardesty asked when criminal history judgments will be entered into the new system. Ms. Ornellas replied that the Division of Records, Communications and Compliance has hired a database administrator to evaluate all the different versions and formats of criminal history information that have been going into the system since the 1980's and begin migrating that data, and she said that according to her schedule, data will likely begin being entered into the new system in October 2021 and the data will be fully migrated by March 2023. Justice Hardesty said that the Sentencing Commission has recently discussed the fact that there is a significant backlog of judgments which have not been entered into the current system and asked what is happening to address this and to account for this in the transition. Ms. McKay said that the Division of Records, Communications and Compliance has eliminated the backlog which consisted of 900,000 dispositions and is now addressing the backlog in sentencing information. She said that when that effort started 5 years ago, there was about 25% completeness in the records, but now the system is in the 60th percentile, which is the national average, and she noted that 100% completion is not possible because there will always be new and active cases. She said that due to the COVID-19 pandemic, the Division of Records, Communications and Compliance had to lay off a significant number of temporary staff because they were sharing desks, which has resulted in a delay. Justice Hardesty then asked when courts will be able to transmit convictions electronically, and Ms. Ornellas replied that the problem is that some courts use different case management systems, so the Division of Records, Communications and Compliance is hoping to create a technical specification to provide to the courts to create an interface where each can submit dispositions electronically, and she noted that this will require partnership with the courts. Justice Hardesty asked if the courts were now fully reporting and Ms. Ornellas said that all courts are fully reporting and that the outreach and communication efforts have helped.

Appointment of Members to the Subcommittee on Criminal Justice Information Sharing

Chair Nguyen appointed Mindy McKay as the Chair of the Advisory Commission's Subcommittee on Criminal Justice Information Sharing. Chair Nguyen then appointed Robert

Quick, Jenny Noble, Steve Grierson, Heather Palasky, Rick Stefani, Erica Souza-Llamas, Evelyn Grosenick and Tom Lawson to the Subcommittee on Criminal Justice Information Sharing, and she said that these were the members who had served on the Subcommittee during the previous interim and had expressed interest in continuing. She also formally recognized Fred Olmstead as the member appointed by the Department of Public Safety pursuant to NRS 176.01248.

IV. SUBCOMMITTEE ON CRIMINAL JUSTICE INFORMATION SHARING

The Advisory Commission appointed one subcommittee during the 2019-2020 interim: the Subcommittee on Criminal Justice Information Sharing. The Subcommittee on Criminal Justice Information Sharing is statutorily tasked with examining various issues related to criminal justice information sharing, including those related to NCJIS. The Subcommittee on Criminal Justice Information Sharing must also prepare and submit to the Advisory Commission a comprehensive report that includes the recommendations of the Subcommittee (NRS 176.01248).

A. MEMBERS OF THE SUBCOMMITTEE ON CRIMINAL JUSTICE INFORMATION SHARING

The following members were appointed to and served on the Subcommittee on Criminal Justice Information Sharing for the 2019-2020 interim. All members were appointed by the Chair of the Advisory Commission except where otherwise noted.

Mindy McKay, Division Administrator, Records, Communications and Compliance Division, Chair
Undersheriff Robert Quick, Lander County Sheriff's Office, Vice Chair
Steve Grierson, Court Executive Officer, Eighth Judicial District Court
Evelyn Grosenick, Chief Deputy Public Defender, Washoe County Public Defender's Office
Captain Tom Lawson, Division of Parole and Probation
Erica Souza-Llamas, Criminal History Repository Manager, Central Repository for Nevada Records of Criminal History
Jennifer Noble, Chief Deputy District Attorney, Washoe County District Attorney's Office
Fred Olmstead, General Counsel, Nevada State Board of Nursing (Appointed by the Director of the Department of Public Safety)
Heather Palasky, CJIS Manager, LVMPD
Rick Stefani, Deputy Director-IT, Administrative Office of the Courts

The Legislative Counsel Bureau staff services were provided by Kathleen Norris, Deputy Legislative Counsel, Legal Division; Nicolas Anthony, Senior Principal Deputy Legislative

Counsel, Legal Division; Angela Hartzler, Deputy Administrator, Legal Division; and Jordan Haas, Secretary, Legal Division.

B. MEETING OF THE SUBCOMMITTEE ON CRIMINAL JUSTICE INFORMATION SHARING

During the 2019-2020 interim, the Subcommittee on Criminal Justice Information Sharing held one meeting on October 19, 2020, which diligently and proficiently addressed the statutory duties of the Subcommittee prescribed by NRS 178.01248. The presentations from actors engaged in criminal justice information sharing included presentations concerning: (1) the addition of new disposition codes; (2) the activities of the Nevada Offense Code ("NOC") Working Group; (3) the NCJIS modernization effort; and (4) the implementation of the National Incident-Based Reporting System ("NIBRS").

Alison Ristine, Criminal History Repository Manager, Division of Records, Communications and Compliance, presented to the Subcommittee on Criminal Justice Information Sharing on Topic Paper 12. The presentation recommended adding 12 new disposition codes to better reflect the final outcome of criminal arrest charges in CCH. Ms. Ristine stated that courts use hundreds of disposition codes and various code types. She further described that the lack of standardized disposition codes was problematic when the State attempted to input the criminal history data and the disposition codes utilized by courts did not correlate to those codes used by the State. Chair McKay believed that the proposed disposition codes could be implemented as part of the NCJIS modernization effort. Ultimately, the Subcommittee on Criminal Justice Information Sharing unanimously approved the proposal.

Judy Christenson, Criminal Records Unit Manager, Division of Records, Communications and Compliance, and Chair of the NOC Working Group, presented to the Subcommittee on Criminal Justice Information Sharing on the activities of the NOC Working Group. As part of her presentation, Ms. Christenson stated that the NOC Working Group studied a discrepancy created by A.B. 236 in the penalties imposed for certain marijuana-related offenses. Ms. Christenson asked the Subcommittee on Criminal Justice Information Sharing to submit a recommendation to the Advisory Commission to address the discrepancies in the sentencing structure of NRS 453.336. Ms. Christenson also asked the Subcommittee to consider recommending that the definition of "record of criminal history" in NRS 179A.070 be amended to include vehicular homicide punishable as a misdemeanor pursuant to NRS 484B.657(1) so that the offense would be retainable as a record of criminal history.

Julie Ornellas, NCJIS Modernization Program Administrator, Division of Records, Communications and Compliance, presented to the Subcommittee on Criminal Justice Information Sharing on the NCJIS modernization effort. Ms. Ornellas detailed the necessity of the modernization effort and stressed that an estimated total of $40 million from the State General Fund over the next two biennia would be necessary to implement the NCJIS modernization effort.

Anna Hickox, Special Services Manager, Division of Records, Communications and Compliance, presented to the Subcommittee on Criminal Justice Information Sharing on the implementation of NIBRS. Ms. Hickox discussed the historical use of the Summary Reporting System ("SRS") and emphasized the deadline for users of SRS to transition to NIBRS by January 1, 2021.

C. RECOMMENDATIONS OF THE SUBCOMMITTEE ON CRIMINAL JUSTICE INFORMATION SHARING

The Subcommittee on Criminal Justice Information Sharing met on October 19, 2020 and unanimously voted to approve six recommendations to be forwarded to the Advisory Commission for its review. There are two recommendations to draft legislation, one recommendation to draft a letter and three recommendations to include a policy statement in the Final Report of the Advisory Commission. These six recommendations were ultimately approved by the Advisory Commission and are included in the Advisory Commission's recommendations as Recommendation No.'s 7, 8, 9, 10, 11 and 12. A summary of each recommendation is identified below:

RECOMMENDATIONS TO DRAFT LEGISLATION

i. Draft legislation to revise the sentencing structure set forth in NRS 453.336 in order to eliminate sentencing discrepancies related to marijuana offenses created by A.B. 236.

ii. Draft legislation to expand the definition of "record of criminal history" pursuant to NRS 179A.070 to include the offense of vehicular manslaughter punishable as a misdemeanor pursuant to NRS 484B.657, in order to make the offense retainable for purposes of records of criminal history.

RECOMMENDATIONS TO DRAFT A LETTER

iii. Draft a letter to the Governor and the Legislature urging support for the necessity of the delegation of an estimated total of $40 million from the State General Fund over the next two biennia to be used for the NCJIS modernization effort.

RECOMMENDATIONS TO INCLUDE A POLICY STATEMENT

iv. Include a policy statement in the Final Report of the Advisory Commission supporting the facilitation of integrated relationships for criminal justice information sharing between NCJIS and criminal justice agencies in order to promote the sharing and collection of statistical data for research related to recidivism of persons enrolled or previously enrolled in specialty court programs.

v. Include a policy statement in the Final Report of the Advisory Commission supporting the Department of Public Safety's drafting, implementation and maintenance of a standard technological specification to be used by all systems of criminal justice agencies that code criminal justice information in order to facilitate ease and uniformity in criminal justice information sharing and to ensure its accurate transmission.

vi. Include a policy statement in the Final Report of the Advisory Commission supporting the State's use of 12 new disposition codes in order to better reflect the final outcome of criminal arrest charges in CCH.

V. DISCUSSION OF ISSUES AND FINAL RECOMMENDATIONS

This report is intended to provide a brief summary, with relevant background, of each final recommendation adopted by the Advisory Commission. The outline is organized by requested action type (drafting legislation, drafting a letter and including a policy statement in the final report) as approved at the Advisory Commission's November 12, 2020 work session meeting. At that work session, the Advisory Commission considered 18 total recommendations. Ultimately, the Advisory Commission approved 12 total recommendations consisting of 8 recommendations for the drafting of legislation, 1 recommendation to draft a letter and 3 recommendations to include a policy statement in the final report. The Advisory Commission does not have any Bill Draft Requests allocated by statute; however, individual legislators or the Chair of any appropriate standing committee may choose to sponsor any Advisory Commission recommendation for legislation.

At the work session, Chair Nguyen began by stating that the potential recommendations listed on the work session document as Recommendation No.'s 5, 6, 7, 11 and 13 require further review, and indicated that those recommendations would be removed from consideration. Senator Pickard then stated that he was concerned about the recommendation listed on the work session document as Recommendation No. 2 and explained that he does not want to remove the authority of the courts to respond to the facts of the case. This led to a discussion wherein the Advisory Commission members realized that Recommendation No. 2 had more complex ramifications. Thus, Recommendation No. 2 was also removed from consideration. The Advisory Commission then approved all of the remaining recommendations as a slate by unanimous vote without further discussion. A summary of each recommendation, as approved by the Advisory Commission with pertinent background information, is provided below:

A. RECOMMENDATIONS TO DRAFT LEGISLATION

1. *Recommendation on Standard Information in Presentence Reports*

During the Advisory Commission meeting on September 30, 2020, Lieutenant Ryan Osborn, Division of Parole and Probation, stated that NRS 176.145(1)(h) requires a presentence report to include "such other information as may be required by the court," and concluded that this

judicial discretion created presentence reports which were not uniform and the contents of which differed between court jurisdictions. To solve this issue, Lieutenant Osborn asked for the removal of NRS 176.145(1)(h) in order to create uniformity in the contents of presentence reports.

> **RECOMMENDATION NO. 1 —** Draft legislation to facilitate the production of presentence reports that contain standard information.

2. *Recommendation on Sentencing Recommendations*

During the Advisory Commission meeting on September 30, 2020, Lieutenant Ryan Osborn, Division of Parole and Probation, stated that NRS 213.1078(3)(a) authorizes a court to set the level of supervision of probationers and NRS 213.1078(5) authorizes the Parole Board to set the level of supervision of parolees under certain circumstances. Lieutenant Osborn detailed that the level of supervision of a probationer and parolee is adequately determined by the risk and needs assessment of the Division of Parole and Probation. Therefore, he asked that these provisions providing for levels of supervision to be determined by the court or the Parole Board, respectively, be removed in order to facilitate the level of supervision always being determined by the risk and needs assessment.

> **RECOMMENDATION NO. 2 —** Draft legislation to remove provisions requiring the Division of Parole and Probation to make certain sentencing recommendations.

3. *Recommendation on Supervision Terminology*

At the September 30, 2020 meeting of the Advisory Commission, Lieutenant Ryan Osborn, Division of Parole and Probation, recounted that A.B. 236 required the Division to utilize a risk and needs assessment to determine the appropriate level of supervision for probationers and parolees, respectively (NRS 213.1078). He stated that the risk and needs assessment no longer uses the phrases "intensive", "close" or "strict" supervision and instead uses the phrase "enhanced" supervision. In conclusion, Lieutenant Osborn asked that this outdated terminology throughout the NRS be replaced with "enhanced" supervision in order to accurately reflect the levels of supervision delineated by the risk and needs assessment.

> **RECOMMENDATION NO. 3 —** Draft legislation to replace references to "intensive", "close" or "strict" supervision with "enhanced" supervision.

4. *Recommendation on Probable Cause Inquiries for Parole and Probation Violations*

During the Advisory Commission meeting held on September 30, 2020, Lieutenant Aaron Evans, Division of Parole and Probation, detailed the current probation revocation process, including the requirement that the Division conduct a probable cause inquiry within 15 days of the alleged probation violation. Lieutenant Evans discussed that A.B. 236 amended NRS 176A.630 in order to require that a probationer who is arrested and detained for committing a technical violation of the terms of his or her probation be returned to court within 15 days to determine if there is

probable cause for the violation. Lieutenant Evans believed that removing the probable cause inquiry conducted by the Division of Parole and Probation would still ensure the protection of the due process rights of the probationer because: (1) NRS 176A.630 requires that the probationer alleged to have committed a technical violation return to court in the same amount of time as the Division would likely have conducted the probable cause inquiry; (2) a probationer alleged to have committed a non-technical violation, such as the commission of a gross misdemeanor or felony, is already required to appear before a magistrate on the new charge; and (3) in instances where the probationer is alleged to have absconded, the Division is required to prepare a report and a court is then required to make a probable cause determination on whether the probationer absconded. Because of A.B. 236, Lieutenant Evans requested that the probable cause inquiry be removed as the provisions are now redundant, or alternatively revised in order to remove the redundancy.

At the same meeting, John Piro, Chief Deputy Public Defender, Clark County Public Defender's Office, also stated that his office supported the removal of the probable cause inquiry hearing conducted by the Division of Parole and Probation because: (1) with the amendments to A.B. 236 this inquiry was now redundant and unnecessary; and (2) the caseloads of public defenders in Clark County made it almost impossible for them to get the inquiry.

Moreover, John Jones, Chief Deputy District Attorney, Clark County District Attorney's Office, at the September 30, 2020 meeting signified that the Clark County District Attorney's Office concurred with the proposed repeal of the provisions concerning the probable cause inquiry conducted by the Division of Parole and Probation.

> **RECOMMENDATION NO. 4 —** Draft legislation to repeal statutory provisions related to probable cause inquiries conducted by the Division of Parole and Probation.

5. *Recommendation on Graduated Sanctions for Parole and Probation Violations*

At the Advisory Commission meeting on September 30, 2020, Lieutenant Ryan Osborn, Division of Parole and Probation, detailed the necessity to revise certain statutes in order to facilitate the policy of graduated sanctions for probation and parole violations mandated by A.B. 236. He stated that NRS 176A.660(2)(b) authorizes a court to impose a 6-month term of residential confinement on certain probationers who violate the terms of their probation. Similarly, Lieutenant Osborn stated that NRS 213.152(2)(b) authorized the Parole Board to impose a 6-month term of residential confinement on certain parolees who violate the terms of their parole. Lieutenant Osborn asked that the provisions of NRS 176A.660 and 213.152, respectively, be revised in order to promote the policy of graduated sanctions adopted by the Division of Parole and Probation.

> **RECOMMENDATION NO. 5 —** Draft legislation to remove references to sentences of residential confinement imposed for probation and parole violations that conflict with graduated sanctions adopted by the Division of Parole and Probation.

6. *Recommendation on Separating Parole and Probation Statutes*

At the Advisory Commission meeting on September 30, 2020, Lieutenant Aaron Evans, Division of Parole and Probation, stated that several statutes were amended by A.B. 236 in a manner that combined language for probationers and parolees.

First, Lieutenant Evans detailed that NRS 176A.510 was amended to authorize the imposition of a series of graduated sanctions on probationers and parolees who violated the terms of their probation and parole, respectively. He asked that 176A.510 be amended to apply only to probationers and a new section be added to chapter 213 of NRS to address parole violations. Second, Lieutenant Evans stated that NRS 213.1078 requires risk and needs assessments of both probationers and parolees and establishes the use of individualized case plans. Again, Lieutenant Evans suggested that these sections be bifurcated to facilitate NRS 213.1078 applying to parolees and a new section added to chapter 176A of NRS addressing probationers.

Finally, Lieutenant Evans discussed NRS 213.10988 which addresses recommendations for probation and parole. He again suggested that 213.10988 be reserved for parolees and an identical section for probationers be enacted in chapter 176A of NRS.

> **RECOMMENDATION NO. 6 —** Draft legislation bifurcating certain statutory provisions in order to have separate processes for probation and parole.

7. *Recommendation on Penalties for Certain Controlled Substances Offenses*

During the September 30, 2020 meeting of the Advisory Commission, John Jones, Chief Deputy District Attorney, Clark County District Attorney's Office, stated that possession of controlled substance with intent to sell was a lower level felony than possession of a controlled substance under certain circumstances. He stated that the "intent to sell" made such an offense more serious than possession of the controlled substance and he asked that possession with intent to sell remain a category D felony.

Mr. Jones also stated that the sentencing structure of marijuana-related offenses and certain other THC-related offenses needed to be revised in order to eliminate certain inconsistencies and loopholes. He stated that possession of marijuana over 1 ounce and under 50 ounces was previously punishable as a category E felony but inadvertently A.B. 236 had removed such a penalty. Mr. Jones stated that his office had been treating such offenses as category E felonies.

At this same meeting, Chuck Callaway stated that LVMPD concurred with the analysis by the Clark County District Attorney's Office with regards to possible revisions to the sentencing structure for certain marijuana-related offenses set forth in A.B. 236.

On October 19, 2020, Judy Christenson, Criminal Records Unit Manager, Division of Records, Communications and Compliance and Chair of the NOC Working Group, presented to the Subcommittee on Criminal Justice Information Sharing on the activities of the NOC Working

Group. As part of her presentation, Ms. Christenson stated that the NOC Working Group studied a discrepancy created by A.B. 236 in the penalties imposed for certain marijuana-related offenses. Ms. Christenson asked the Subcommittee on Criminal Justice Information Sharing to submit a recommendation to the Advisory Commission to address the discrepancies in the sentencing structure set forth in NRS 453.336.

> **RECOMMENDATION NO. 7 —** Draft legislation to revise penalties for certain offenses related to controlled substances.

8. *Recommendation on Records of Criminal History*

On October 19, 2020, Judy Christenson, Criminal Records Unit Manager, Division of Records, Communications and Compliance and Chair of the NOC Working Group, presented to the Subcommittee on Criminal Justice Information Sharing on the activities of the NOC Working Group. Ms. Christenson asked the Subcommittee on Criminal Justice Information Sharing to consider recommending that the definition of "record of criminal history" in NRS 179A.070 be amended to include vehicular homicide punishable as a misdemeanor pursuant to NRS 484B.657(1) so that the offense would be retainable as a record of criminal history.

> **RECOMMENDATION NO. 8 —** Draft legislation to revise the definition of "record of criminal history."

B. RECOMMENDATION TO DRAFT A LETTER

9. *Recommendation on Funding for the NCJIS Modernization Program*

On October 19, 2020, Julie Ornellas, NCJIS Modernization Program Administrator, Division of Records, Communications and Compliance, presented to the Subcommittee on Criminal Justice Information Sharing on the NCJIS modernization effort. Ms. Ornellas detailed the necessity of the modernization effort and stressed that an estimated total of $40 million from the State General Fund over the next two biennia would be necessary to implement the NCJIS Modernization Program.

> **RECOMMENDATION NO. 9 —** Draft a letter to the Governor and the Legislature urging support of funding for the NCJIS modernization.

Attached as **Appendix A** is a letter dated December 11, 2020 from the Advisory Commission to Governor Sisolak, Senator Brooks and Assemblywoman Carlton.

C. RECOMMENDATIONS TO INCLUDE A POLICY STATEMENT

10. *Recommendation on Information Sharing for Specialty Court Programs*

At the Subcommittee on Criminal Justice Information Sharing meeting on October 19, 2020, Steve Grierson, Court Executive Officer, Eighth Judicial District Court, detailed issues related to collecting data on recidivism of persons enrolled or previously enrolled in specialty court programs. He stated that strengthened integrated relationships for criminal justice information sharing between NCJIS and criminal justice agencies could be used to promote the sharing and collection of statistical data for research related to recidivism of persons enrolled or previously enrolled in specialty court programs.

> **RECOMMENDATION NO. 10 —** Draft a policy statement encouraging information sharing in order to facilitate research regarding specialty courts.

11. *Recommendation on Technological Specifications for Criminal Justice Information Sharing*

At the Subcommittee on Criminal Justice Information Sharing meeting on October 19, 2020, Mindy McKay, Chair, Subcommittee on Criminal Justice Information Sharing, detailed the need for all criminal justice agencies to use a system that conforms to a standard technological specification in order to ensure uniformity in criminal justice information sharing and its accurate transmission. Subcommittee Chair McKay requested the Advisory Commission's support of the Department of Public Safety's drafting, implementation and maintenance of a standard technological specification to be used by all systems of criminal justice agencies that code criminal justice information.

> **RECOMMENDATION NO. 11 —** Draft a policy statement related to the development of a technological specification to be used by all systems of criminal justice information sharing.

12. *Recommendation on New Disposition Codes*

During the Subcommittee on Criminal Justice Information Sharing meeting on October 19, 2020, Alison Ristine, Criminal History Repository Manager, Division of Records, Communications and Compliance, presented to the Subcommittee on Topic Paper 12. The presentation recommended adding 12 new disposition codes to better reflect the final outcome of criminal arrest charges in the CCH. Ms. Ristine stated that courts use hundreds of disposition codes and various code types. She further described that the lack of standardized disposition codes was problematic when the State attempted to input the criminal history data and the disposition codes utilized by courts did not correlate to those codes used by the State. The Subcommittee on Criminal Justice Information Sharing voted unanimously to approve the use of the 12 new disposition codes and requested the Advisory Commission's approval of this proposal.

RECOMMENDATION NO. 12 — Draft a policy statement to encourage the State's use of 12 new disposition codes.

VI. CONCLUSION

Throughout the 2019-2020 interim, the focus of the Advisory Commission was to efficiently and effectively evaluate the criminal justice system in Nevada. With that mission, the Advisory Commission was able to meet its statutory duties and complete its work in a thorough and expeditious manner. Through the use of knowledgeable resources, which included members from all aspects of the criminal justice system and numerous experts and concerned individuals, the Advisory Commission was able to generate meaningful discussion and propose significant recommendations to strengthen Nevada's criminal justice system.

The Advisory Commission wishes to thank all of the individuals who attended and testified throughout the interim. It is the goal of the Advisory Commission to forward the approved recommendations to the 2021 Nevada Legislature, and to prospectively encourage future reforms that are lasting and beneficial to the criminal justice system in Nevada.

APPENDIX A

ROCHELLE T. NGUYEN
ASSEMBLYWOMAN
District No. 10

COMMITTEES
Chair
Health and Human Services
Member
Education
Judiciary

State of Nevada Assembly

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December 11, 2020

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

VIA ELECTRONIC MAIL

The Honorable Chris Brooks
Nevada State Senate
Chair, Senate Committee on Finance
3540 West Sahara, No. 188
Las Vegas, NV 89102-5816

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 Brooks and Assemblywoman Carlton:

As Chair, and on behalf of the members of the Advisory Commission on the Administration of Justice (NRS 176.0123), I am writing this letter to seek your continued support of the Nevada Criminal Justice Information System ("NCJIS") Modernization Program.

Throughout the 2019-2020 interim period between legislative sessions, the Advisory Commission considered many significant policy recommendations impacting criminal justice in this State. Pursuant to the statutory duties prescribed by the Nevada Revised Statutes, and in accordance with NRS 176.01248, the Advisory Commission appointed the Subcommittee on Criminal Justice Information Sharing. The Subcommittee then brought this seminal issue of record modernization to the full Advisory Commission, wherein it was unanimously approved to draft this letter in advance of the budget planning for the 2021 Legislative Session.

By way of history, on October 19, 2020, Julie Ornellas, Program Administrator, Records, Communications and Compliance Division of the Department of Public Safety, presented to the Subcommittee on the NCJIS Modernization Program. As Ms. Ornellas stated, Norsoft Consulting, the current vendor providing the proprietary NCJIS system, notified the State two years ago of their intent to retire within two to five years. Thus, it is only a matter of time until the current system code base will no longer be supported. Without modernization, the Department of Public Safety will fall behind in its ability to meet federal and state mandates concerning civil and criminal justice information sharing. Further, it is anticipated that without such action the State will become non-compliant with the Federal Fix NICS (National Instant Criminal Background Check System) Act of 2017. Finally, if the State were to experience a full or partial record system failure, the State's criminal justice agencies would have no viable means to obtain information for criminal investigations, intelligence, arrests, prosecution, sentencing, record sealing, parole and probation supervision and detention center records.

As you are aware, Senate Bill 514 was enacted during the 2019 Legislative Session. The measure appropriated nearly $7,000,000 from the State General Fund for the replacement of NCJIS over the biennium. Additional money was advanced from the Records, Communications and Compliance Division's fee reserves to support the modernization. It is anticipated that the need for funding to complete the modernization and implementation of NCJIS will cost approximately $40,000,0000 over the next two biennia (2021-2023 and 2023-2025). Therefore, on behalf of the Records, Communications and Compliance Division, we urge you to support General Fund appropriations for this Program over the next two biennia.

While I realize that this State is facing an unprecedented budget shortfall, and that critical and difficult decisions will need to be made, it is not lost on me that the proverbial clock is ticking on the NCJIS Modernization Program. Thank you for your consideration of this crucial fiscal issue affecting the entire criminal justice system and more specifically the records of criminal history in Nevada.

Please do not hesitate to contact me should you have any questions regarding the NCJIS Modernization Program, and I look forward to working with all of you in advance of and during the 2021 Legislative Session.

Sincerely,

Rochelle T Nguyen

Rochelle Nguyen, Chair
Advisory Commission on the Administration of Justice

On behalf of members:

Senator Melanie Scheible, Vice Chair
Senator Keith Pickard
Assemblywoman Lisa Krasner
Paola Armeni, Representative, State Bar of Nevada
Judge Sam Bateman, Henderson Justice Court
Kendra Bertschy, Deputy Public Defender, Washoe County
Judge Jacqueline Bluth, Eighth Judicial District Court
Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department
Charles Daniels, Director, Nevada Department of Corrections
Christopher DeRicco, Chairman, Board of Parole Commissioners
Aaron Ford, Attorney General
Justice James Hardesty, Nevada Supreme Court
Mark Jackson, Douglas County District Attorney
Mindy McKay, Division Administrator, Records, Communications and Compliance Division
Lieutenant Corey Solferino, Washoe County Sheriff's Office
Holly Welborn, Policy Director, ACLU of Nevada, Inmate Advocate