

**MINUTES OF THE 2019-2020 INTERIM  
ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE**

**June 11, 2020**

The meeting of the Advisory Commission on the Administration of Justice was called to order by Chair Nguyen at 1:06 p.m. Pursuant to Governor Sisolak's [Emergency Directive 006](#), the meeting took place via webconference and did not have a physical location.

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

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Rochelle Nguyen, Assembly District No. 10; Chair  
Senator Melanie Scheible, Senatorial District No. 9; Vice Chair  
Assemblywoman Lisa Krasner, Assembly District No. 26  
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  
Anne Carpenter, Chief, Division of Parole and Probation  
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

**COMMITTEE MEMBERS ABSENT:**

Senator Keith Pickard, Senatorial District No. 20

**STAFF MEMBERS:**

Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau  
Kathleen Norris, Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau  
Tyler Sherman, Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau  
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau  
Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

**OTHERS PRESENT:**

Michelle Feldman, State Campaigns Director, Innocence Project  
Patricia Adkisson  
Tonja Brown  
Sara Bartel  
Annemarie Grant  
Leonard Engel, Director of Policy and Campaigns, Crime and Justice Institute  
Amber Widgery, Senior Policy Specialist, National Conference of State Legislatures  
Alison Lawrence, Program Director, National Conference of State Legislatures

**Assemblywoman Rochelle Nguyen (Assembly District No. 10; Chair):**

I will now open the second meeting of the Advisory Commission on the Administration of Justice (ACAJ). Pursuant to Governor Steve Sisolak's Emergency Directive 006, since we have no physical location for this meeting, this meeting can be listened to or viewed live over the internet, and that address is at the Nevada Legislature's website for all those people that are on there, and that was listed also on the agenda that was posted last week.

I will move to agenda item III, which is public comment. Public testimony under this item may be presented by phone or written comment. Because of time considerations, each caller offering testimony during this period for public comment will be limited to not more than two minutes, and I will have the timer on that. I'm not trying to be rude, but I want to make sure that we are able to get through this meeting in a timely fashion and also hear people's concerns. A person may also have comments submitted in writing, so if you aren't able to get to that you can submit those, and they can be submitted by email, facsimile or mailed directly before, during or after this meeting. Are there any callers for public comment at this time?

**Michelle Feldman (State Campaigns Director, Innocence Project):**

Thank you so much. It's good to hear a lot of familiar voices on the phone today. I just wanted to bring up three issues that we're really hoping the ACAJ considers as you're looking at what to take up ([Agenda Item III A](#)). This is obviously a really critical time in reckoning with racial bias in the criminal justice system, and wrongful convictions is a part of that. Last year, Nevada did an incredible job of enacting innocence reforms, from recording interrogations to compensation, and there's really three more areas that we would suggest the ACAJ consider. One is improving transparency around jailhouse informants, which is something that came up that the Commission looked at in 2018. The Nevada District Attorneys Association said that every agency would have to have a policy by January of 2019, so following up to see how that was implemented would be very useful. The second is looking at transparency around police disciplinary records, which is an issue a lot of states and Congress are looking at right now because of the George Floyd case. It's also important in wrongful convictions because oftentimes exonerees, at

their trial, they don't have the full records of the officers that were testifying against them, and the officers had many misconduct issues. The third issue is criminal discovery practices, which comes into the folds—it's really the broader issue of transparency in pretrial justice. I think that the Criminal Justice Information Sharing Subcommittee was considering these types of issues. We just would encourage more—we encourage that, and we are happy to help provide information on what other states are doing on these issues. Thank you.

**Chair Nguyen:**

I'm sorry, Michelle, that's two minutes. Thank you so much for that public comment. If you have any other additional things, please feel free to submit that in writing as well.

**Patricia Adkisson:**

Because this is two minutes, I'm just going to read this ([Agenda Item III B](#)). The NDOC's (Nevada Department of Corrections) initial and ongoing classification of offenders utterly fails to identify felony offenses. In Charles Skaggs' case, his JOC (judgment of conviction) lists NRS (Nevada Revised Statutes) 199.330 which is a misdemeanor improperly stated in the JOC. As a result of the failure of the offender classification system utilized by the NDOC, Skaggs is in prison where a JOC only provides a misdemeanor conviction. That is found on grievance 20063098442. In another instance, Adam Garcia has expired his conviction and remains in prison solely as an abuse of the NDOC's system of classification—grievance 20063087085—where the Legislature has conferred authority to executive branch NDOC to establish a system of classification of offenders. The NDOC system for that classification has access to exceed the statutory authority conferred where NDOC assigns the crime severity and offense category of a felony where no offense is present. When considering NRS 193.165, use of a deadly weapon, in the case of Edmond Wade Green, convicted of second-degree murder where no conviction for use of a deadly weapon is possible because it is no offense. That is established by stare decisis pursuant to case law *Raby v. State*. No conviction ever results from use of a deadly weapon. Once the sentence for the crime was discharged, the NDOC fictitiously applied a category F in order to continue to imprison him, currently reversed and remanded by the Nevada Court of Appeals, Case 77908.

**Chair Nguyen:**

Ms. Adkisson, that is your two minutes. I think you're reading from a document, so I would encourage you to send over that so it can be incorporated as a part of the public record. Thank you for your testimony.

**Ms. Adkisson:**

I emailed that. Thank you.

**Chair Nguyen:**

Perfect, thank you.

**Tonja Brown:**

This is Tonja Brown, advocate for the inmates and the innocent ([Agenda Item III C-1](#)). During the February 2020 meeting, I provided this Commission with a factual innocence posthumously recommendation for your consideration to be submitted to the 2021 Legislature. You've also been provided a letter written from Mr. Ray Krone asking this Commission to support a factual innocence posthumously recommendation that is now before you ([Agenda Item III D](#)). His name may sound familiar. He is best known as the Snaggletooth Killer. Mr. Krone was the hundredth person to be exonerated. Mr. Krone was convicted twice of rape and murder of Kim Ancona. The first time he was convicted, he received the death penalty, the second time without. I will read you a portion of Mr. Krone's letter that he has written to you. He states, "I don't ask you to imagine what those 10 years in prison were like for me. I want you to imagine what they would be like for you if it was your son or daughter serving that time for a crime they didn't commit. At what point would you stop fighting to clear their name? How many times would they have to tell you 'I didn't do it?' Had I died in prison, not only would my family and friends would have been denied justice but the family of Kim Ancona would've been denied as well."

Please support factual innocence cases being allowed to proceed to conclusion even if the person convicted of the crime has died. When a person dies while their case is still pending in the court, the district attorney or Attorney General files motions with the court and the case will be closed and pursuit of justice stops there. During the 2019 hearings on Assembly Bill (AB) 356, I had the privilege and honor to speak with DeMarlo Berry. During our conversation, I had the opportunity to ask Mr. Berry if things had been different for him and he had passed away prior to being exonerated, would he have wanted his wife to continue to clear his name? His answer was "Absolutely." I ask this Commission to accept my recommendation that is now before you. Justice delayed is justice denied even after death. I have also provided this Commission with additional information I received from Mr. Bruce Burch regarding AB 236 ([Agenda Item III C-2](#)). In the information is a letter written—

**Chair Nguyen:**

Ms. Brown, that is your two minutes. If you could just wrap this up, and I know that you have submitted some written documentation as well so the Committee will have that as well.

**Ms. Brown:**

I just want to say a few—there needs to be some changes under NRS 213.0851 to include number 3 to read, “With the exception of the offender has been convicted of nonviolent offenses.”

**Sara Bartel:**

I am here today to ask this Commission to consider a recommendation to the Legislature that AB 236 be made retroactive. In the interest of time, I'll ask that you read my full written comments which I've already submitted ([Agenda Item III E](#)), but I wanted to share with you the stories of two prisoners who are currently serving sentences for habitual criminal offenses which would not have been applied under the amended statutes. Each of these prisoners has given me permission to share their stories with you in the hopes that it will bring about change. Steven Scott: he is serving three consecutive life with parole sentences. All of Steven's prior convictions were nonviolent. He has served 18 years under the habitual criminal statute. While incarcerated, he has earned his associate degree and has had no major write-ups. He has worked diligently for Prison Industries for 14 years. He has a supportive family who wants to see him home. Paul Hill was sentenced to life without the possibility of parole for the habitual criminal offense. Paul has spent over 40 years of his life incarcerated. The prior convictions used to apply the habitual criminal statute are over 30 years, old including a crime he committed at the age of 18. Paul is deeply remorseful of his actions and is spending his time in prison learning how to be an advocate for himself and others like him.

AB 236 was an excellent effort made possible by this very Commission. Please further that work and create an equitable solution for the people currently serving time under the habitual criminal statute by making AB 236 retroactive. Thank you for your time and consideration.

**Annemarie Grant:**

I am writing today in support of a factual innocence posthumously recommendation ([Agenda Item III F](#)). When someone who maintains their innocence dies in the midst of their battle to clear their name, not only do they die without resolution, their family continues to live with no resolution. Given the recent COVID-19 pandemic that has taken the lives of thousands of community members, it's not just a possibility, it's a reality already for one man, Rudolph Sutton, who died due to COVID as the Innocence Project was working to exonerate him. Though Rudolph has passed due to COVID, the Innocence Project who says that he is factually innocent didn't just go, “Oh well, he's gone, our job is done here.” Instead, they are fulfilling a posthumous exoneration, exactly what I'm urging this Commission to support a recommendation for. The families of those who die in prison while maintaining their innocence can't just pick up the pieces and return to the life they once knew, a life that did not revolve around writing the ultimate malversation to their loved one. That desire to clear their loved one's name does not end

when their loved one dies. These families must live with the whispers and false innuendos due to their loved one's wrongful conviction. If that were the case in our state, that someone who maintained their innocence contracted COVID-19 who had been ordered a new trial and they died, all their claims would then be moot in the State of Nevada. To die in prison innocent is the ultimate wrongdoing. It's time the families of those who suffer that fate have an avenue to repair that. Thank you.

**Chair Nguyen:**

Thank you. At this time, I will close agenda item III, public comment, and move to [agenda item IV](#), which is the approval of the minutes from February 13, 2020 ([Agenda Item IV](#)). I'm hoping everyone had the opportunity to review those minutes.

ASSEMBLYWOMAN KRASNER MOVED TO APPROVE THE MINUTES OF THE MEETING HELD ON FEBRUARY 13, 2020.

JUDGE BATEMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Nguyen:**

We are going to move to agenda item V. Agenda items V and VI are some presentations. One of the things that was discussed, and it came through pretty clearly during the February meeting, was that this Committee took on AB 236, which was very voluminous and encompassed a lot of change, and so I think there was a desire to look at some of the provisions of 236 that maybe could use some improvement or fine-tuning. We heard some public comment that might have some things that we want to take into consideration, but for this purpose we are going to be looking and getting some more information as it relates to controlled substances in those criminal provisions. The first presentation is going to be Mr. Engel from the Crime and Justice Institute.

**Leonard Engel (Director of Policy and Campaigns, Crime and Justice Institute):**

Good afternoon, everyone. It's good to see some familiar faces. It's a pleasure to be here with you all, on video anyway. I want to thank the chair and the members of the ACAJ for the invitation to present some of the recent work of the ACAJ on the Justice Reinvestment Initiative which led to the passage of AB 236.

Before we get into the meat of the presentation, I want to provide a little bit of background on how this effort started ([Agenda Item V A-1](#)). In 2018, Nevada state leaders, the Governor, Chief Justice and the leaders of the Senate and the Assembly requested justice reinvestment technical assistance. The Justice Reinvestment Initiative, or JRI, is a public-private partnership of the Bureau of Justice Assistance in the Department of Justice and the Pew Charitable Trust. The request for technical assistance was approved, and state leaders directed the ACAJ to lead this effort and develop comprehensive crime and recidivism reduction approaches while recommending policies that allow resources to be shifted toward more cost-effective public safety strategies. As part of this process, the ACAJ completed a comprehensive analysis of the state's criminal justice data and its systems. It reviewed statutes and state agency policies, evaluated research on best practices, examined policies implemented in other states and conducted two victim roundtables. The ACAJ used this information to develop 25 policy recommendations which were drafted into the final report which was submitted to the state leadership.

I'll review the general findings of the data review, then I'll focus specifically on the data related to drug offenses, then review the policy development process employed by the ACAJ and the three recommendations regarding sentencing policy made by the ACAJ in its final report. The Crime and Justice Institute was the technical assistance provider to the ACAJ throughout this process. Before we dig into the data, I want to just review the substance of the three drug offense and sentencing changes that resulted from this effort. One established penalties for drug possession based on the weight of the substance, one required the court to defer sentencing for the first two drug possession convictions pending completion of conditions and treatment programs if necessary, and the last allowed the court to impose a probation sentence for certain second and subsequent commercial drug convictions. Let's get into the data a bit. The ACAJ reviewed 10 years of Nevada Department of Corrections data. The period was from 2008 to 2017. We also looked at data from the Division of Parole and Probation and from the Board of Parole Commissioners. The ACAJ also reviewed the findings of an extensive review of individual files to get a deeper understanding of the circumstances of the offense and the individual's criminal history.

A quick review of drug sentencing policy that was in place at the time of this examination: here are the categories of drug offenses and corresponding sentencing ranges. Drug trafficking is, as you would expect, the most serious offense and carries the most severe sanctions, although it is split between two categories with lower-weight trafficking offenses in category B and higher-weight offenses in category A. It's important to note that trafficking is solely based on the weight of the substance and does not require a showing of conduct or intent to sell or distribute a controlled substance involved. The growth trends that were examined by the ACAJ indicated that the growth in the Nevada prison population, which had increased approximately 7 percent since 2009, was driven largely by the two key drivers of prison populations. The iron law of prison population growth is measured by the number of people that come in the door and the amount of time they stay, and in Nevada's case, both of these factors increased over that period. Nevada's admissions to prison, those people coming in the door, increased 6 percent and



then the amount of time folks once in stayed increased 20 percent. Thus, Nevada's prison population grew during this period because more people were coming in the door and they're staying longer. The prison population as of last month was 12,500 individuals.

Focusing first on admissions, we see the growth of admissions is largely driven by an increase in revocations from people on community supervision. Thirty-nine percent of admissions to prison are for probation and parole revocations. Additionally, two-thirds of the growth is for non-person offenses. Non-person offenses are cases where the most serious offense at conviction was a drug crime, a property crime or another offense not classified as violent or a sex offense by the NDOC. The admission to prison of females increased nearly 40 percent. As a cohort, females are typically less violent than their male counterparts, and looking at the 2017 data for admissions, we see that 70 percent of women came in for either a drug or a property offense as their most serious offense.

A brief look at time served, the amount of time a person is spending in prison: the minimum and maximum sentence has increased over this period. This growth in the minimum portion of a sentence as well as the maximum has an effect on when people are eligible for parole and when they are released. Those coming in on new prison sentences, not those coming in from supervision revocations, served approximately 31 percent longer in prison over a 5-year period, and time served in prison for the largest cohort of admissions, felony B offenses, increased by 10 months. The overall impact of the findings of the data indicated that the population growth was driven by increasing numbers of probation and parole failures, increases in felony B offenses coming into prison and staying on average 10 months longer, an increase in the number of females coming into the system, and an increase across all offense types of time served in prison. With these trends as a backdrop, we will look a little closer at data related to drug offenses.

Nevada has five categories of drug offenses ([Agenda Item V A-1](#)). Nearly one-third of the people convicted of drug possession, the possession of 4 grams or less of a controlled substance, were admitted to prison in 2017. Drug possession admissions are higher than any other drug offense, with drug trafficking a close second. When we look at drug admissions by offense type, we see that 40 percent are for felony B offenses. Felony B offenses include, as I indicated earlier, lower-level trafficking and the sale and transport of controlled substances. The lower-level trafficking offenses that are in the felony B category are offenses involving between 4 grams and 1 ounce, or 28 grams, of a controlled substance, and then it also includes the distribution and transportation or sale of these substances. The next highest number of admissions to prison is category E drug offenses, and that's primarily drug possession.

The ACAJ examined the criminal histories of those admitted to prison to understand the influence of criminal history on the sentencing decision. Looking just at admissions for drug possession, these are category E, more than 40 percent had no prior felony convictions. These individuals may have had prior misdemeanor convictions, but no felonies. Based on NDOC data, the prior felonies included felony convictions from other



states. This graph shows us the impact of revocations to prison for possession offenses, as well as how possession offenders with no prior felony convictions end up in prison. Sixty-three percent of possession offender admissions came in as a result of a revocation from parole or probation, which means that individuals were sentenced to probation for a possession charge, violated the terms of their supervision conditions either with a new crime or a technical violation, and then received the sentence as a result of that revocation to be served in prison. For trafficking offenses, more than 40 percent admitted to prison had no prior felony convictions, obviously not as surprising as the possession offenders without priors. It is still a fairly high number.

We conducted a review of pre-sentence investigation (PSI) files to get a better picture of the various factors of the offense and the person's criminal history. We reviewed 166 PSIs of individuals convicted of drug trafficking in 2017 and found a number of factors related to their past which likely had an impact on their sentencing. What we see from this graph is that for most trafficking offenses, the sole basis for the trafficking charge was the weight of the substance. We also found that the majority of lower-weight cases resulted from routine traffic stops while the higher-weight offenses were the result of police investigations. Lastly, we found from the PSI files that 74 percent of cases reviewed showed evidence of substance abuse by the individual at the time of the arrest. This evidence consisted of failed drug tests, failure to show up for a drug test, new criminal activity such as possessing drugs or drug paraphernalia, and self-admission of ingestion of some controlled substance.

Taking a closer look at the weights involved in trafficking offenses, on the lower end of the spectrum where we see felony B trafficking offenses, which are 28 grams and less, down to 4 grams, we see a fair number of individuals who fall within that range that end up convicted of a trafficking offense and a class B felony. Additionally, methamphetamine accounted for nearly two-thirds of the trafficking cases. Taking a look at time served for drug sentences, we see that while all offense types saw increases over the 5-year period, 2012 to 2017, drug offense time served had increased 28 percent, from 18 months to 23 months. This means that individuals released on a drug sentence in 2017 served approximately 5 months longer than those released in 2012. Looking at time served for the different drug offenses, the trafficking sentences experienced more than a 30 percent increase in time served. The remaining drug offense increases are 23 percent for sale and transport of a controlled substance, 1 percent for conspiracy, 16 percent for possession for sale and 10 percent for possession of a controlled substance.

The increase in time served is a function of the sentence imposed, the amount of credit earned and parole consideration. A person's parole eligibility is determined by the type of offense they were convicted of. If they have a C, D or E felony then prison credits reduce their minimum sentence, which then determines their parole eligibility date. But for A and B felonies, credits can only be deducted from the maximum sentence, so their parole eligibility date does not readjust with good behavior. We also see in the slide for felony B drug offenses that maximum sentences increased 16 percent, and felony A drug offenses were not included in this graph because they make up a very small portion of the prison

population. Looking at minimum sentences, we see similar increases in the minimum sentences imposed over this period, with the highest increase again in felony B sentences. Again, the other offense categories, C, D and E, while their minimum sentences increased, they're eligible for parole based on the accrual of credit. For felony B, they do not get credit applied to their minimum sentence.

We looked at the top 10 offenses for new prisoner admissions. These are folks that came in straight from the street not being on supervision. In 2017, it shows here the number of people admitted for the particular offense and the minimum and maximum average sentence. You can see longer sentence ranges were imposed for lower-level trafficking offenses than were imposed essentially for more serious offenses such as assault with a deadly weapon and battery causing substantial harm.

A few things to summarize: drug possession accounted for nearly one-third of drug admissions, 41 percent of those had no prior felony conviction, 40 percent of drug admissions were for felony B offenses, a high range of conduct in felony B trafficking cases was observed, 46 percent of the cases reviewed were charged on weight alone, time served increased 28 percent for all drug offenses, and the average maximum sentence for felony B offenders increased by 16 months.

We will now shift over to a few slides on the policy development process employed by the ACAJ after reviewing several hundred slides and hearing testimony from a number of people. The ACAJ spent an additional 3 months focused on developing the policies to address the issues identified from these findings. The focus of the discussion included several things, like the impact of a felony conviction on an individual and their future prospects for stability, the need and availability of behavioral health interventions in lieu of incarceration, the impact of incarceration on recidivism, whether the punishment is proportionate to the conduct, whether the trafficking weight thresholds focused on true drug traffickers or ensnared low-level dealers as well as possession offenders with larger amounts of drugs, the role of conduct in determining whether someone is a drug trafficker, adjusting punishment based on the severity of the drug on an individual and on society, and the lack of judicial discretion in imposing an appropriate sentence.

With these discussion points in mind, here's where the ACAJ began its work. The focus was on drug possession and drug trafficking since the other drug offenses were not as significant a factor in drug sentencing or in the prison population. Drug possession, as I indicated earlier, is the possession of up to 4 grams of a schedule I or II controlled substance. Based on the person's criminal history, it could be either a category E felony or a category D felony. Possession of 4 grams or more of a schedule I or II substance bump a person into the trafficking category no matter what the intent or the conduct of the individual. Possessing between 4 and 14 grams of these substances was a category B felony with a 1- to 6-year sentence, and possessing between 14 and 28 grams was also a B felony but with a 2- to 15-year sentence, and 28 grams or more was a category A felony facing 25 years or up to life in prison.

The ACAJ considered various policy options when looking at drug possession. These options were largely based on examples from other states or policies under consideration in other states. The option that garnered significant discussion was to make drug possession a misdemeanor offense as a few other states have done. There were versions of that option discussed, as well as a focus on the Utah example which a few years earlier had reclassified the first two drug possession convictions as misdemeanors, and they bumped the third subsequent conviction up to a third-degree felony. For trafficking, the ACAJ considered several variations. Some continued the Nevada model of having solely a weight-based offense, while other options considered the conduct in addition to weight. What seemed to be an agreed-upon approach was to focus on raising the weight threshold at a minimum, whether conduct was included or not. Among the more modest policy options was to simply allow judges to impose probation or divert the person to a drug court.

After much consideration the ACAJ finalized recommendations, although the 25 recommendations, including the 3 drug-related recommendations, were not agreed to by all members of the Commission. The report was finalized and delivered to state leaders, and here are the recommendations that were received: reclassifying the first two drug possession convictions as misdemeanor offenses and making the third and subsequent conviction category E felonies. For commercial drug offenses including trafficking, increase the weight threshold triggering a trafficking charge and require evidence of intent to sell, distribute or manufacture. Lastly, provide judges with greater sentencing discretion for commercial drug offenses, allowing judges to impose probation or drug court participation instead of incarceration for selling or trafficking in drugs. As with any recommendation to the Legislature, what gets requested often gets amended. Changes occurred prior to drafting and filing of AB 236, then there were a number of amendments to 236 throughout the process. Here is what the tiered penalty structure looked like after passage of AB 236. The elements include raising the weight threshold for simple drug possession from 4 grams to 14 grams and requiring the court to defer sentencing for the first 2 convictions. If the conditions of the deferral are met, the court must dismiss the charges. With regard to drug trafficking, AB 236 significantly increases the weight threshold for trafficking offenses, raising it from 4 grams to 100 grams for the B felony and from 28 grams to 400 grams for the A felony. Additional changes to drug sentencing include moving first convictions for sale and transport from a B felony to a C felony. This would then allow these sentences to be reduced by credits to be eligible for parole earlier, allowing probation for repeat commercial drug offenders, although trafficking offenses still remain ineligible for probation. The overall impact of the changes in AB 236, all of the policies, not just the drug-related changes, is a reduction in the growth of the prison population by more than 1,000 beds and savings as calculated by NDOC of more than \$640 million over a 10-year period.

AB 236 is a very significant package of reforms in drug sentencing and beyond. An awful lot went into this. I commend the ACAJ for its work and the Legislature for the seriousness with which it took these recommendations and worked on them over the session last year.

These changes go into effect on July 1, and there have been several measures put in place to track and assess these changes over the following years of implementation. With that, I'm glad to answer any questions.

**Mark Jackson (Douglas County District Attorney):**

Thank you, Madam Chair. Thank you, Mr. Engel. I appreciated all your presentations during the last interim before the Advisory Commission as well as your testimony before the Legislature in 2019. As you may recall, Assemblyman Yeager and Justice Hardesty introduced AB 236 in the Assembly Judiciary in March of last year, and Chuck Callaway along with myself, Washoe County District Attorney Chris Hicks and Clark County Assistant District Attorney Christopher Lalli led the opposition. I think that you're also aware that, as the matter remained for most of the session in the Assembly, it was because there was significant work that was done, including weekly work sessions, and there was a lot of time and energy that was put in by a lot of the stakeholders. All sides, I think, were represented in order to come up with the legislation that ultimately made it out of the Assembly and into the Senate.

Having said that, pretty much all of your presentation really summarizes what you presented to the ACAJ last interim. Because these laws haven't gone into effect, we have no data at all about what the effects of all of these laws that were passed as part of this comprehensive criminal justice reform bill. You are aware that it's going to take—if you're looking back at 2017, would you agree it's probably going to take a couple of years in order to really understand the effects of all of these that are specific just to the changes in the drug laws?

**Mr. Engel:**

I would agree, yes. It always takes a couple years.

**Mr. Jackson:**

Madam Chair, I have a couple follow-up questions, if I may?

**Chair Nguyen:**

That's fine.

**Mr. Jackson:**

Mr. Engel, on slide 21 you actually reduced down some of those numbers specific—because the slides before that were all dealing with percentages, but percentages don't mean a whole lot unless we know what some of the raw data is, so thank you for including that in the slide. But you have listed out—it's a slide that's titled “Low-Level Trafficking Sentences Longer than Assault, Battery.” On that slide, for possession of a controlled

substance schedules I through IV, first offense, it shows that in 2017 the new prisoner admissions were 86. Do you see that number?

**Mr. Engel:**

I do.

**Mr. Jackson:**

I recall this testimony being presented to us during the interim and also to the Legislature. These numbers have not changed at all. Then, from that you took it further and broke it down that 41 percent of these possession of a controlled substance new admissions, of 86, that 41 percent of those had no prior convictions, correct?

**Mr. Engel:**

Correct.

**Mr. Jackson:**

In part of your extensive review, you talked about looking at those individual files. I had asked previously that if these 86 cases that were individual files would've been looked at, if those names could be provided to us, because I've gone back and looked at possession of a controlled substance in the last 10 years, and here's what I saw. I didn't see anyone convicted that was charged initially with just simple possession of a controlled substance, that all of them carried higher-level felonies, and in fact, the majority of them carried category B felonies from residential burglary to grand theft to trafficking in a controlled substance, and through plea negotiations, a lot of times that's where prosecutors may go is down to that category E mandatory probation for a first-time offender felony. I want to make sure that the statistics are not misleading due to a misunderstanding of the numerical data points that are provided. I would like to be able to have an opportunity to look at those 86 cases, because I think that what we are going to all find is that these are not just a prosecutor charging a single count of possession of a controlled substance and the person is taken to a preliminary hearing or indicted by a grand jury and then taken to trial or the person pleads guilty to this one count of possession of a controlled substance. I believe that all of them are through a plea negotiation. Would you agree with that from what you recall as your review of these 86 individual files that were extensively reviewed?

**Mr. Engel:**

Well, the file review did find the trafficking cases, so it didn't get into possession offenses.

**Mr. Jackson:**

Of those 86, because you came up with that number, as part of that number, do you have those specific cases that you can get to us so that we can look more extensively at those? I just don't want primarily really the public to believe that this is really what's going on in the state, that we just are prosecuting and putting simple first-time offenders who have never been involved in the criminal justice system, never done anything wrong, because you also know and understand that a first-time offender for possession of a controlled substance can't be sent to prison, that the judges' hands have been tied for years here and cannot just send that person to prison. There has to be some of those violations along the way, correct?

**Mr. Engel:**

First, you're talking about three discussions. You're talking about the original charge versus what they were convicted of. We looked at what they were convicted of. We don't know what they were charged with. They may have been charged with possession for sale, they may have been charged with trafficking, they may have been charged with something else. You're right, but somewhere during the plea bargain process we assume the charge was reduced to possession. So, notwithstanding the absence of convictions, they may have had a criminal conviction for a misdemeanor. We're not saying they have previously not come in contact with the criminal justice system, and they may have been charged with additional offenses or a more severe offense, but the offense at conviction, the most severe offense at conviction, was possession of a controlled substance.

**Mr. Jackson:**

Would you agree with me, at least if we're in the position of trying to recommend policy changes to the Legislature, that that is something that we at this point should be considering, looking at that big picture to know what is driving this data, and in fact, because what we use primarily as a negotiation tool—and this is really for the benefit of the defense and not for, say, the prosecution, but where we end up going a lot and it's at the request of the defense bar is down to the simple category E felony possession, because the reality is that the majority of all category E felonies, if that's all that is charged—currently, 1 to 4 grams, say, of illicit drugs such as cocaine, methamphetamine or even heroin, they are—frankly, the majority of them are reduced down to a misdemeanor. The times that prosecutors may deviate from that, there are things specific to that case. That is the reason that they do that. We typically deviate anyways from that. I have no further questions other than to see if we can get a confirmation that those 86 cases' names or case numbers could be provided to the Commission.

**Chair Nguyen:**

I'm sure if they have that information, they will make that readily available. I think we are in a position where we don't have the data for the changes that will occur coming up, but



I know that this was a contentious thing that a lot of people, including district attorneys and law enforcement, wanted to address in revisiting because we wanted more information about how these categories ultimately ended up in the last session to see if that does need refining. One of the things we might want to look into is having a presentation by the district attorney's office or the city attorney's office or other avenues of law enforcement, because I know the Clark County District Attorney's Office has some innovative things that they plan on instituting in their office in the coming months, and I'm sure that you have some ideas about where we can take this type of legislation. I appreciate that. Does anyone else have any other questions for this? I know that we have another presentation that we'd like to get to.

**Justice James Hardesty (Nevada Supreme Court):**

Thank you, Madam Chair. I don't have a question of the presenter, but I do have a comment. One of the issues that I was concerned about during the ACAJ study of this matter in 2018 and the recommendations that were made, determinations of criminal liability and sentencing based on weights and focusing solely on weights, and there are several drugs the weight of which could do far more serious damage than other drugs. My concern has been and continues to be that perhaps the Committee should evaluate adjusting some of the penalties based upon the seriousness of the drug itself and its impact, things such as fentanyl and the like. I know that we have been focused on weights and we continue to be focused on weights, and I think that we ought to consider a slightly different approach, because frankly, the weight of these drugs create a very serious impact on society and on the user. Thank you.

**Chair Nguyen:**

Thank you, Justice Hardesty. Does anyone else have any other questions or comments? Thank you for your presentation. At this time, I would move to agenda item VI, and it's a presentation on national trends in legislation regarding controlled substances. Do we have Alison and Amber on the line for that presentation? They are from NCSL (National Conference of State Legislatures), so I think they are just going to provide us some information about what is happening nationally.

**Amber Widgery (Senior Policy Specialist, National Conference of State Legislatures):**

I am a Program Principal at the National Conference of State Legislatures within our criminal justice program. Thank you for inviting my colleague Alison and I to participate in today's meeting. I'll let her introduce herself and tell you a little bit about NCSL.

**Alison Lawrence (Program Director, National Conference of State Legislatures):**

Thank you for having us today. I'm a Program Director in NCSL's criminal justice program. NCSL is a bipartisan organization for all legislators and staff in the country ([Agenda Item](#)

[VI A-1](#)). We serve all 50 states, territories and commonwealths. NCSL is headquartered in Denver, Colorado, where we provide comprehensive, unbiased research on state policies and legislative institutions. We also have a small office in Washington, D.C. Their work focuses on ensuring state legislatures have a strong, cohesive voice in the federal system. NCSL does not make policy recommendations nor do we advocate certain positions. Instead, we promote policy innovation and facilitate communication amongst states.

We've been asked by Chairwoman Nguyen to present on drug sentencing trends. It's a perennial topic in states, so today Amber and I are going to focus on some of the very hot trends and also just offer a glance at the array of policies that exist. We will be happy to follow up or dig deeper if there are specific topics that you would like to hear more on.

**Ms. Widgery:**

First, I would like to start off by providing some context with information about drug arrests and the incarceration of drug offenders nationally. The bar chart that you see on this slide was created using the FBI's (Federal Bureau of Investigation) Uniform Crime Reporting data and shows significant growth in the number of reported drug arrests from 1980 through 2018, with an almost tripling of arrests in that time. We also know that most of those reported arrests are for possession-related offenses and not necessarily offenses that have been designated in the FBI's data as sale or manufacturing offenses.

**Ms. Lawrence:**

Who is in prison and who is in jail? One in five people incarcerated in the country are there for drug-related offenses that include pretrial detention, serving sentences in state prisons, local jails, as well as federal detention facilities. Generally, those serving time for misdemeanors are in local jails. Misdemeanors are generally less serious offenses than a felony and 1 year, 365 days or less. Felonies are generally served in state prisons, though sometimes in jails, and are mostly one year or more. Over the past decade, states have reevaluated who is in prison and enacted reforms to address the prison population. One of the stated goals of a number of the reforms we've seen across the country is to increase the number of violent offenders behind bars and decrease the nonviolent offenders. We have seen a slight shift in the national numbers on drug offenders and those who are in prison. As of 2010, it was just over 17 percent of the population, and in 2018 it was down to 15 percent of the population, numbers according to the Bureau of Justice Statistics, and they cite 4 percent of inmates there for possession.

**Ms. Widgery:**

In jails at the local level, nearly 23 percent of the convicted population is serving time for a drug charge while about 25 percent of the pretrial detainee population is there for a drug offense. Note that these statistics only represent charges. We are not accounting for other individuals who may have substance use disorders or needs who have possibly been

charged with other offenses such as property crimes. The actual numbers of pretrial and convicted jail inmates are noted on the pie graphic that you see on the slide, and you'll notice that the pretrial population represents a much larger portion of the total jail inmates. To provide that with some additional context, I'm going to back up a slide and highlight the fact that nationally about 66 percent of all jail inmates are actually pretrial detainees. In the last 10 years, overall jail populations have decreased, and those reductions are largely due to significant drops in the sentenced population, while pretrial populations have remained relatively steady over that same time. I also wanted to highlight that the number of inmates listed as being in jail for a drug offense in that pie chart is just a snapshot of that population so that we can compare those numbers with the prison numbers that are in that same pie chart. The reach of jails is actually much broader because of the volume of individuals who are admitted and released after relatively short stays. This is known as jail churn. State and federal prisons admit just over half a million people annually and local jails admit nearly 20 times as many, with more than 10 million admissions annually. Out of those people admitted to jail every year, an estimated 2 million individuals are admitted who have serious mental illness, and of that population, the vast majority of those individuals also suffer from co-occurring drug or alcohol issues which can complicate treatment.

**Ms. Lawrence:**

In recent years, the approach to drug crime policy has shifted to include recognition that addiction is a medical disorder that affects the brain and changes behavior. In addition to holding justice-involved individuals accountable for their crimes and protecting public safety, this new approach incorporates what scientists have learned about substance use. States have crafted targeted responses that promote prevention, treatment, recovery and accountability. We're going to cover four buckets of policy that fall under this new approach. Those are on your screen. They include a greater focus on prevention and reducing justice involvement, prioritizing treatment and recovery, differentiating users from distributors, and using a holistic and substance-based approach. There are a handful of states that have made meaningful progress in many of these areas of the four buckets. Colorado, Indiana, Kentucky, Idaho and Utah are a few I would point to. You'll hear their names pop up throughout the presentation because they are states that have taken a measured approach in adopting numerous new laws throughout the years that are making this sort of intentional shift in the way they deal with drug policy.

**Ms. Widgery:**

As Alison mentioned on that previous slide, states have worked on strategies that promote prevention and reduction of justice involvement overall. Specific policy approaches that have been implemented to achieve that goal are listed on this slide here, and I will go into a little bit more state and policy specific detail for these policies on the next slide as well, so I'm not going to read them to you here. First, I did want to highlight a recent publication from NCSL that I will reference throughout this presentation. It's the Legislative Primer on Mental Health Report, and the link is provided in your materials and

it is also shown here on the screen ([Agenda Item VI A-1](#)). This report uses a tool called the Sequential Intercept Model to evaluate opportunities at each step in the process of the criminal justice system and evaluate at each step where individuals can appropriately be rerouted away from the justice system to appropriate treatment and community-based alternatives. The report highlights legislation and also specific programs and can be a great resource for examples not just of mental health interventions but also for populations who have co-occurring substance use and mental health disorders. The framework of the Sequential Intercept Model can also be helpful when developing a systemic approach to addressing substance use.

The first policy approaches that I want to discuss are deflection and pretrial diversion. Deflection, or what some people have also called pre-arrest diversion, targets populations with behavioral health needs largely and includes individuals with both substance use and mental health disorders. These programs reroute individuals before they even encounter the justice system in some instances, or at least certainly before or at the first point of contact with law enforcement. Deflection programs are developing rapidly on the local level to meet the needs of each individual unique local jurisdiction, but we are also starting to see a little bit more legislative support and regulation of these programs. LEAD, or Law Enforcement Assisted Diversion, is possibly one of the most well-known models. It started in King County, Washington. It has been replicated across the states following early promising results. Legislation in California, Colorado and New Mexico has appropriated funding for pilot LEAD programs or for evaluations of existing local LEAD programs. Other state legislation in Florida, Illinois, Kentucky and New Jersey has authorized or encouraged adoption of other models or pathways to assist individuals in avoiding justice involvement, if appropriate.

There has also been an expansion in the availability of more well-established pretrial diversion alternatives. These programs differ slightly in that they reroute individuals after the point of arrest but before final adjudication in a case. These programs have many names, some of which you will see on my slide, and you can learn more about them in the pretrial diversion database and learn more about which programs address drug crime specifically, also defendants who have substance use needs, but also general population diversion programs that can also benefit individuals who have substance-related needs. Recent legislation has focused on expanding eligibility and requiring that these programs adhere to best practices. An example of recent eligibility expansion has been the creation of pretrial diversion alternatives, in particular for primary caregivers of children under the age of 18. Also, state legislation has required treatment courts to allow the use of or require training reports on the use of medication-assisted treatment. Finally, expansion of brief screenings has also helped to identify more candidates that might be appropriate for diversion.

There has also been an expansion of deflection programs that take place between law enforcement collaboration and their colleagues from the behavioral health field. Many of these programs are very diverse, but I wanted to highlight this graphic because it provides a high-level overview of a few of the different structural models where collaboration can

occur, and then today I specifically also wanted to highlight one example from the Crisis Stabilization Center Model. That example is in Charleston County, South Carolina where in 2017 they opened the Tri-County Crisis Stabilization Center. The opening of the center was a result of partnership between state and local actors and also government actors and local businesses, in particular the local hospitals who supported the opening of the center. Businesses contributed resources and the sheriff's office continues to provide ongoing security for the center. Law enforcement can now drop off individuals who they feel might need assistance in as much or less time as it would take to book that individual into jail. Those individuals are then offered a full continuum of services from inpatient psychiatric treatment to detox and sobering services, and they have the availability to be immediately connected with other treatment after their initial stay, including medication-assisted treatment that can be accessed onsite. Additional details about this and other programs can be found in the mental health report that I mentioned.

Every state has also enacted a law to make it easier for individuals to access Naloxone, whether that's via standing order, third-party prescription or protocol. Most laws I briefly just highlight on this slide here also provide some kind of immunity as well to promote wider use of Naloxone. Alongside those Naloxone access and immunity provisions, essentially every state has now enacted some version of a Good Samaritan or overdose immunity law that applies when an individual calls for medical assistance in the event of an overdose. Nevada is obviously a pioneer in this area of the law. They were one of the first states and have probably one of the more expansive provisions, but we've also seen recent legislation expanding in other states of what is covered by the law, and so most of that recent legislation has expanded coverage or immunity to include pretrial probation and parole violations, immunity from restraining or protective orders in certain instances, and a diverse array of other controlled substance offenses that are unique to the states but mostly fall into the category of misdemeanors or low-level felonies. Recent legislation has also stripped away some of the requirements that in many states were initially put in place for immunity to apply. We've also seen an expansion of immunity outside the context of an overdose. This is applied largely to paraphernalia offenses and particularly hypodermic needles. These provisions have been to encourage safe practices in terms of users but also ensuring law enforcement safety by providing immunity and making law enforcement officers more aware if an individual does have a hypodermic needle on them. Another example of the sort of recent enactments that apply to the immunity field includes exempting fentanyl testing products from potentially being included in paraphernalia offenses.

The next area or the next bucket that we wanted to address is treatment and recovery ([Agenda Item VI A-1](#)). The information that you see in the graphic on the slide is admittedly somewhat dated at this point, but I think it still highlights information that is relevant to consider when addressing drug policy, particularly as it relates to the criminal justice system. According to the most recent data we have from SAMHSA (Substance Abuse and Mental Health Services Administration) other than outside self-referrals, the criminal justice system is the largest source of referral to treatment with about 34.4 percent of people coming to treatment via the justice system. For individuals who aren't

deflected or enrolled in a diversion program early in their contact with the criminal justice system, screening for mental health and substance use disorders upon arrest or booking can also help identify individuals who might benefit from treatment.

To provide an example of this, 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. For those who remain incarcerated in local jails, there has also been a focus on providing treatment. Treatment opportunities can be limited because of the relatively short length of stay for most jails and also a lack of resources. Some jails have been working to change this by working through jail in-reach programs so that jail inmates can be connected to treatment in the community at the point at which they are incarcerated and then continue with that same treatment provider once they're released. Often times these programs utilize peer supports or case managers to facilitate seamless transition or a warm hand-off upon release, which data shows can be very effective in keeping individuals engaged in treatment.

**Ms. Lawrence:**

Community supervision can be a risk- and resource-sensitive strategy that holds offenders accountable and protects public safety. To sort of match that vision, legislatures have made a continuum of community-based sentencing and corrections options available to the courts and corrections agencies. Diversion, as Amber mentioned, probation, prison, specialty courts, intensive supervision, prison diversion—not going to prison, that's obviously not part of the community options—electronic monitoring and community correction centers, also known as halfway houses: each of these options has different levels of surveillance and security and services and treatment to try to match some of the risks and needs. In the sentencing and corrections system, you see statutes addressing risk, needs and responsivity assessments throughout the entire system. States have legislated on them in a variety of ways. I'm not going to get into too much detail on that. I will point out a couple of strategies.

At least a quarter of the states have provided an instruction to their sentencing courts to consider the results of an assessment when ordering a sentence to certain community-based options such as intensive supervision, probation or drug treatment. In a handful of states, the legislature placed limits on placement based on assessment in order to try to match those convicted of crimes with their treatment needs and their level of risk. Presumptive probation is a term of art that refers to policies where the legislature has directed the court to order probation instead of prison unless certain findings are made off and on the record. Some states use this policy to actually steer individuals into treatment programs rather than to prison or to probation. Drug courts and other treatment-based courts are high-intensity treatment programs that serve juveniles, adults and families. They can also be combined to address co-occurring disorders.



Oversight is an important aspect to ensure the effectiveness of treatment courts. States have created oversight bodies, codified framework that's in line with nationally recognized best practices known as ten key components for both drug courts and the myriad of treatment and service providers that work with community supervision agencies or your department of probation and parole. The legislatures have attached funding, and certification for use of practice are based often times on adherence to the best practices and requiring proof of adherence to those. For people in prison, they will also provide a framework for skills, services and treatment programs designed to help reduce recidivism.

Legislation has focused on inmate reentry plans. These plans include risk and needs assessment to identify and assign in-prison programming prior to release. Ideally a minimum of 3 to 6 months before release, the plan is updated to identify needed transition services. The updated plan also includes action items for after release like job searching and reconnecting with family. The concrete steps in these reentry plans help individuals negotiate their way back into the community. While many corrections departments already utilize these plans for some or all of their inmates, legislatures have increasingly codified minimum requirements. The laws also put in place mechanisms for interagency cooperation and record sharing that can improve continuity of supervision and care during the time when people are most at risk for reoffending. I'm going to turn it back over to Amber to talk about the last bullet there.

**Ms. Widgery:**

We broke out a separate slide for medication-assisted treatment (MAT). In addition to prioritizing treatment alternatives generally across the justice system, legislatures have also been active in funding and expanding access to medication-assisted treatment. From pretrial release all the way through reentry, states have appropriated for MAT throughout the entire system, including individuals who have a high likelihood of even becoming involved in the justice system. There was a Florida appropriation that addressed that population before they were even involved. We have also seen appropriations for pilot programs, for drug courts, for diversion programs, for correctional facilities and also as a part of community corrections or supervision.

Legislation has also required that restrictions on the use of MAT that had been developed be lifted. For example, Illinois, Indiana, New Jersey and New York have prohibited treatment courts from requiring abstinence-only treatment in order for a defendant to successfully complete their treatment court program or their diversion program. Indiana is also particularly notable because they enacted legislation that requires training for all judges, prosecutors and public defenders in the state on the availability of treatment programs in their jurisdiction and also on the basics and the science behind medication-assisted treatment. I should also note that legislation has rolled back other prohibitions on MAT, particularly those in correctional facilities, including requirements that somebody who has been engaged in medication-assisted treatment dis-enroll from that treatment and/or come off those substances before or upon entry into a correctional facility. These actions are in line with recent successful litigation across the 50 states on this issue that

relied on the Eighth Amendment and the Americans with Disabilities Act to force corrections facilities to allow inmates to continue their medication-assisted treatment.

**Ms. Lawrence:**

There have been a number of trends in state sentencing laws that have been designed or aimed at differentiating users from distributors ([Agenda Item VI A-1](#)). I'm going to run through a couple of those more nuanced actions for you. Marijuana legalization: legalized for recreational use in 11 states, D.C. and the Northern Mariana Islands. Another 16 states, Guam and the Virgin Islands have decriminalized possession. Decriminalization generally means that a small personal consumption amount is a civil or local infraction or the lowest-level misdemeanor and not carrying jail time. A dozen states have also enacted laws reducing non-marijuana personal possession penalties from felony to misdemeanor. The decreased penalties place greater emphasis on treatment by allowing courts to order community-based treatment in lieu of prison for people who are identified as suffering from substance use disorders.

Prosecutorial powers have largely been unlegislated, but we've started to see legislation pop up that aligns with other criminal law changes or with local practices. In a number of localities across the country, prosecutors have opposed and do not prosecute for residual amounts of drugs for people seeking treatment, participating in needle exchanges or other activities like that. There was a 2019 Colorado law that prohibited prosecution for any instance of residual drugs. On the flipside, states have also reclassified their top-tier offenses by designating some of the most serious nonviolent offenses with longer and stronger penalties. Examples include new kinds of drug trafficking and criminal enterprise which are above and beyond other manufacturing/distributing/trafficking offenses. Other states target criminals who provide financial backing for crimes and they also created specialized penalties for drug-induced homicides. States have redefined what constitutes possession and dealing, the goal being to differentiate between people who are addicted to drugs and those high-level dealers. A handful of states have also created new offense categories. Colorado and Indiana created separate sentencing grids for their drug crimes. Colorado lawmakers found that by distinguishing the drug from the non-drug offenses they were able to provide judges with more targeted alternative sentencing options like expedited placement in drug court and ordering a term in a drug treatment facility.

Mandatory penalties are in place in every state. Not every state has them for drug crimes, but many do. In the case of nonviolent drug crimes that do carry mandatory minimum penalties, there are legislatures that have found current policies don't match with the original intention of the law. Basically, too many people are getting counted under those mandatory minimums. They are being applied to a wide range of offenses rather than just the most dangerous or serious. On your screen you will see an excerpt from a 2015 North Dakota law. The legislature added in language allowing the sentencing judge to depart from most mandatory minimum sentences for drug crimes if the sentence would impose a manifest injustice. More than half a dozen states have adopted language like this. I do want to highlight, it's not removing mandatory minimums, it's simply providing judges with

the discretion to depart from them. As drug schemes are changing, legislatures have created a suite of policies that align previously ordered sentences with new sentencing policies. A lot of these are known as second looks or second chance. There is a wide variation in many of them, but in terms of where we have seen action specific to drug crimes, states have allowed the retro-application of sentencing via sentencing court review. Maryland's mandatory minimum law, which is very similar to the one I showed you on North Dakota, made their law retroactive so eligible inmates can apply to the sentencing court for a review of their sentence.

Another strategy is expanding the parole board's authority to review sentences. Colorado created a presumption of release on parole for drug offenders sentenced under their old laws, and so once those old laws hit the amount of time served that matched what the new laws put in place, the parole board then automatically took a look at their case and considered them for release at that point.

Clearing of criminal records for drug offenses: there's a whole list of laws in states that deal with allowing people to apply to have their record cleared if certain conditions are met. Especially, most recently in the states that have legalized marijuana, there's been a number of initiatives aimed at clearing the records of people with simple possession convictions on their records. NCSL does have a webpage specifically on that topic. If you are interested, we can send it to you. The second-chance and second-look policies are very much aligned with the broader holistic approach that we have observed in states, and Amber will describe that for you.

**Ms. Widgery:**

Thanks, Alison. So far we've addressed a lot of the specific policy changes and legislation in states, but I wanted to also take a minute to address the larger shift in state strategies from substance specific-based approaches to a more holistic approach that's focused on treatment and helping people with substance use and co-occurring disorders instead of criminalizing behavior of those individual users as it relates to specific substances. Historically, changes to state laws have been focused not so much on the defendant and where they fall within the hierarchy that Alison described in terms of being personal possession users through people who are more economic traffickers, but instead we used to previously focus much more on substances that were of concern at the time. Laws have created historically mandatory penalties for varying types of cocaine, and then laws created new code sections that specifically addressed penalties for methamphetamine and precursors. Following that, we created penalty enhancements for synthetic drugs, and then most recently in response to the opioid epidemic, a number of states have created specific and/or enhanced penalties as it relates to fentanyl and other related opioids.

We know that many individuals are poly-drug users, and so more and more we are seeing states address that core issue of addiction and misuse of substances on the broader level instead of creating new penalties each time a substance of concern emerges. I should

also take a moment to say now that there is still obviously a role for substance-specific legislation, and states have recognized that. To provide an older example, it has obviously been necessary historically, and historically meaning they were created previously but they are still necessary now, to create standards for cleaning up methamphetamine labs in residential homes to prevent future harm when a property changes hands or after a meth lab is discovered. Treatment is another area of the law where substance-specific action is warranted. Medication-assisted treatment can be specific, say, to opioid use disorders, and yet we don't really have an equivalent therapy for methamphetamine users. Laws enabling those specific types of treatment are obviously still very much necessary.

Additionally, new variations or emerging drugs will need to be scheduled. Designer synthetic drugs, I think, have presented one of the biggest challenges on this front in particular, requiring legislators to adapt and respond quickly to the evolving chemical changes of these substances and the need to encompass those new and emerging substances within our existing legal definitions and structure. This new, more holistic approach has involved reviewing the entirety of the criminal justice system response to drugs using tools like the Sequential Intercept Model that I mentioned earlier. That is a part of our mental health report that can help identify strengths and also where system improvements can be made or where resources might be lacking. It has also required a substantial amount of cross-systems collaboration, and legislatures have played a key role sometimes in helping to facilitate those collaborations by establishing committees, taskforces, other bodies—the terms vary by state—that bring together key stakeholders that each play a role in addressing substance use disorders and the people and systems that are impacted. The two bills that I listed here on the screen are just two of many examples of legislative efforts to bring together specific groups to address addiction and substance use in particular and create a more unified and holistic approach to some of these core issues.

**Ms. Lawrence:**

I will just close out by pointing out a few strategies ([Agenda Item VI A-1](#)). We know successfully reducing crime does not begin and end with the criminal justice system. States have made intentional efforts to cooperate across other policy areas, and we've listed a number of them on your PowerPoint slide, but that is by no means the be-all-end-all for which the cooperation is happening. The criminal justice system is made up of various state and local entities. Formal lines of communication and data-sharing agreements are key to ensuring public safety and can also help to maximize resources and minimize duplication. Strong partnerships with service providers often include sharing relevant information on justice-involved people who are accessing their services. This includes risk scores, criminal history, medical records, current compliance with supervision conditions, any new arrests. Faith-based organizations have been strong supporters for the justice-involved, connecting folks with basic necessities like housing, bus tokens, clothing and much, much more. Regulations on travel, association and entry into prisons and jails can be a barrier on that service provision. Building a formal

partnership with the faith community can help identify those barriers and find solutions that maintain safety while allowing appropriate access.

I should also mention in addition to faith-based communities peer support services, which often involve folks who have been out of prison but have criminal records, which sort of fall into some of those barrier areas too where there are state laws existing that will prohibit them from helping to provide services. But we do know federal resources and research that peer support services can be incredibly powerful for those who are in the criminal justice system.

Terminology seems like a smaller technical fix, but it can also symbolize partnerships. When people from various sectors start using the same language, they start to better understand one another. We have seen criminal justice legislators working with their health counterparts to include more modern medical terms in the criminal justice legislation and vice-versa so that they're all working on the same page.

I would like to thank you, Madam Chairwoman, and the Commission for inviting Amber and I here today, and we will be happy to answer any questions that you may have.

**Chair Nguyen:**

I have a couple of questions. When you were talking about that program out of Washington State, you had indicated that it's kind of a model that's been used across the country in various states. Do you have information on how they redistributed funds to allocate funds that were traditionally used for the enforcement aspect of it and move that into these treatment-based models for addressing them? Do you know if you have that kind of data from Washington or other states that impose this type of programming? Does that make sense?

**Ms. Widgery:**

Yes, absolutely. I don't have the data on hand, but that's something I can certainly get back to you on, if it exists ([Agenda Item VI A-2](#)). I do know that implementation of LEAD has looked slightly different in every jurisdiction, so that answer might be different for a couple of different jurisdictions, but I will see if I can put together some examples.

**Chair Nguyen:**

My other question is, you talked a little bit about how there are various jurisdictions that do it differently, different states. Some of them are doing it by weight, some of them are doing it by type of drugs, because arguably 100 grams of one thing is not the same as 100 grams of marijuana or something like that. Is there any kind of trends on whether or not to distinguish between types and weights, or is there movement away from weights and types of distinguishing in that kind of matter? Do you know off hand?

**Ms. Lawrence:**

I don't know if there is a trend, per se, but certainly there are statutes that differentiate for different types of drugs, and not all drugs are done by weight ([Agenda Item VI A-3](#)). Some are done by quantity, like the party drugs. Tabs would be by unit. But we can certainly look into recent legislation to see if there has been a trend one way or the other. I think more the trend has been in states where they haven't been defining, they've moved towards defining. We can definitely give you examples of how those definitions are created.

**Justice Hardesty:**

Thank you. In discussing the slide that was entitled "Differentiating Users from Contributors" on the second-chance bullet point, you mentioned the availability of a website on various approaches that have been taken to either delay or pardon or commute, or however you want to phrase that, low-level marijuana usage. Do you happen to have that website available now, or is it something that you could furnish pretty quickly?

**Ms. Lawrence:**

Absolutely. My laptop is over there and it's open on the screen, so we will put that in the chat box here before the end of your meeting so you've got it.

**Justice Hardesty:**

Okay. I don't know if I have access to that.

**Chair Nguyen:**

You do, Justice Hardesty. There's a little button there and they can share documents with us.

**Justice Hardesty:**

Okay.

**Chair Nguyen:**

I can also ask them to provide it to the Committee and we'll distribute it as well.

**Justice Hardesty:**

I would appreciate that. There is an agenda item for our Pardon's Board next week that will be relevant to that, I think, and I'd like to use that.



**Ms. Lawrence:**

Once you read it, if you would like more, we can provide that.

**Justice Hardesty:**

Yes, I would like to more deeply research the question.

**Chair Nguyen:**

Does anyone else have any questions? Okay, thank you for your presentation. I appreciate it. I think we can get it if you share it in the chat. We'll make sure that it's distributed via email to all the parties and also put online for members of the public to review if they would like to as well.

I'm going to move to agenda item VII. This is some of the discussion about possible appointments of members to and designation of chairs for subcommittees of this. There is one subcommittee, and you can see that I listed two. I will be honest with you; in light of the unprecedented budget cuts that we are facing as a state, having these subcommittees—they have to be staffed, they are treated as public committees and they cost quite a bit of money and resources to put together. So, instead of having these subcommittees established, in the abundance of tightening our budget all the way around, I think that it would be appropriate that if we are going to discuss any of these topics, I think that it should be done as a Commission as a whole just so we don't have multiple committee and staff members from LCB having to conduct these meetings. I know that every dollar counts right now, and so I don't want to tax our limited resources any further, so I will be doing those. If things change and we need to break out into these specific subcommittees, I think that would be appropriate then, but at this time I just don't feel comfortable using those resources in that matter given the state of our current economic situation.

There are some topics—I think I would be remiss to not address some of the ongoing things that are happening in our community locally as well as statewide as well as nationally regarding all matters. I know that Attorney General Ford is on the line as well, and I know that he has been a vocal advocate for having these discussions regarding everything from community policing to law enforcement best practices. I think this is kind of a unique opportunity because we do have a lot of representatives on this Commission in all areas, and so I think there are a lot of people at the table that need to be at the table to have these kind of discussions. I'm interested in taking any ideas. Feel free to speak up now if there are certain topics. I know there were some topics that were brought up during public comment initially, but if there is anything from the Advisory Commission that you would like to see further addressed at our future meetings, I think this would give the public, as well as all of us, an opportunity to really dive into some of the specific issues that we may want to recommend to the Legislature or individual legislators, or even members of this Commission that have bill draft requests that they can bring in the

upcoming session. With that being said, is there any topics that you would like to hear more information about in any of those areas? Are there any presentations that we think would be appropriate from even other members of this Commission? I think that could be helpful. I know that with the drug trafficking and the drug charges and that kind of stuff, I think it would be useful to hear from prosecutor offices around the state on how they're implementing and what they're seeing in real practice in combination with some of the data that we have been presented. I know sometimes the data is presented in one way and you may dispute the way it is collected or interpreted, so I think those type of presentations would be useful for this Commission. I'd just leave that out there to see if anyone has any ideas with regard to those things, or any policy things that you would rather take this opportunity to look at.

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

Thank you, Chair Nguyen, for this opportunity to talk about a few things. I had submitted a letter to Attorney General Ford—thank you so much for having that discussion this past Sunday—just discussing what we saw as maybe low-hanging fruit options perhaps a special session or the upcoming Legislature could consider given recent events in our community and across the country. But I think the one recommendation that we had that we could look at now that we are looking at it as a Committee as a whole, what we had recommended was that we form a subcommittee of some type that could look at policing data, perhaps in accordance to ZIP Code so we could really get an idea of how different communities are policed, the number of patrols in a particular area at any given time. I think it would be very interesting and useful to hear from our law enforcement agencies on how they're patrolling and to also understand what programs, community policing programs, may already exist in various different jurisdictions. I think that would be very helpful to informing future policy.

**Chair Nguyen:**

Thank you. I had written some of that. I know that a lot of what we've done in the past and what I think is effective is evidence-based or data-based things. I know data is lacking here in our state, but I know that a lot of our law enforcement agencies are already collecting some of this data, and I am sure that they're looking at ways to improve that collection of data. That's definitely something that I can look into getting more information about.

Is there anyone else here that would have any input or be willing to share information that would be helpful, like programs that you are doing? I'm looking at a lot of you law enforcement people. Do you have programs that you think are working in your communities and in your things that might be replicated or recommended on a more statewide scale?

**Justice Hardesty:**

I'm sorry that I don't have something to offer on that topic, although I'm obviously very interested, as you are, but I do think criminal justice information sharing—I would urge that perhaps Ms. McKay or her staff or someone else could give us a very current update on the status of the criminal justice information systems. As we know from past Advisory Commission meetings, there were serious deficiencies and backlogs and the like, anybody in the criminal justice system, from—all the way through to presentence investigation reports. I know that there were some appropriations made, or at least I think there was, to enhance or to rehabilitate or—the systems. I think it would be very helpful for the Commission to know what the status is of that area because it is such an important foundational piece on which we all rely. Thank you.

**Chair Nguyen:**

I will definitely reach out to Mindy. I definitely think that's something that we can look into. Like I said, I think it's a difficult situation with finances being the way they are. Initially, I know in my personal capacity I had looked at improving some of our information sharing technology and making an integrated system that could be used throughout our state to share data with law enforcement and between district attorneys and sharing discovery and all kinds of stuff. I know that it is a very, very expensive proposal which probably won't be done now, but I think giving an update on what our current system looks like and potentially preparing for what we can do in the future I think would be great. With the pandemic, I think we all realize how important it is to have some of that stuff digitally accessible when we are not using paper products and we are not meeting in person, so I think there are some things there. I think some of the local jurisdictions have been contemplating updating their systems with CARES (Coronavirus Aid, Relief and Economic Security) money, so that's something that we can also look into, and I will be in touch with Mindy about presenting probably some updated information about what's going on with them. Thank you.

**Judge Sam Bateman (Henderson Justice Court):**

On your last question, and it was on Justice Hardesty's concern about the Central Repository information, I know you and I, Assemblywoman Nguyen, have talked about criminal case and criminal background information sharing in Clark County, and particularly with SCOPE (Shared Computer Operation for Protection and Enforcement) and whether it's getting updated by the local police departments with dispositions and how those dispositions are getting to the Central Repository in terms of the reporting requirements. We're finding ourselves down here—and I'm sure in your practice you're having the same problem figuring out what everybody has, what everybody has in the system. A lot of our defendants have a lot of cases going on at one time in different jurisdictions. Some of our more centralized case management programs have gone offline in favor of transfers of information, but everybody is not on that process. Between the cases themselves and the hard time finding what people have, this is all practically

nuts and bolts stuff, but then whether we're getting those updates in SCOPE, because you guys passed a law about a presumption that traffic offenders that come in on bench warrants should be OR'd (own recognizance). Part of that, what we're trying to do, is figure out have they been in the system before on their warrants, and SCOPE is what we're using to try to make those determinations so that people get automatic ORs if they haven't been in on bench warrants before, and we are having a hard time figuring out whether our SCOPE process down here is getting updated. It's really what people are using as a tool in Clark County more so than JLink and the statewide system for those types of things. If you have a presentation regarding the Central Repository, it might be helpful to maybe pull in SCOPE and maybe just a little bit of that information. I've talked to them and I think they're updating their computer processes to try to talk to each other a little bit better and get that information. I don't know where they are at.

There's also a lot of non-retainable misdemeanor offenses. By retainable—I am learning these terms—they're not being retained in the system. A lot of people aren't getting booked, aren't getting PCN (process control number) numbers, so we really oftentimes don't know what a person's true criminal history is. It's important as we're trying to implement Justice Hardesty's—it's not his, but he's pushed it—the NPRA (Nevada Pretrial Risk Assessment), things like that. You sometimes feel like you're operating with about 75 percent of the information, and I don't think that's helpful to anybody. I know now is a tough time with resources and everything, but if we have a presentation, it might be nice to have it.

My only other question was, and I don't know if JRI is still on the line, if we're ever going to have them back going forward. Some of the information, the key takeaways that I had from the last session, was the question of why? We heard about it again today with drug trafficking and the sentences across the board that had gone up over the last 5 and 10 years. We had an increase in the percentages of parole and probation revocations, which they talked about driving some of the admissions to NDOC. We talked about 40 percent more females in the prison system. One thing we never got to last session, last interim, is the question of why is that happening? I don't know if JRI ever came up with some information that they felt comfortable to help us ask those questions. I think they're somewhat qualitative. I also talked to Anne Carpenter last session about whether Parole and Probation ever kept any sort of information about their recommendations. I know that would have been difficult for them to be able to collect that information, but I was trying to answer the question of why, and the only other thing that I might throw out there is whether JRI ever, in continuing to look at the data, were able to answer any of those questions, because it seems like that would be entirely relevant to what you guys were doing at the Legislature and entirely relevant to courts and then to law enforcement as well. That's maybe a little bit more than what you're asking for.

**Chair Nguyen:**

I think that goes hand in hand. CJI (Crime and Justice Institute) had data that they were pulling from JOCs and also from PSIs and other documentation, but I think that goes hand

in hand with what Ms. Welborn had requested. I think looking at that in combination with policing data and some other things might give us a bigger picture. I know the Sentencing Commission, they have a huge task to undertake, probably even limited money now to do so, but I think that's an important thing to look at. I don't think we should look at things just in a box. Sometimes we do, but I don't think there's anything wrong with trying to see what we can find out about that and see what the data shows us.

**Aaron Ford (Attorney General):**

Thank you for the opportunity to chime in here. I won't offer suggestions on topics right now, only because, as many of you know, I'm having a series of what I call Justice and Injustice forums. I've had my second—my third is scheduled for this Saturday—where we are talking about real, tangible solutions of either policy changes that have already taken place in the aftermath of George Floyd's killing or that are being planned right now. I have had Sheriff Lombardo and Sheriff Balaam on 2 weeks ago, and this past weekend I asked some legislators on and they talked about legislation that may be introduced either in the special, if they decide to do that, or this next February for a legislative session. This Sunday at 2:00 p.m.—that's been the general time that I'm holding these. Sunday at 2:00 p.m., we are going to have chiefs of police departments from Henderson, Reno, North Las Vegas, a lieutenant from Elko's police department and Sheriff Allen from Pershing talking about actual departmental implementation of policies that they've changed or they are contemplating changing. Chief Soto, for example, has instituted the duty to intervene requirement and is working on policy in that regard.

So, what I want to do is, as I've said before, move beyond the conversation. I don't think we are at the beginning of the conversation. We're not at the middle of it either. We frankly should be done conversing and looking at some actions to take place. That's what we are hearing about on these panels, and what I would like to do is be able to report back after—it looks like it's going to be about a 6-week series that I'm doing, and some of the judges on the panel here and the prosecutors, you should know that I intend to reach out to you for my last two. I'm going to be looking at—because I view this as a systemic issue. This isn't just about cop training, it's also about the discretion that prosecutors have in the process and the discretion that judges have in the sentencing process, and talk about what things can be done or might be done throughout the entirety of this. Around mid-July I'll be done with these, and I'd like to report back with potentially some suggestions on things we can talk about based on what's been discussed in these particular meetings so that I'm not just having people repeat what we're already talking about without having any concrete opportunities for progress going forward. I just thought I would share that out loud with everyone. Every Sunday at 2:00 p.m., with the exception of June 21, which is Father's Day. It's going to be on a Saturday at 2:00 p.m., the day before that on that one, but every Sunday at 2:00 p.m., ending I think—also not on the Sunday after the Fourth of July. So, it will be 2 weeks beyond the Fourth of July where these will take place as well. I just wanted to share that, and thanks for letting me do that.

**Chair Nguyen:**

Thank you. I think that would be actually very helpful. I know that there's things that we are looking at as a Legislature for a potential special session, if one is called, as well as things that maybe need a bigger—more research to move in 2021, so I think that would be very helpful. Thank you. Does anyone else have any other concerns or questions or things that they would like to hear as a part of this?

**Assemblywoman Lisa Krasner (Assembly District No. 26):**

Thank you, Chair Nguyen. I am interested in seeing a presentation or at least some data on expungement of crimes committed as a minor. Of course, not violent crimes or sex crimes, but I would like to see some data as to what other states are doing in regards to juvenile justice and expungement, please. Thank you.

**Chair Nguyen:**

One of the things that I looked at here, and I know with the Governor's recent order, and I'm sure that's what Justice Hardesty was talking about, the Board of Pardons looking at marijuana convictions and how the expungement, sealing, that process, or even potentially retroactivity or second-look or second-chance type programs. I think that would go hand in hand with that. That's definitely something I think we can put together to see what is being done across the country.

**Attorney General Ford:**

I just wanted to actually also share that we've streamed these live on Sunday. I don't mean to co-opt your meeting, but we stream these live on Sunday at 2:00 p.m. We also tape them and I post the episodes, if you will, on our Facebook and our social media pages from the AG's (Attorney General) Office and also my personal one. If anyone wants them personally, I can email you if you want to take a look at these as well. I just wanted to share that out loud.

**Judge Jacqueline Bluth (Eighth Judicial District Court):**

One of the things that I was interested in looking at because I've been reading some recent articles since the Supreme Court came down with the *Valdez-Jimenez* case and how that obviously affects bail reform, but also in some of the articles I have read lately they talk about certain courts in certain counties, how basically different counties or even maybe prosecution versus defense are interpreting it differently. I think it would be interesting to have a presentation, maybe one from prosecutors and one from defense, in regards to how they interpret it and how the courts in that county of Nevada are looking at that, because I think it does have an impact and effect on a lot of different avenues in the criminal justice system. That was something that I was interested in.



**Chair Nguyen:**

I will tell you, Judge Bluth, that I actually sit on the other study—it's the pretrial bail study—and I know that we did have some presentations just earlier last week regarding the recent Supreme Court decision regarding that pretrial bail. I can tell you that I know that that legislative committee has been taking testimony and hearing from various people regarding it. It does have bill draft requests that are being looked at to address some of the confusion that has come up, I think on all sides, and interpretation issues, so I know it is something that the Legislature is looking at. I know we have so many topics, so I don't know if we will be able to include it here, but I would encourage you to look at that committee meeting. I think we are meeting in, I want to say July or August, again with potential recommendations. I know that members of the district attorneys as well as the public defenders' offices as well as different law enforcement and other community groups have been participating in those presentations. In fact, a lot of the people I'm seeing here on this Committee also have been participating in that, so there is that going on, and that is a definite issue that I know is out there. I'm sure you're seeing it firsthand.

**Judge Bluth:**

Okay, great. Thank you.

**Chair Nguyen:**

Seeing no one else, I'm going to move on to agenda item VIII. We actually kind of started some of that with potential dates for future meetings. I don't know if we have another meeting set up. Do we have another meeting set up? Does anyone know?

**Nicolas Anthony (Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau):**

There is a meeting set for August 18 at 1:00 p.m. However, there is also another legislative meeting scheduled that day, so there is a chance that we may have to move this meeting if we're still operating in a virtual world. That is something for you to consider.

**Chair Nguyen:**

Okay. Do you know what legislative meeting is scheduled at that same time?

**Mr. Anthony:**

It is the Interim Study on TRPA (Tahoe Regional Planning Agency) and Marlette Lake. Unfortunately, they scheduled their meeting before the Advisory Commission so they have precedence.

**Chair Nguyen:**

Probably out of an abundance of caution I will send out some potential new dates for everyone to consider. We'll just start from there, if that works for everyone. That will end agenda item VIII. We'll move to our final public comment, agenda item IX. Again, I would advise that presentations may be presented by phone or by written comment. Because of time considerations, each caller who is offering testimony during this period will be limited to not more than two minutes. I will cut you off, and I'm not trying to be rude, I just want to make sure that we are fair to everyone, and we'll go from there. I am going to take a three-minute break. I think that's what I was directed to do, so if we could just come back here in three minutes and we'll see if there's any public comment that needs to go on. Thank you.

It looks like we have three callers on the line. It looks like everyone's back, so why don't we go ahead and start taking those callers?

**Ms. Grant:**

Michelle Feldman from the Innocence Project suggested transparency when it comes to police disciplinary records. Given the recent events in Minneapolis with George Floyd—Nevada, in particular Washoe County, has had their own George Floyd. Three men were asphyxiated to death at Washoe County jail. One of those men was my brother, Thomas Purdy, who was hogtied for 40 minutes by Reno police during a mental health crisis. He was then asphyxiated by four deputies at the jail while still hogtied, begging for his life and calling out for my dad to save him. Transparency when it comes to police officers' disciplinary records is vital. One of the deputies, Paul Hubble, who asphyxiated my brother went on to smother another man, Justin Thompson, less than a year later. One of the officers from Reno police, Christopher Good, went on to shoot a community member in 2017. Had records been an open book, perhaps these deaths would not have happened. I know my family received an absolute wall of silence from law enforcement and DA (District Attorney) Chris Hicks when my brother was killed as far as any information about what happened. It was only through litigation we received video and not anything regarding the officers' disciplinary records. I would like to take it one step further and suggest body cam footage and the names of officers involved in shooting community members names be released within 10 days. Clark County typically releases that information within a few days. Washoe County does not. Rolando Brizuela that was shot and killed by Sparks police July 17, 2018, that body cam footage and officers' names have yet to be released. We need better transparency all around. I look forward to the meetings the AG is holding. Thank you.

**Ms. Brown:**

Tonja Brown, advocates for the inmates and the innocent. In the materials provided to you for the presentation on AB 236, I did not see where in the materials it reflects those individuals who have been sentenced to life without the possibility of parole for nonviolent

offenses or where it helps those whose crimes are no longer a crime under AB 236. AB 236 must be retroactive. Also, in the criteria for inmate applications in the time and sentence disqualification, it states applications from inmates sentenced to death or life without the possibility of parole for an offense committed after July 1, 1995 will not be considered for commutation of a sentence that allows for parole. In today's news, Governor Steve Sisolak announced that he placed a resolution for consideration on the Pardons Board of Pardons Commissioners' agenda to provide relief to tens of thousands of people who were previously convicted of possession of small amounts of marijuana. Is it possible to have the Pardons Board members, such as Justice Hardesty or Attorney General Ford, place the resolution for consideration on the Pardons Board agenda that could fast-track AB 236 to allow those convicted of nonviolent crimes who have been sentenced to life without the possibility of parole while they wait for possible changes to AB 236 in 2021? Thank you.

**Ms. Adkisson:**

The Nevada administration regulation 504, reception and initial classification process, mandates that an inmate is to be properly committed with appropriate commitment documents ([Agenda Item III B](#)). It further sets forth operational procedure 504—says that certified judgment at felony conviction is the appropriate document. There is no felony conviction pursuant to use of a deadly weapon. The crime is discharged and you remain in prison solely as a result of the abuse of the classification procedure. Also, operational procedure 510 for the NNCC (Northern Nevada Correctional Center) facility requires the judgment must be for a felony. The requirement that the staff be trained and knowledgeable in recognizing felony offenses pursuant to *Ex Parte Joseph Dela* in NRS 176.105. You must have a punishment and an offense before that punishment can be inflicted. The system for classification for offenders is acting in a manner not contemplated with the statutory authority. The representations made as a result of an abuse in excess of statutory authority of the offender classification system for the NDOC are relied on to the detriment of the inmates. Where an inmate incarcerated for use of a deadly weapon is presented to the Parole Board with a claim that a category A through F felony may be present and the conviction actually occurred and assigned the crime severity where the NDOC has utterly failed to publish a crime severity table in order to challenge the constitutionality of existing or color grievances or civil rights complaints. The Parole Board's authority to consider a grant of parole is limited to only consider the current crime under consideration. When considering the use of a deadly weapon, there is simply no crime to consider. The injury the inmate sustains is a direct result of the abuse of the offender classification system established pursuant to NRS 209.341.

**Chair Nguyen:**

I would ask you to wrap up. It's been two minutes.

**Ms. Adkisson:**

Thank you.

**Chair Nguyen:**

I would encourage you again to submit anything in writing if you were unable to complete your statement and all parties will be able to look at them. Thank you. Do we have any other callers for public comment? Okay, wonderful. Thank you. I appreciate everyone here. At this time, with no further business before the Commission, I thank you for your time today and the meeting is adjourned at 3:26 p.m.

RESPECTFULLY SUBMITTED:

---

Jordan Haas, Secretary

APPROVED BY:

---

Assemblywoman Rochelle Nguyen, Chair

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

<b>Agenda Item</b>	<b>Witness/Agency</b>	<b>Description</b>
A		Agenda
B		Attendance Roster
<a href="#"><u>Agenda Item III A</u></a>	Michelle Feldman, Innocence Project	Public Comment
<a href="#"><u>Agenda Item III B</u></a>	Patricia Adkisson	Public Comment
<a href="#"><u>Agenda Item III C-1</u></a>	Tonja Brown	Public Comment
<a href="#"><u>Agenda Item III C-2</u></a>	Tonja Brown	Public Comment
<a href="#"><u>Agenda Item III D</u></a>	Ray Krone	Public Comment
<a href="#"><u>Agenda Item III E</u></a>	Sara Bartel	Public Comment
<a href="#"><u>Agenda Item III F</u></a>	Annemarie Grant	Public Comment
<a href="#"><u>Agenda Item IV</u></a>	Jordan Haas, Commission Secretary	Draft Minutes of the February 13, 2020 Meeting
<a href="#"><u>Agenda Item V A-1</u></a>	Len Engel, Crime and Justice Institute	Presentation on Legislation Relating to Controlled Substances
<a href="#"><u>Agenda Item V A-2</u></a>	Len Engel, Crime and Justice Institute	Follow-Up Information
<a href="#"><u>Agenda Item VI A-1</u></a>	Amber Widgery and Alison Lawrence, National Conference of State Legislatures	Presentation on National Trends in Legislation Relating to Controlled Substances
<a href="#"><u>Agenda Item VI A-2</u></a>	Amber Widgery and Alison Lawrence, National Conference of State Legislatures	Follow-Up Information
<a href="#"><u>Agenda Item VI A-3</u></a>	Amber Widgery and Alison Lawrence, National Conference of State Legislatures	Information on Drug Threshold Enactments