MINUTES OF THE
2015-2016 INTERIM
ADVISORY COMMISSION ON
THE ADMINISTRATION OF JUSTICE
AUGUST 3, 2016

The meeting of the Advisory Commission on the Administration of Justice was called to order by Chair Hardesty at 9:35 a.m. at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and via videoconference at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Justice James W. Hardesty, Nevada Supreme Court, Chair
Mark Jackson, Douglas County District Attorney, Vice Chair
Assemblyman Elliot T. Anderson, Assembly District No. 15
Connie Bisbee, Chairman, State Board of Parole Commissioners
Judge Kevin Higgins, Justice of the Peace, Sparks Justice Court
Jorge Pierrott, Lieutenant, Parole and Probation, Department of Public Safety
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Holly Welborn, Policy Director, ACLU of Nevada, Inmate Advocate

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Senator Aaron D. Ford, Senatorial District No. 11
Senator Mark A. Lipparelli, Senatorial District No. 6
Assemblyman John Hambrick, Assembly District No. 2
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Phil Kohn, Clark County Public Defender
Lisa Morris Hibbler, Victim's Rights Advocate

COMMITTEE MEMBERS ABSENT:

Paola Armeni, Representative, State Bar of Nevada
Adam Laxalt, Attorney General, Office of the Attorney General
James Dzurenda, Director, Nevada Department of Corrections
Judge Lidia S. Stiglich, Second Judicial District Court, Washoe County

STAFF MEMBERS PRESENT:

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau

Diane Thornton, Senior Research Analyst, Research Division, Legislative Counsel Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Linda Hiller, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:
Robyn Grace
William O'Connell, NV-CURE
Wes Goetz
Anonymous Female
Tonja Brown, Advocate for the Inmates, Advocate for the Innocent
Dwayne Deal, Administrator, Offender Management Division, Nevada Department of Corrections
Julie Butler, Administrator, General Services Division, Department of Public Safety

Chair Hardesty:
I will open the sixth meeting of the Advisory Commission on the Administration of Justice (ACAJ) with a vote on the minutes from the June 14, 2016 meeting.

> CONNIE BISBEE MOVED TO APPROVE THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE MINUTES FROM JUNE 14, 2016.
>
> KEVIN HIGGINS SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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I will open Agenda Item III, public comment.

Robyn Grace:
I am with a reentry program here in southern Nevada. I would like to address the indigent inmates as I do at every meeting. I was working with Elliot Anderson who was supposed to give me a meeting in front of Nevada Department of Corrections (NDOC) so we can address this situation. There are too many inmates behind bars that have been paroled, are still behind bars, and have nowhere to go. That is a waste of the taxpayer's money. Given the opportunity of a platform for a block of time for the next meeting, maybe we can come up with a strategic plan to address that situation.

Chair Hardesty:
I invite you to submit a letter outlining what you would propose and I will take it up with Mr. Jackson and we will discuss that subject for an agenda on the Commission.

William O'Connell (NV-CURE):
I am pleased to see on today's agenda that several issues are rolling along with an eye toward rehabilitation of inmates rather than merely containment. I particularly noticed the restoration of felony voting rights and am encouraged to see that. I want to remind people that we are more than the worst thing we have ever done. Restoration of voting rights and rehabilitation back into the community is something we can do after we have served our time.

Wes Goetz:
I just got an order from the Nevada Supreme Court (NSC); *Steve Dell McNeill v. The State of Nevada* (Agenda Item III). I have been trying to get travel permits to do my business in Tahoe. Today, I got this and was told that a lot will change because of this new order. I went to my parole officer to get a travel permit to California to do some recreation stuff and I showed him this order. He said he had talked to the sergeant and now I do not need a travel permit. I think the State has 20 days to appeal it. The order talks about how the State Board of Parole Commissioners (Parole Board) made their own laws but not through legislation. What I understand is that the Legislature's intent to make law is what they should follow and with the rules of lifetime supervision, we should talk more about this.

Chair Hardesty:
I intend to defer discussion of that particular case in the context of lifetime supervision until the next Advisory Commission meeting so the remittitur period can pass. Before a case of the Supreme Court becomes final, the rehearing period that can be sought by a party must elapse and then a final remittitur issues from the Supreme Court.

Mr. Goetz:
So this is not final?

Chair Hardesty:
They have an opportunity to seek rehearing. I want to make sure we are past that rehearing period and then that case will be part of the discussion by this Advisory Commission as soon as the remittitur issues.

Mr. Goetz:
I wanted to give everybody a heads up on it because now all the complaints I have done have just been lifted until this comes out. I appreciate you listening to me and my complaints, but now I do not have complaints until they figure out what this order is going to do.

Anonymous Female:
Good morning. I am speaking anonymously because of the retaliation we survivors of domestic violence are receiving in the State of Nevada. We

have decided to go ahead and start our legal proceedings against this panel because they have chosen not to stop the destruction of our children's abuse evidence. You all have a copy of Justice Armstrong's affidavit saying he is still continues to oversee the destruction of child abuse evidence every 2 years and these are children that are still minors. So our children are going to go ahead and start legal proceedings against the panel and when this first came to light was then-Chief Justice Hardesty chaired a meeting June 3, 2010. There is some commotion in the background; may I know what that is about?

Chair Hardesty:
I do not think it has anything to do with you. I think a gentleman was just asking a question, so you can proceed with your comments.

Anonymous Female:

Okay, thank you sir. And the statute of limitations tolls for our children so we are going to go ahead and start the legal proceedings, but please know that our children will relook at the issues when they reach the age of majority, and then the statute still tolls even past that. If they are contacted by their abusers, the statute could even continue to toll past that. So we just want to make you to aware that these proceedings will be going on for a very long time. Now, then-Chief Justice Hardesty, in June 2010, was legally counseled by a Nevada Supreme Court staff attorney just a couple of weeks prior to the June 3, 2010 meeting, and the attorney counseled all of the Supreme Court justices to get umbrella policies. That was wise legal counsel. The umbrella policies, what she didn't have at that time, in 2010, was how much the cost of the umbrella policy, not the cost, the amount of coverage of the umbrella policy should be. Well, if she were still the staff attorney for the Nevada Supreme Court justices, she would advise to make the coverage on your umbrella policies $3 million. That is what has been awarded to the first five children that have gone forward against the State because their evidence was destroyed prior to them reaching majoral age. So we think you should take attorney Neuffer's advice; get umbrella policies. That way, when, and of course, we are going to sue each of you individually; that case was decided and upheld by the United States Supreme Court, thanks to the ACLU and the *Kidd v. Ashcroft* case. So we are just letting you know that and we just can't tell you how disappointing it is that you won't address abused children but you'll address giving inmates three square meals a day when you don't even know that abused children don't even get that.

Tonja Brown (Advocate for the Inmates, Advocate for the Innocent):
We have discussed why more inmates are not being paroled. Grievances are filed by inmates and then go through a process by a member of the Nevada Department of Corrections (NDOC). If the inmate loses, he can appeal to a higher level. Disciplinary actions can be imposed which can result in being transferred to another institution, being placed in segregation, being locked in isolation, denied visitations and credits used toward an early parole can be taken away. Disciplinary actions are factored in to parole decisions. The inmate can file a suit against NDOC and its employees who they believe violated their rights. If the inmate files suit against the NDOC and wins, that outcome is not reflected in the NDOC or notice files, but is submitted to the Parole Board. That is the same with breach of settlement agreements and ongoing litigation. There is retaliation, segregation, medical, and those in medical do not get good time credits.

Reasons for parole denials include that the inmate has not completed his programming, is a threat to society based on new information, has an appeal pending, 2007 Assembly Bill (A.B.) 510, the seriousness of the offense, the psych panel changed the risk assessment to higher risk for no reason.

ASSEMBLY BILL 510: Makes various changes pertaining to offenders. (BDR 16-1377)

Violating inmate's due process to receive a parole hearing in revocations by the parole board leads to litigation. The Parole Board denies inmates who maintain innocence. I was asked by a friend if I would step in in her place. Her daughter was sexually assaulted and the Parole Board sent her two letters. One was under the open meeting law and the second letter was a way to circumvent the open meeting law and present evidence and testimony that would remain confidential. That plays a factor in denials because the inmate does not know what the evidence is and if it is even true.

Assembly Bill 267 pertains to inmates who committed crimes under the age of 25. We have heard that the male brain does not mature and now they are looking at those under the age of 18. Then, you have those who committed crimes at age 19 or 20 and the brain does not mature until the age of 25, and they have been in 35 years.

ASSEMBLY BILL 267: Revises provisions concerning the sentencing and parole of persons convicted as an adult for a crime committed when the person was less than 18 years of age. (BDR 14-641)

An inmate sent me a 2015 U.S. District Court document from the case of *Jesse Anderson v. Connie Bisbee*. An order was issued in 2016 and briefly states that the plaintiff was not given prior notice of the hearing nor the opportunity to be heard to present witnesses and documentary evidence and that he did not violate the conditions of his parole. The plaintiff alleged that defendant Bisbee was biased against him due to

previous lawsuits he filed against her. He did not have a neutral and detached hearing body. Plaintiff may proceed on his 4th amendment claim against defendant Bisbee. The court finds that plaintiff has stated … retaliation claim based on plaintiff's allegation he had filed two previous lawsuits against defendant and during his parole revocation, defendant refused to recuse herself and denied plaintiff's request for continuance and present witnesses during the hearing. Plaintiff will proceed on the 6th amendment claim.

Much of what we hear just touches on the surface of the Parole Board. You have to allow these inmates to be able to see and check for accuracy. This is why we need an independent ombudsman with oversight over the Parole Board.

Chair Hardesty:
Ms. Brown, we have extended you the courtesy of setting aside 15 minutes in our August 31 meeting to discuss your issue so we would request the courtesy of you sticking within the public comment period.

We have a few follow-up items on the agenda today but consistent with the vote by this Advisory Commission to focus our attention on the assessment of category B felonies and the approach the Legislature might consider taking in the future in making decisions on sentencing lengths when activities are criminalized and are in our code, we are focusing now on the responses we got from Commission members about those category B felonies.

I also want to set this in context by rounding out our discussion on the restoration of rights, so people understand what the implications are from a conviction as well as the policy approaches from the National Council of State Legislatures (NCSL) that this Advisory Commission should be considering. We solicited from the Commissioners a list of category B offenses that we would evaluate and prioritize. I invite Commissioners who have not submitted their list to speak up. Those are my priorities for today's meeting.

Assemblyman Elliot T. Anderson (Assembly District No. 15):
Is there a list of every category B felony? It might make our research easier.

Chair Hardesty:
Yes, prior to the last meeting on June 14, 2016, we distributed a complete list of all the category B felonies. I believe there were 218 or 220 of them. If you can get on the ACAJ website for the last meeting, there is an exhibit with all of the category B felonies. From that list, I asked Commissioners to look at the crimes and categorize them for reclassification based on principles that guide sentencing determinations recommended by NCSL.

Reporting on the Justice Reinvestment Initiative, I am waiting for a callback from those folks. I will open agenda item VII with a presentation from Diane Thornton.

Diane Thornton (Senior Research Analyst, Research Division, Legislative Counsel Bureau):
I will present two legislative histories. The first history is on *Nevada Revised Statutes* (NRS) 213.1075, governing the confidentiality of certain information leading to parole. I have submitted a document listing the history of this legislation (Agenda Item VII A-1). There were many changes made to this statute; the last in 2005 where the confidentiality cloak was expanded to include any employee of the Division of Parole and Probation. I could not find any reason in the minutes why the confidentiality was broadened.

Senator Ford:
What issue was the Legislature attempting to address in 1945 with the passage of the initial bill?

Ms. Thornton:
I will research that.

The second legislative history pertains to NRS 213.1243, the statute governing the lifetime supervision of sex offenders. The history of this legislation stems from the federal passage of Megan's Law in 1994. Across the country, laws were enacted, named for a 7-year-old girl named Megan from New Jersey who was sexually assaulted and murdered in 1994 by a neighbor who, unknown to the victim's family, had been previously convicted of sex offenses against children. I have submitted a document with the full history of this legislation in Nevada (Agenda Item VII A-2).

There were several changes to the law after 1995, including the 2005 passage of *Senate Bill (S.B.) 341 of the 73rd Legislative Session* at a meeting in which the Director of the Department of Public Safety (DPS) testified that the bill would assist DPS with cleaning up the language on lifetime supervision for interstate compacts.

SENATE BILL 341: Makes various changes concerning sex offenders and offenders convicted of crimes against children. (BDR 14-678)

The bill also authorized certain access to information from the Central Repository for Nevada Records of Criminal History and required DPS to establish a community notification website. Additionally, sex offenders were required to register prior to renewing driver's licenses.

In 2007, *S.B. 354 of the 74th Legislative Session* clarified that sex offenders living in transitional housing are prohibited from being near a school, movie theater or other child-oriented business.

SENATE BILL 354: Makes various changes to provisions relating to the safety of children. (BDR 15-1062)

Also in 2007, *S.B. 471 of the 74th Legislative Session* made the most sweeping changes to the statute, establishing community safety zones that required certain distances between places where a Tier 3 sex offender or a sex offender who committed crimes against children under the age of 14 could reside or loiter.

SENATE BILL 471: Makes various changes to provisions related to sex offenders, offenders convicted of a crime against a child and other criminal offenders. (BDR 14-1426)

This law also required an incarcerated sex offender or an offender convicted of a crime against a child to register with a law enforcement agency in the jurisdiction where he or she would reside upon release. It required electronic monitoring of certain offenders by the Division of Parole and Probation, changed certain provisions concerning Tier 3 sex offenders and increased penalties.

The last change to the statute was in 2009 with *A.B. 325 of the 75th Legislative Session*, which clarified the community safety zones, effective dates and provided that a person convicted of certain sexual offenses and released on probation, has a suspended sentence, parole or placed on lifetime supervision must not have any contact with the victim or the witness who testified against them unless approved by the chief of the Division of Parole and Probation or his designee.

ASSEMBLY BILL 325: Revises provisions relating to sex offenders. (BDR 14-1028)

Chair Hardesty:
As I mentioned earlier during Mr. Goetz's testimony, there has been a recent Nevada Supreme Court decision we will talk about later as soon as the remittitur in that case issues, if it does by the time we conclude our work here this year. If you can provide Mr. Anthony with a short memo about the 1945 history on the other bill, that would be great.

I will now open agenda item VIII, a presentation on Bill Draft Request No. 83 regarding aggregated sentences and parole eligibility.

Connie Bisbee (Chairman, State Board of Parole Commissioners):
In the 2009 Session of the Legislature, Senator David Parks started aggregated sentences which allowed inmates to opt in to aggregating their sentences if they had a life to a life sentence to go to. Within a week of that passing, the very first eligible inmate opted in. I had the pleasure of calling the victim of that inmate's crime and telling her that he had opted in. She was thrilled and thankful for the law that meant she would not have to face the man who murdered her daughter for another 10 years. Victims were a huge part of that. Nevada is unusual in the fact that we do consecutive sentences and hearings in-between each of them.

In 2011, Senator Parks expanded to allow aggregation of sentences for any crime, not just life crimes. It did not pass that Session. Senator Parks came back with it in 2013, finding more interest in the issue. It sailed through both houses of the Legislature and was approved unanimously. Unfortunately, when it failed in 2011, we realized there was a problem with it because it did not make clear that you could also aggregate dissimilar sentences. For example, if you had a sentence for burglary and another sentence for something that happened several months later for auto theft, by the clear writing of the law, the fact that they had two different case numbers meant that you could not aggregate those sentences. All you could aggregate were sentences that were consecutive with the same case number.

We had realized this in 2011 and were prepared to deal with it using an amendment to the bill, but after it crashed that year, by the time it came back up in 2013, we had forgotten about it. After sailing through both houses in 2013, the NDOC had done all this work on it, so they put all of the inmates into the program whether they had the same case number or not. Then they realized the law did not allow this.

So in 2015, that was not addressed, but there has been great interest between NDOC and the Parole Board, working on the language together. The new NDOC Director is supportive of this and so am I. If it is passed in 2017, it will allow an inmate to opt in those dissimilar sentences and be able to aggregate all of them. That was originally how NDOC had set it up.

If you look at page 3 of my handout (Agenda Item VIII), section 6 of NRS 176.035, it takes A.B. 267 in to consideration. That bill did not exist when we realized we had the problem in 2011. We wanted to be sure not to punish an inmate who had been aggregated and then the law changed, so we did not un-aggregate. There is a section in here where an inmate who has not been heard on one of those cases could once again opt in to a full aggregation. Also, if the court chooses, it can aggregate sentences from different jurisdictions. I do not see a downside of this. This allows for the least period of time in which to make rehabilitative changes and be considered for parole. It also lengthens the time on the street that concerned so many people about whether or not there would be supervision at the end of an aggregated sentence.

I encourage us to support this bill draft request (BDR). It is advantageous for an inmate to do this; it is advantageous to the State because it gives us the opportunity that, if appropriate, we can release an inmate at the absolute minimum time served and it gives us the ability to do that supervision at the other end, which helps reduce recidivism. Additionally, if you look under subsection 3 of NRS 213.1212, it addresses the problems many people have with the confusing credit schemes in this State.

Chair Hardesty:
It is also advantageous to victims who are not being expected to come back time and time again to subsequent parole hearings when the defendant has completed the minimum length of a sentence. I would like to have some conversation about this subject and possibly entertain a motion as one of our recommendations to be considered by this Commission.

Mark Jackson (Douglas County District Attorney, Vice Chair):
Whenever I read language in a statute about establishing a fixed term based upon any type of an assumption, it always causes me to pause. The changes to subsection 3, paragraphs (c), (d) and (e) of NRS 213.1212 are based upon that. We are all aware that there are many credits available for prisoners in this State. Except for the two that exclude under those three paragraphs regarding the credit for donating blood or for those educational achievements which will apply to the maximum and not to the minimum. One of my concerns is that if all the credits are not available to all the prisoners, how would we address that? I am concerned that this could potentially cause an issue because it is based upon an assumption that every other credit except for these two would be applied to establishing the minimum for the determination of the aggregate. Am I reading this wrong?

Ms. Bisbee:
What it says is that the credit allowance that would be used is that particular one. To manage the different credit schemes that exist in our law right is a horrible headache. Few people have been around long enough to even understand all the applications of them. The NDOC has to be able to manage that prison sentence. If it is a constant change with an aggregated sentence, where, for example, on this one we are going to apply this number of credits and on that one we are going to apply a different number of credits, then it becomes something that is not practical or workable. If it is the same way all around, it is not to anybody's detriment. It can fare well for some inmates, but the bottom line is that even with credits applied to the minimums, it is still up to the Parole Board, under a discretionary scheme, to decide whether it is the right time to parole these inmates out.

Chair Hardesty:
My understanding of this language is that it is addressing credits that are allowable, not necessarily those that the inmate is entitled to. If credits are allowable under a given

statute, but not awarded because they are discretionary, then the credits earned are only those which the inmate has indeed earned.

Dwayne Deal (Administrator, Offender Management Division, Nevada Department of Corrections):
A number of different sentence credit laws apply. When you have an aggregated sentence, you only have one sentence and you need to have one sentence credit law apply to that sentence. When we started trying to mix the various credit laws, the system broke down and we were not able to do that. To have one sentence credit law, there is really only one way to do that—it has to apply to basically everybody. This way was the least detrimental to inmates, and it still held the discretionary option of the Parole Board to deny or grant parole.

Regarding credits, there are stat credits, required by law and automatically applied. There are also work credits, which are used in our projections—we project to have them earned, so each month the amount that was actually earned is applied or if the inmate did not earn any work credits, those projected credits are zeroed out. There are also meritorious credits, which are based on statutes. Those are not calculated into the projected dates, but when earned and applied, they move the expiration date of a sentence forward.

Chair Hardesty:
In any event, the language here would not extend credits to an inmate that were not earned through work credits or were not entitled to as meritorious credits.

Mr. Deal:
One of the older sentence credit laws is NRS 209.443; I would have to look up what timeframes apply to that.

Ms. Bisbee:
In the big indicator there is the part about getting credit for giving blood, which has not happened in decades.

Mr. Deal:
I have not seen that in forever. I can look at NRS 209.443 and get back to somebody.

Chair Hardesty:
I think the question is whether or not the statute as proposed here is saying that someone who did not earn credits will nevertheless get them. I do not think that is what this statute is saying at all. It is saying that these statutes afford you these credits and that is what will be used in the count, either by statutory mandate or by having earned them as work or meritorious credits, in counting the aggregate sentences.

Mr. Deal:
We certainly would not want to have credits being provided to inmates that they did not earn.

Chair Hardesty:
Yes, and I do not see this statute doing that. It is simply taking into account the various credit statutes.

Ms. Bisbee:
Nevada Revised Statutes (NRS) 209.433 has to do with inmates sentenced before 1969, so they wanted to take care of every possibility. The inmate would not necessarily receive the credits that are projected, but the minimum term would be based on the projection if they had received them.

Chair Hardesty:
In any event, the board will assess that at the time an inmate shows up to determine their eligibility to be in front of the Parole Board.

Ms. Bisbee:
All the other credits would come off the back end, not the front end. That part was put in to address those under NRS 209.433 who were sentenced before 1969. This just illustrates how difficult the whole credit issue is because there are so many schemes. I do not know how many inmates we still have who were sentenced before 1969.

Mr. Deal:
We still have some, but as we go along, more and more of these older statutes will not be applicable because those inmates will be out.

Ms. Bisbee:
When they were looking at all the different possibilities, they wanted to make sure all of them were covered. Originally, when we realized we did not have the ability to aggregate the different sentences, they went back to the minutia of it to make sure everything was covered. That is in reference to those convicted prior to 1969. The bottom line still will be that regardless of when they come to the Parole Board, it is still discretionary.

Holly Welborn (Policy Director, ACLU of Nevada, Inmate Advocate):
I am pleased to see there is an exception for A.B. 267, but I want to clarify that there is proposed legislation for that bill which will require automatic aggregation of eligible individuals. Also, at what point is the person notified of their eligibility to opt in?

Ms. Bisbee:
They are notified as soon as the law changes. It is posted in all units of NDOC. Inmates have been watching this issue very closely. I have not seen what the final proposal is on A.B. 267.

Assemblyman John Hambrick (Assembly District No. 2):
There is a BDR that has been submitted to amend A.B. 267. Both Ms. Bisbee and I have been in contact with James Dold. I have submitted an amendment to that bill which should be public any day now and will address many of these issues.

Chair Hardesty:
As to those offenses?

Assemblyman Hambrick:
Yes.

Judge Kevin Higgins (Justice of the Peace, Sparks Justice Court):
It has been a while since I have done prison math, but if you have three 2 years to 5 years sentences, if this bill passes, instead of having to go to the Parole Board every 2 years for three times, you could elect to go once after 6 years.

Mr. Deal:
Correct.

Chair Hardesty:
Although it could be slightly shorter than that, depending on the credits and that has been the nature of our discussion. It is not impacted by credits on the top side, which adjusts the period of supervision if you get paroled.

Ms. Bisbee:
The 6-15 could be a 4-15 because they were category C and category D crimes.

Chuck Callaway (Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):
You said the inmates are watching this issue to see what happens. How many are you talking about, from a practical standpoint? Will it mean 50 percent are eligible for parole at an earlier or later date? What is the impact if this were to pass?

Ms. Bisbee:
I am taking a wag here, because when we originally worked on those numbers of eligibility, it was several years ago. They started being aggregated by law at sentencing after July 1, 2014. Those previous to that who were eligible for aggregation under the way we thought we had drafted it, numbered 330 inmates at that time. Those that have

qualified for aggregation have already been aggregated if they opted in. I would be surprised if there are even 100 inmates now.

Mr. Deal:
Last time I checked, we have more than 700 inmates with aggregated sentences now. What this will do is allow multiple case numbers to be aggregated. I do not know how many inmates that will affect. We can probably get an idea of how many inmates are eligible but we have no idea, or how many will request it.

Mr. Callaway:
Would this reduce their sentences?

Ms. Bisbee:
The impact it has on their sentences is that they are not seen for each individual sentence; they are seen for the first time under the minimum of all of their convictions added up. On the 700 aggregates, remember that a bunch of those were aggregated by law since the original 330 when this was an opt-in issue. Those include offenders sentenced since 2014. The impact is that rather than see them each time they are eligible, you see them one time for their first eligibility on all the minimums tacked together. It will not make a huge difference, but in the long run it will increase the amount of time people are on supervision at the end of it. Instead of serving a short time because you have seen each case individually and the other ones have expired, you would be waiting for the end of it and they would have that long tail on parole.

Chair Hardesty:
As a former sentencing judge, I have been enthusiastic about this for 5 years.

Mr. Callaway:
This is an area I am not super familiar with it so I am just trying to get a clear picture. So if a person goes on a robbery spree and commits six robberies over a period of several weeks, all with individual sentences, let us say that in robbery No. 1, he is eligible for parole tomorrow, but in robbery No. 2, he is not eligible until the next year. He would currently go before the Parole Board and maybe they grant it, but he stays in prison because he still has the second one he is not eligible for. Under this system they would all be aggregated into one, so he could go before the Parole Board for the first one, and if it is granted, he could be released even though he has these other ones that he might not be eligible for. Do I understand that correctly?

Chair Hardesty:
No, that is not correct. The hypothetical offered by Judge Higgins is the one I would like to return to. In that robbery crime spree, say there are three separate counts where the judge sentences the defendant to a minimum of 2 years and a maximum of 5 years on each of the three counts. Currently, the defendant goes to Parole Board after the first

2 years on count one. If the Parole Board determined he should be paroled on that count, he would then move to serve on count two and serve that sentence and be eligible to see the Parole Board again in 2 years on that second count. It he is granted parole, then he moves to serving the third count of robbery and then sees the Parole Board after 2 years. If he is then paroled, he is released from prison. The problem is, the period of supervision is measured by the remaining balance of the sentence from the third count because he has already been paroled and excused on the first two counts. For a victim, they have to appear at every single Parole Board hearing.

In the same situation under an aggregated sentence, where the sentences are combined instead of being served sequentially, the defendant would first appear before the Parole Board after 6 years instead of 2 years, subject credits earned. If the Parole Board were to grant parole at that 6 year mark, the offender would be released but still subject to the 15 years at the top end of his sentence. One of the benefits is that the Parole Board has less hearings to see, victims have less to attend, the defendant has serves all the minimum sentences when first standing before the Parole Board and the State has a supervision time that is much longer.

Mr. Callaway:
That helps, thank you.

Ms. Bisbee:
In 2011, there were 3,000 inmates serving consecutive sentences. At that time, 1,100 inmates were serving denial periods between the consecutive sentences. The practicality is that there is a huge fiscal impact on prison time. After seeing inmates with consecutive sentences for so many years, we have learned that if there is going to be trouble with adjustment or behavior, it is going to happen at the front end of time served. Of these 1,100 inmates serving denial periods, they could have been seen after 2 years, during which their behavior has probably not changed; programming has not happened; they are not doing anything that makes you feel better about releasing them to the street. Whereas, if that same person had served 6 years and had the behavioral problems in the first 2 years, it would likely have been something the inmate had worked out and could reflect on at the 6-year Parole Board hearing. We have a better opportunity to parole them at that point. If they were denied to expiration at the first 2-year eligibility on a non-aggregated sentence, they could have done more time. Aggregation is positive for inmates; positive for the State and really positive for victims. In fact, only one victim has objected to having their offender getting an aggregated sentence—that person wanted to see the inmate on every single sentence. It appears to be a win-win-win situation and it is important to remember that ultimately, we still have a discretionary parole system in Nevada.

Chair Hardesty:
To return to the hypothetical, say that on count one, after the inmate served 2 years and was seen by the Parole Board, he was denied parole because the Board was not satisfied with the progress he had made in that time. Now he would do an additional 1 year at least before being able to come back before the Parole Board. If that is the only instance in which parole was delayed, now they have served 7 years of minimum instead of 6 years. This adds time to the incarceration period.

Mr. Jackson:
I support this proposal. One issue this does not take care of that victim advocates and prosecutors have to deal with is that under NRS 176.035, subsection 1, if the court imposes sentences to run consecutively, it must pronounce the minimum and maximum aggregate terms of imprisonment pursuant to the statute. What would happen is that in our guilty plea agreements, if there is a consecutive sentence, we would have language in there to ensure that during the canvass, the defendant is made aware of this.

In the hypothetical three robberies with 2-5 year sentences, the victim walks out of court after the first hearing, thinking the perpetrator will not be eligible for parole for 6 years but that is before any of the credits get applied which will happen at the prison. If in the scenario these were all category C felonies, what type of time are we talking about?

Mr. Deal:
Under current statute, NRS 209.4465, you can get 20 stat credits per month and 10 work credits at medium custody. That cuts the sentence a day for day, so it would be approximately 50 percent off sentences.

Chair Hardesty:
Those credits are going to be earned on the minimum side with or without aggregation. In the hypothetical, that defendant will be coming before the Parole Board in less than 2 years because of credits. This conversation underscores the need for a complete reexamination of the credit system in Nevada. It is confusing, almost impossible to calculate, and it needs to be reworked and restructured. It is so complicated we only have a couple staff members at the Nevada Supreme Court who understand it. Why have a system that is so complicated and difficult that victims and even defendants cannot understand it? We need to revisit that.

Mr. Jackson:
I agree. This proposal does not take care if that issue, but it does provide benefits. It is important to be able to tell a victim in a case such as three consecutive sentences of 2-5 years aggregated to 6-15 that, for all intent and purposes, most likely the perpetrator will go before the Parole Board in 3 years, not 6 years.

Ms. Bisbee:
And they will expire that 15 years in seven-and-a-half years. We deal with that on a daily basis. The court proclaims the sentence, but once the credits are applied, we have victims in shock constantly when they find out the maximum sentence expiration is much shorter than the sentence.

Chair Hardesty:
Even judges are not clear on this. They think they have sentenced someone to a 6-15 year sentence only to find out that by the time you work through all the credits, they have in actuality sentenced someone to half of that. It is a problem throughout the system.

Mr. Deal:
I want to point out that in the hypothetical you said make them a category C and a category D instead of category A or category B because the latter two do not get credits off their minimum terms. The statute also stipulates that violence or sex offenses do not get credits. You could have a violent or sex crime that is a category C or category D that still will not get the time off the front. Many people miss this, even some of the courts.

Mr. Jackson:
Do you have a list of those category C and category D crimes that fall under the violent offense category?

Mr. Deal:
Yes, we can provide them to the Commission.

Assemblyman Anderson:
There is an interesting prison math presentation available that might be interesting for us all to see.

Chair Hardesty:
The district court judges saw this a few years ago at a conference. It caught many of them by surprise. I want to put this issue as a separate agenda item and provide the Commission with a better overall picture of the challenges that NDOC, the Parole Board and others in the system work with. It is a very challenging system to follow.

SENATOR FORD MOVED TO ENDORSE THE RECOMMENDATION THAT THE 2017 LEGISLATURE MODIFY THE AGGREGATE SENTENCING BILL AS RECOMMENDED BY MS. BISBEE.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY BY ALL COMMISSION MEMBERS PRESENT.

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If Mr. Deal could provide us with that list of the credits, especially as they relate to the violence and sex offense exceptions. I will have Mr. Anthony get together with the folks so we can develop an appropriate presentation on the broader question of the credit calculation issues.

I will now open agenda item IX, an overview of the restoration of rights of convicted persons in the State.

Nicolas C. Anthony (Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau):
This is a broad, general outline of the restoration of rights, which has been an issue taken up by the Legislature over several sessions in the last 2 decades or so. This agenda item was requested by Senator Ford. I have submitted documents (Agenda Item IX), starting with the constitutional requirements moving into the statutory references for restoration of rights. As opposed to a general outline, I thought it was important to actually provide the blackletter law there.

When we talk about ex-felons restoration of rights, they are largely the right to vote, the right to hold office and the right to serve on a jury. Firearms are a separate issue that I will discuss later. The Nevada Constitution says, “No person who has been convicted of treason or felony in any state or territory of the United States, unless restored to civil rights, shall be entitled the privilege of an elector, to hold office or sit on a jury.” That is Nevada Constitution article 2, section 1; article 15, section 3 and NRS 6.010 as it relates to a jury.

In 2003, a bill passed with a lot of work by the late Assemblyman Bernie Anderson. The bill was *Assembly Bill 55 of the 72nd Legislative Session*, which provided automatic restoration. That bill allowed first time felony offenders, convicted of felonies which are below category A or category B involving the use of force or violence, to be immediately restored to their right to vote, serve on a civil jury, hold office after 4 years and to serve on a criminal jury after 6 years.

ASSEMBLY BILL (A.B.) 55: Makes various changes concerning persons convicted of certain crimes. (BDR 14-330)

The restoration of these rights take effect upon the flattening out or completion of a sentence which is in NRS 213.157, the offender’s honorable discharge from parole,

which is in NRS 213.155 or the honorable discharge from probation which is in NRS 176A.850 (page 16, Agenda Item IX).

Following a person's release from prison or honorable discharge, that individual must be given, by statute, a document saying their rights to vote and serve on a civil jury have been immediately restored. The document also provides the date upon which the right to hold office and serve as a criminal juror will be restored. If the person loses that information, he or she can file with a court of competent jurisdiction for an order restoring civil rights. Much of this information is available to offenders through the courts. The Eighth Judicial District Court of Clark County has a great website that explains this information.

Another process to restore rights is for a person to apply to either a court or for a pardon to have their voting rights restored. Any person can apply for this, but specifically a category A felony or a category B felony involving the use of force or violence; or a person with two or more felonies not arriving out of the same act. These individuals are not eligible for automatic restoration; they have to apply to a court of competent jurisdiction, not the original sentencing court, but any court.

Ex-felons wanting to restore their rights could also apply for a pardon. The Board of Pardons Commissioners can restore the civil rights of any felon. That Board consists of the Governor, Supreme Court Justices and the State Attorney General. The Board has pardon authority for all offenses except impeachment and treason. Pardons are granted by a majority vote, but the Governor must be in the majority.

Pursuant to NRS 213.090 (page 27, Agenda Item IX), a pardon granted by the Board is deemed to be a full and unconditional pardon unless the Board explicitly limits the restoration of rights. The person pardoned must be given an official document which provides that the person has been granted a pardon and also explains the rights granted.

The final way to seek restoration of rights is through sealing of records. Not all felonies can be sealed (page 21, Agenda Item IX). If a person's rights are not already restored, he or she can file under NRS 179.245 to petition the court of original conviction for the sealing of criminal records after a certain amount of time, ranging from 15 years for certain category A and category B felonies to 7 years for category E felonies. Not all felonies are eligible to be sealed and those are spelled out in the statute.

Pursuant to NRS 179.285 (page 25, Agenda Item IX), the effect of sealing records is that the person is immediately restored the right to vote, hold office and serve on a jury.

The right to own firearms is restored only by pardon, NRS 213.090. If a person is restored the right to bear arms, the official pardon document must explicitly state this.

Except as provided by specific statute, juvenile adjudications do not impact any civil disabilities. They do not have to go through restoration of rights. Persons convicted out of state may only exercise civil rights in Nevada if they were restored in the original crime state.

Persons convicted of a federal offense may only regain civil rights in Nevada with proof of a restoration by federal authorities, which is currently a Presidential pardon.

There has been legislation over the years to address this issue. Among others, *Assembly Bill 301 of the 76th Legislative Session* in 2011 sought to immediately restore the right to vote to all felons, regardless of offense. That bill passed the Legislature but was vetoed by the Governor.

ASSEMBLY BILL 301: Revises provisions governing the restoration of civil rights for ex-felons. (BDR 16-687)

This Advisory Commission has heard from national experts on this issue in the past, and Nevada is very much in line with other states.

Mr. Callaway:
Regarding firearm rights restoration, if someone is convicted of a felony and is prohibited from possessing a gun so the only way they can have that right restored is through a pardon, and then that person seals their record, when they go to purchase firearm, how will anyone know they are prohibited? My understanding is that a sealed record is deemed to have never existed.

Julie Butler, Administrator (General Services Division, Department of Public Safety):
There was a bill in the 2011 Session, *Assembly Bill 66 of the 76th Legislative Session*, that allowed the Board of Pardons Commissioners to look at sealed records before the determination to grant a pardon. You are right, if you have sealed your records or applied for the pardon first, you still could not legally purchase that firearm. We proposed that the Pardons Board be able to open a sealed record for that reason.

ASSEMBLY BILL 66: Revises certain provisions concerning the restoration of a person's right to bear arms. (BDR 14-465)

Chair Hardesty:
I think Mr. Callaway's question is that if a person seals their criminal records but under their conviction they are precluded of having a firearm. So how does the Central Repository for Nevada Records of Criminal History or a similar system in Clark County pick that up if the record has been sealed?

Ms. Butler:
They would not pick it up if it has been sealed. However, the FBI does not recognize Nevada seals because those records can be opened by certain entities. Even if the records had been sealed, the FBI does not recognize it as valid. But if it has been sealed and the record is run, a local jurisdiction would not know that.

Mr. Callaway:
So, in a Brady check, for example, say I have my records sealed but I do not have a pardon. I walk into a gun store, technically as a prohibited person, but there would be no way of them determining that. If that is the case, there is a loophole.

Ms. Butler:
My staff would be able to view that because we can look at sealed records. Your average criminal justice partner would not be able to determine that.

Chair Hardesty:
I think the answer is that it is a concern. I do not know that the Brady check would pick that up. Do you?

Mr. Callaway:
I do not believe it would. I bring this up because I have had this asked of me and I think there is a loophole. I do not know what the answer is because on the one hand, if the record was sealed but there was some kind of flag indicating that the record is sealed but the person is still prohibited, then the fact that the flag is there would show they had some type of conviction. Then the question becomes, if you are sealing your records and trying to show there was no conviction, how do we balance that person's ability to seal their records with the public safety aspect of keeping a prohibited person from possessing a firearm?

Chair Hardesty:
I think we need more information before we are in a position to assess where we are. I was going to ask Mr. Anthony to follow up with Ms. Butler and others to get a better understanding about how Brady checks are conducted with respect to those with sealed criminal files.

Eric Spratley (Lieutenant, Washoe County Sheriff's Office):
Part of that conversation will also be regarding Carrying a Concealed Weapon (CCW) permits because those are done at the local sheriff level. If we cannot see the sealed records and we grant a CCW, that might give some leverage to the person being able to obtain a firearm.

Chair Hardesty:
Mr. Spratley, I have a homework assignment for you and Mr. Callaway to inquire of your respective sheriffs and their departments to find out how you currently address those kinds of applications and if you are you able access a sealed criminal file for gun purchases.

Mr. Callaway:
In the past conversations I have had with my firearms detail, if the background check was being done for the CCW permit and the detective spoke to a relative or someone who said, "Oh, he should not have a gun; he has a conviction," but there was no record showing that and the detective believed it had been sealed, they could petition the court to open the sealed record to determine if the person was prohibited. Aside from getting that tip, though, there would be no way for us to know the person was prohibited.

Chair Hardesty:
That is disconcerting. We need to follow up and get that information.

Mr. Higgins:
At the justice court level, we have had the opposite situation where people have had their domestic battery convictions sealed and they have not been able to clear a Brady check to be able to buy a handgun because the federal government does not recognize that seal. So somehow, the Brady check folks are getting past sealed records and probably the old FBI records are still available. I agree that more information is needed, because we have people coming to us, wanting to make a pardons application so they can have a weapon again after their domestic battery conviction.

Chair Hardesty:
I would like to round out this conversation on the Pardons Board's involvement in handling applications to allow someone to have a firearm. We hear roughly up to 25 cases every 6 months for people wanting the restoration of their civil rights Those requests often include a debate about whether they should be allowed to have a firearm as part of their request for the restoration of their civil rights. The outcome is not always certain. There are several cases where a person is denied the request to have a firearm as part of their restoration of civil rights.

The Pardons Board spends a lot of time looking at this question. My concern is that there are people with sealed records who are not aware they need to come to the Pardons Board. They may just assume, as a result of having gotten their record sealed, that they can now go get a gun. So someone could get their records sealed, go to a gun show, buy a gun and assume they are good to go without knowing they needed to come to the Pardons Board and now they have unknowingly committed a crime. It has a lot of different permutations. We just need to understand the facts a little bit better.

Ms. Butler:
That was why we brought A.B. 66 forward in 2011. Prior to that, if a person did get his or her records sealed and then went to purchase a firearm, the only mechanism in Nevada to restore that right was a pardon, and the Pardons Board did not have the ability to look at the sealed record to make that determination. The person was then just out of luck because the FBI does not recognize a sealed record so there is no provision in Nevada law that says just because you have a sealed record, you can get your firearm back.

Mr. Anthony:
For the Commission's reference, A.B. 66 was the 2011 bill that requires a court, if they are going to seal records, to give the person applying a written notice explaining that the sealing of this record does not restore one's right to bear arms and that the only way to get that is through a pardon. That put the person on notice.

Senator Ford:
Mr. Anthony, I would like copy of what you were reading. You indicated that in 2011, a bill to immediately restore all categories of felon's rights, A.B. 301, passed the Legislature and was sent to the Governor but was vetoed. Do you recall anything about the veto message telling why it was vetoed?

Mr. Anthony:
I can provide a copy of my written remarks. We will put that up on the website.

Senator Ford:
Part of the reason I am asking is because I had a bill last Session, 2015, where I intended to do something exactly like this. I intend to bring the bill back next Session and would be interested in understanding what I can address beforehand. Part of the other question I have relates to the onset for removing the right to vote. What was the initial reason in our State for doing that in the first place? Is there any history to why it was initially thought we should deprive ex-felons of the right to vote and to serve on a jury?

Firearms is a different topic; I get that, at least in regard to certain felonies. If you were a violent felon and you get out, it makes sense you would not necessarily get your gun back. But marijuana possession may not make sense for not getting your gun back. I understand Kentucky was the first state to say ex-felons could not get the right to vote back. Why did we decide to do that in Nevada?

Mr. Anthony:
We can certainly research the history of restoration of rights in other states how it has developed there constitutionally and in statutory law.

In answer to your question about the Governor's veto message on A.B. 301, it said the bill would have sought to restore ex-felons rights to all persons regardless of category. The message says there were not compelling arguments to overlook the severity of certain offenses and alter the just punishment that is delivered to those who commit these more serious offenses.

Chair Hardesty:
We will get that veto message circulated to the Commission members, along with an additional memo that deals with the history behind the preclusion of voting or jury service as part of the overall understanding of this issue.

Senator Ford:
For context, the reason I asked about that is because to my surprise in 2013, the Senate Committee on Judiciary held a hearing on marijuana. I had no idea about the history of criminalization of marijuana, but we had a panel that talked to us about it, laying out some of the racial underpinnings for Mexicans and African Americans and how that brought about the onset of the criminalization of marijuana, as opposed an understanding of the medical aspects of using it, etc., It was amazing to hear that one of the reasons for criminalizing marijuana was initially based on race. I am interested in understanding if there is any race-based issue associated with the initial removal of certain rights for ex-felons. Hopefully, there is not.

Chair Hardesty:
We will get that additional information to you and circulate it to the Commission.

I will now open agenda item X, truth in sentencing. I asked Mr. Anthony to include some previously circulated materials concerning the publications about determinate and indeterminate sentencing and their differences.

Mr. Anthony:
This request goes back to the Commission's discussion at the June 14 meeting on *Senate Bill 416 of the 68th Legislative Session*, the truth in sentencing legislation that was enacted in 1995.

SENATE BILL (S.B.) 416: Makes various changes regarding sentencing of persons convicted of felonies. (BDR 15-1872

After that, I reached out to the National Conference of State Legislatures (NCSL), who provided these documents on determinate and indeterminate sentencing. There are 33 states, including Nevada, with indeterminate sentencing and 17 states with a determinate sentence where a judge actually hands down a specific sentence as opposed to a sentencing range.

I was also asked to look at the history of categories. There are five felony categories in Nevada from category A to category E. Looking at the 1995 legislation, Nevada had preexisting categories. They were not labeled or listed from A to E, but the 1995 Legislature looked at Arizona, which had recently gone to a class situation, making six categories. Looking at Western states on the sheets provided by NCSL (Agenda Item X A-1 and Agenda Item X A-2), you will see that some states use categories and some do not, although the handouts do not specifically delve into that topic as much. Our surrounding states of Utah and Oregon use categories but California and Idaho do not, instead specifically providing for the penalty under each criminal offense.

We also looked at some of the distinctions, such as the fact that A.B. 510 credits are only applicable to class C, class D and class E felons. The categories also come into play in a number of areas throughout statutes. Specifically, our attempt crimes—if you commit an attempted category A felony it is a category A offense; if you commit a category B attempt, it is a category B offense. It also comes into play in the restoration of rights in sealing records. Certain category A and category B felons do not get immediate restoration of rights. There are also additional penalties—attempt crimes obtaining and using personal identifying information, residential confinement eligibilities based on your category of offense, peace officer jurisdiction, which is limited jurisdiction for certain category B and below offenses; DNA evidence to be stored, alternative programs of treatment; certain eligibility for that as well. So there are a number of places where, subsequent to the 1995 legislation, those categories have been carved out to have an impact depending on whether a person is convicted of any of the five felony categories.

Chair Hardesty:
After our last meeting, I asked Mr. Anthony to dig into this because I was concerned that the definitions of the five felony categories were not clear. What is clear, though, is that there are consequences to being a category A, B, C, D or E felon, but even those have to be researched. As you heard from Mr. Anthony's report, there are a variety of consequences that befall a defendant depending on the category of their offense, not to mention the offense itself.

I want to ask Mr. Anthony to reduce his report to a memo to the Commission so everybody has the collection of those consequences in front of them as we consider how to approach this issue further in future meetings. For now, you have an overview that there are more than just credits; there are other consequences associated with finding ones' self to be convicted of an offense that lands you in a category B or category C felony slot. This is also relevant to our consideration of tendering category B offenses so we can debate and determine whether those should be shifted to another category or have sentencing lengths changed.

It also addresses the question about whether, in considering these categories, should they be, as appears in the basic 1995 history, built around the sentencing patterns of the State. The more serious offenses were viewed as category A with longer sentencing lengths while category E felonies were the least serious crimes with automatic probation. We have gotten away from that intent, it seems. I would like to see us revert back to that intent so that when the Legislature or an independent sentencing commission sets sentencing lengths, there is consistency in how we approach these lettered categories.

Mr. Higgins:
I sat in on those hearings in 1995 and my recollection is that those broad categories are supposed to reflect similar types of conduct to be punished similarly. So the worst violent and sex offenses were category A and down the line. The problem is, in the meantime, crimes have been placed in those categories because there was a sentence they wanted rather than it fitting into a category of the severity. There are some category B offenses—one that popped out to me was putting a lien on a judge's house. While I certainly do not want an illegal lien put on my house and there should be a penalty, I am not sure that falls into the same category as some violent and sexual assault offenses that are category B felonies.

It also makes it difficult in other circumstances. We are on a separate pretrial commission where we are trying to determine if people can be released pretrial with a validated form. It would be very easy if those stovepipe categories were consistent, so then we could say our pretrial resource people can release people with category E felonies that meet a certain criteria because they are all similar crimes. The problem is, now they are not. We have violent category E crimes that we probably do not want pretrial services to release.

I think there is a management issue. If we could get those categories into stovepipe classifications where they are separate again and consistent between all five felony categories, it would benefit prison management, parole and probation, pretrial decisions and improve our management of the criminal justice system in many ways. It is a huge job and maybe should be the task of a full time sentencing commission that could decide which categories crimes should fall into.

Mr. Spratley:
I want to thank Nick Anthony and his team for the way they put together information on category B felonies. One of the category B felonies is "transacting unauthorized insurance business." I do not know enough about the insurance business to know why this is a category B felony, but certainly, if I thought I had insurance and lost everything because I it turns out I was not insured, I would want this to be a category A felony. During Legislative Sessions, passions and emotions are there, everybody is on board and things get passed. It would be better for a sentencing commission comprised of

people absent all the passions to deliberate and look at the facts of where a crime should be categorized. I agree with the direction we are heading and I certainly appreciate it.

Chair Hardesty:
The examples cited by Judge Higgins and Mr. Spratley of the two crime types just confirm the importance of having this conversation and taking the sentencing lengths out of the passions and putting them into the consistency that the State can operate.

I will now open agenda item XI, an overview of possible recommendations regarding the seven principles of effective state sentencing and corrections policy.

Mr. Anthony:
I have submitted a document (Agenda Item XI A-1) based on the seven sentencing principles provided by the National Council of State Legislatures (NCSL) which we discussed at the last Commission meeting (Agenda Item XI A-2). The summary document I submitted is intended for discussion purposes for this Advisory Commission, whether you want to look at a policy statement, which could be drafted a number of ways, for example, place it in statute, create a preamble in statute, use transitory language, etc. Those are details this Advisory Commission can discuss. Essentially, the gist of it is that a bill draft request (BDR) proposing to amend the *Nevada Revised Statutes* (NRS) to make legislative findings and declarations that it is the policy of this State that these seven principles go into statute as an overarching policy somewhat similar to what this State has as a policy statement at the beginning in Chapter 463 of NRS for gaming. This would be a similar policy statement, perhaps at the beginning of Chapter 193 of NRS for criminal sentencing.

Chair Hardesty:
I asked Mr. Anthony to prepare this information consistent with the NCSL article (Agenda Item XI A-2), which I think is an excellent academic piece that provides guidance about the framework for sentencing decisions. I had in mind that the Commission might consider enacting this as a policy recommendation to the Legislature. To further underscore this, if one wanted to think even a little bit bigger, this would also form the direction to a sentencing commission in setting sentencing ranges with respect to crime types.

Mr. Jackson:
The NCSL report was done in 2011 and references several states. The seven proposed findings listed are probably agreed upon by all or most of us. Just adopting it without providing the meat may not give enough direction to the Legislature. Looking at No. 1, “Sentencing and corrections policies should embody fairness, consistency, proportionality and opportunity,” (Agenda Item XI A-1), I agree with that. This would bring up an issue of truth in sentencing. If we have a person commit a crime in one of

the rural counties, we would want to ensure that person is treated similarly in the criminal justice system as a person prosecuted and convicted in the more urban areas. That comes down to the judges, who are given a great amount of discretion. I have heard some judges speak of certain crimes where they would prefer more discretion because there are certain limitations with certain types of crimes, specifically, some category A felonies and level 1, 2 and 3 drug trafficking.

Under No. 2 (Agenda Item XI A-1) about clear and purposeful sentencing, if all of this is ultimately going to provide information to the Legislature next Session and if there was a BDR of a proposed criminal act and someone drafting it just slapped on that it is a category B with a 1-10 year sentence, these recommendations by themselves are not going to help guide the Legislature. I know it is a starting point. The second sentence in No. 2 where is says "The criminal code should articulate the purpose of sentencing, and related policies and practices should be logical, understandable, and transparent to stakeholders and the public," our codes are typically in our municipalities and counties while at the State level we refer to them as statutes. We would need the language to conform to that.

Under No., 3, the question would be what is a serious offender?

On No. 5, you have heard me talk repeatedly about being data driven. This Commission has not gotten there yet, but I agree with this item.

No. 6 (Agenda Item XI A-1) says "Sentencing and corrections policies should reflect current circumstances and needs." We have all seen that evolve. I was a member of Governor Gibbons' methamphetamine working group. We came out with a report that started from the 1980s and 1990s and the war on drugs. We tried to enforce our way out of that. My thinking changed a lot based upon that and I truly believe today that the key is prevention and when prevention fails, we need to deal with the treatment. Enforcement needs to be there, but we cannot enforce our way out of that. If we follow, for example, the criminalization of marijuana, look at how the State has handled marijuana offenses over the last 2 decades and the question that will be before the voters coming up. The public policies have really helped shape that.

No. 7, (Agenda Item XI A-1) relating to strategies to reduce crime and victimization involving prevention reminds me that the one thing I want to make sure we do not lose through all this is attention to the victims. All of this is related to the offender, but I want to make sure we do not lose the victims in this.

Chair Hardesty:
There needs to be an additional requirement that appropriate restitution is addressed. That is a key component in any sentencing approach that a judge would take. As well,

while this policy might be ambiguous, to a sentencing commission trained to evaluate sentencing links, this could be very meaningful.

Mr. Jackson, do you think we should have a sentencing commission? The Legislature assesses criminality but you could have a sentencing commission that administratively provides sentencing links within an appropriate policy direction. That seems like a smart on crime approach.

Mr. Jackson:
I agree, but do not think this NCSL list provides a lot of support. We are fortunate to have four Legislators on the Commission and I would like to hear from them if they thought this would provide them guidance or if it would be associated with a bill to create that sentencing commission. If it is part of the bill, it puts more sense to what it is we are trying to do as a Commission.

Assemblyman Anderson:
This list strikes me as useful in a declaration of intent for a sentencing commission. As far as slapping a category B classification on an issue we are passionate about, you can never really stop the Legislature from doing that; it would just require discipline of individuals to keep it fresh. As term limits cycle through, you have new Legislators come in. If you were really interested in making sure that did not happen, you would have to consider some sort of constitutional amendment to really effectuate stopping Legislators from coming in and just ignoring it and going outside the sentencing commission. There is always the potential that someone might run an initiative on an issue you would have to consider.

Chair Hardesty:
Great points. To the extent that the sentencing commission would be viewed as bridging the Legislature's ability to independently determine sentencing links, there is benefit in having a professional body that provides advice to the Legislature about sentencing recommendations and assessments. Just from the number of crime types we have in front of us, a sentencing commission would be pretty darn busy reorganizing all the existing crime types for 2019.

Assemblyman Anderson:
This would be a mission for the stakeholders to keep Legislators disciplined and continually educate new people coming in. We would have this professional body that could refer back to past actions of the Legislature and give advice.

Mr. Callaway:
I like the idea of a sentencing commission. I know today is not the day to get into the weeds, but some of the questions that pop into my head are: who would be on the sentencing commission, how would they be appointed, how long would they serve, what

type of training would they get and how often would they meet. Do they just look at new crimes or would it be all crimes? Can they change their mind and determine today that something is a category C and then change it to a category B later on? Would it require a super majority to implement something?

The bottom line is, we are taking the power away from the Legislature—right, wrong or indifferent—and handing it to this commission to determine what these crimes are. As Assemblyman Anderson said, what happens when you have a Legislator who is passionate about an issue and wants it to be a certain category? Would the sentencing commission have the ability to overrule that Legislator's decision? To me, the devil is in the detail and there would be a lot of questions that would need to be answered. Just making a recommendation to the Legislature to pursue or investigate this idea without any more significant detail does not seem like enough. We need to dig a lot deeper.

Chair Hardesty:
There are sentencing commissions that have different approaches around the country. If the Commission was interested in this concept, we would dig into this research more deeply.

Phil Kohn (Clark County Public Defender):
I have not said this many times the last few years, but I agree with everything Mr. Jackson said. It is important for district attorneys and public defenders can look at this because we do this every day. I was looking at No. 7 (Agenda Item XI A-1) and surprised Mr. Jackson was not more concerned about the issue of protecting society. I know that is in No. 7, but even as a public defender, I know that sentencing is sometimes, especially with the worst crimes, all about protection and not rehabilitation. I do think we should look at a committee that is put together by the different stakeholders and certainly people out of the State who have looked at these issues on a nationwide basis, like the NCSL report.

Regarding the discussion earlier about the insurance crime and judges getting liens against them, both classified as a category B felony; we know how that goes and Assemblyman Anderson mentioned it. Something that bothers someone a great deal is brought by a lobbyist to the Legislature and goes into a judicial committee. It sounds really bad at the time, but we do not compare it to how it affects other crimes. The idea of a sentencing committee that looks at all the crimes in Nevada and spends a couple years doing that, would be a good thing.

We are looking at the category B felonies today which makes sense. We have gone all these years with the war on crime and without ever looking at how one crime compares to another. Mr. Jackson, I really appreciate your comments. We should consider looking at the whole sentencing range and do it over 2 years to come up with something much fairer and better for taxpayers. We just cannot keep building prisons. I am very

concerned about specialty courts and trying to prevent mental health crimes and crimes by addicts but we are not doing a good job right now.

Ms. Welborn:
I echo that, but something sticks out for me in both approaching the category B felony assignment and listening to the comments made today is related to No. 2 on the list (Agenda Item XI A-1), the purpose of sentencing. What was the purpose of sentencing? What happened in the community that caused an uprising and created more laws? How did this become so disjointed when we are making these sentencing determinations?

From my perspective, because we have a biennial Legislature that requires reliance on commissions like this to make recommendations, I am behind creating a body that is consistently looking at our sentencing laws, helping to balance the need and outcry of a community and the civil rights implications of the people who are affected by the laws we create. It should be based on the needs of the lawmakers and what they need from people who are working on these issues in the interim. It is a very important discussion.

Chair Hardesty:
I am going to assume that most of us on the Commission endorse the idea of a sentencing commission whose principle mission is to advise or set sentencing lengths based on policies included within the scope of the NCSL report. I want to get more data on this for everyone here to give us a better feel for how these things operate and what it would do to stabilize the uncertainty created when you have these episodic and anecdotal approaches to criminal justice.

Ms. Bisbee:
By doing this, is there any way to address everything that already exists? The credit issue is a good example of that. Then you are trying to manage things that have 50 years of exceptions for certain cases. I think this is an excellent idea, but there is so much history in the back that I would hope there is a way to address that.

Chair Hardesty:
Potentially, the sentencing commission could look into that. What I have learned this year in this Commission is that there are areas of our criminal statutes, sentencing schemes and credits that are basically a hodgepodge. If you are going to have an effective, focused, smarter and efficient criminal justice system, you need to collect this information and straighten it out. It is a big task, no doubt. I hear Mark Jackson and Phil Kohn commenting about this issue and they see it every single day. If you had a sentencing commission made up of public defenders and district attorneys, you would probably come out with a pretty efficient set of sentencing ranges. They would not agree, but they could get in there and fight until they did and they would probably come out with what is fair and just.

Is this approach generally okay with the Commission? I have not heard from the Speaker or Senator Ford, and as Legislators, your views are pretty important here also.

Senator Ford:
I am in agreement with the notion of looking into a sentencing commission. We would just have to work out the details.

Assemblyman Hambrick:
I concur with Senator Ford. My only hope is that as we appoint commissioners, we look at the background of members to make sure they have the capability to understand these issues. Whether they are experts from around the State, including Health and Human Services people, law enforcement, probation; I think we need to have a broad spectrum, but make sure they truly understand the problem. We have had too many commissions of people of good faith and good will coming on who did not understand the problem. It will go a long way to give us a really good outcome if we ensure commission members do understand what is needed.

Chair Hardesty:
One thing I have learned as a lawyer and a judge is that we have some exceptional professionals in our system. If you bring those stakeholders together, you can put together some pretty imaginative, innovative outcomes. That is what this Commission could help generate. Obviously, when you create more commissions, the risk is that you are just punting the ultimate problem to another body. I do not want to do that. I want a group that, either in this Commission or in some other commission that meets more frequently and has greater fiscal support than we have and can also meet more regularly to offer meaningful and data driven advice, that keeps people within the silos instead of letting them wax and wane. That is the kind of mission we should aim for.

Assemblyman Hambrick:
I would hope the number of sentencing commissioners would be on the lower side rather than on the higher side. Occasionally, if we get too many members, it can get bogged down. I would recommend between five and seven members.

Chair Hardesty:
Great point. What I am hoping is that the Legislature would consider a commission that is not very large and full of professionals in the criminal justice system who can offer data-driven, fact-based information about these issues. I do not want to get away from what we might be able to do with respect to credits. At a minimum, hearing about the challenges of dealing with credits, the Legislature should reexamine the credits system and get something that is not so difficult to work with. The sentencing side is one thing, but the credits are really a challenge.

I will open agenda item XII, a review of category B felonies. At the last meeting of this Advisory Commission on June 14, I asked Commissioners to submit 20 or so category B offenses that they wanted the Commission to look at for examination and potential recategorization. We have two lists from that request (Agenda Item XII A-1 and Agenda Item XII A-2). When I met with Nick Anthony on this, rather than limiting it to 20, because there were a number of crimes that received at least four Commissioners' interest in discussing, we listed all the ones where there were four responses supporting revisiting a crime and its classification, noting that there were up to 50 more crimes identified by Commissioners that were also suggested for study. I ask all Commissioners who submitted a response identifying a crime that us not on this list to give support of why they want that crime on the list. Judge Higgins gave a good example of one earlier, the liens against a judge's house.

Mr. Anthony:
The Chair did an excellent job of laying out exactly what this document does (Agenda Item XII A-1). On the first page is a compilation of the nine responses staff received identifying category B offenses that should be further studied. Not every response specifically targeted 20 offenses; some did more, some did less. As the list shows, there were two crimes that eight Commissioners targeted—burglary and obtaining money, property, rent, or labor by false pretenses. The list only stops through those crimes that were identified by at least four Commission members. That gives us 37 category B felonies to look at on this list. There were an additional 51 felonies identified that are not on this list. This is from a total of approximately 218 category B felonies. After compiling this list, it was submitted to NDOC and they went through the list, giving us the total number of offenders serving each of the 37 offenses (Agenda Item XII A-2).

Chair Hardesty:
What I wanted to know is, of the 37 crime types identified, how many offenders currently sitting in NDOC would be affected by this. That does not mean that anybody's sentence would be retroactively changed. I want to be clear here. This is a prospective examination to look at what would happen if these 37 crimes were reclassified, and we see that the number is 4,592 inmates, representing about 40 percent of the total prison population. I need clarification from NDOC on that.

Mr. Deal:
We initially intended to try and break this down to number of inmates as well as sentences, so that is the number of sentences on each offense on that list (Agenda Item XII A-2). That number could include inmates who may be included in another offense; they could be serving multiple sentences concurrently. With more time we could whittle it down more, but we ran out of time.

Chair Hardesty:
But still, 4,592 sentences is pretty substantial.

Mr. Deal:
It is. I also put some notes on this to explain what these numbers mean. When we first got the request it raised some questions. From my point of view, we do not always necessarily look at the sentencing statutes; we go by what the judgement of conviction (JOC) says. Whatever the JOC says, that is what we do. When we got the request, we started looking up the statutes provided in this document and one of the first things we ran into is that we did not find offenses for one of the offenses that we knew should have several; it was one of the grand larcenies. When we looked at it, we discovered that we have this in our system as NRS 205.220 but it is NRS 205.222 on the list you gave us (Agenda Item XII A-1). We think the distinction is that NRS 205.220, is the descriptive statute and NRS 205.222 is the penalty statute.

As we audited these—we did as much as we could but did not do all—it brought to our attention that the JOCs have no consistency, especially from court to court. Some mention a single statute and some mention the base statute without drilling down; some stipulate categories and some do not. In most cases, the presentence investigation report (PSI) will usually stipulate the same statute and category of felony. It was just a number of issues we ran into.

Since we could not depend on the statutes, we pulled the offense descriptions, which are usually shortened down in our system. We had to go through each one of those from the sentences we pulled, somewhere between 30,000 and 40,000 to take that offense description to put into the appropriate tab. This was very time consuming and it is not to be taken as 100 percent gospel. We did the best we could in the time we had. It is more or less to give you an idea of the numbers as far as percentages.

Chair Hardesty:
I am sorry that staff was put to such a huge task, but I think it has identified some problem areas. What did you learn from this? Obviously, there are disconnects between what the JOCs say, from what the statutes say and maybe how NDOC has inputted that into their system. Is that a fair conclusion?

Mr. Deal:
Yes, we are going to have to take a good look at the whole process. We cannot control what the JOC is saying; sometimes when we see an issue, we send clarification letters. When it comes down to it, we have to go with what the JOC says. If we see something we recognize as being an issue, like where the minimum sentence exceeds 40 percent of the maximum, for example, and if we do not get someone correcting that, we have to go with what the JOC says.

Chair Hardesty:
The point of this exercise, in addition to trying to identify how many sentences or inmates were impacted by these 37 crimes, was also to underscore what I suspected was the case from my prior experience on this Commission—that when we speak to arriving at data driven decisions, there is a disconnect between the information that provides the data and the data that is input. So when we seek reports, either staff has to physically go through and reconcile these differences or we do not have confidence in the outcome of the reports because there is that disconnect between the source document and the way it is recorded in the system. Is that a fair summary?

Mr. Deal:
Yes it is and that is why it was so time consuming to do what we did. I am sure our staff is doing the best they can, but sometimes the data we get does not allow us to answer the question at the level we need it to be. As long as the category, offense date, sentencing date and the jail credits are correct, those are the main drivers for the dates. Whether specifically the offense description is down to 600 to 3,500 for theft 1 or over 3,500, whether the offense description relating that, which oftentimes is not specified in the JOC either, it does not really impact the sentence, the inmate, the sentence structure or the dates. We should be doing everything we can to make sure that is in fact what it is—if it is supposed to be the 650 to 3,500, it should be that, and if it is supposed to be over 3,500, it should be that. That is one issue I mentioned with regard to JOCs; that a lot of time we do not have that data.

Chair Hardesty:
To all the Legislators on the Commission, when one gets reports from NDOC about how many inmates are impacted by a certain issue, there is concern about the reports themselves because staff is dealing with some challenges and disconnects between what they are given and how they report it.

Mr. Deal:
Also, sometimes when we get requests for the number of inmates, like we wanted to do for this, a lot of time these data requests are aimed at providing the highest offense. We can pull the highest offense in the database. That may not be included the data set you are looking for, but that is the data that comes back on the highest offense data pull. You have to be careful on what sort of data you are requesting. It has to be clearly explained what you are trying to hone in on so we know what exactly to try and pull, sort and filter to get your data. If it is just how many inmates are in for this, or a highest offense, it may be that single offense and may not include the other sentences that inmate has.

Mr. Callaway:
To clarify, does this list of suggestions also include suggestions to move category B felonies up or are these entirely moving them down or is there a combination? In the

document I submitted, I did not make recommendations to move any crimes up, I just made recommendations of what we could look at for potentially moving from category B to category C or lower. Some of the crimes I see here—assault with a deadly weapon against an officer, and child abuse—I am curious if those were recommendations to move these crimes up to category A?

Chair Hardesty:
There were some crimes submitted by Commissioners with a recommendation to move up. I do not know if those made the list.

Mr. Anthony:
These were all crimes identified to be moved down (Agenda Item XII A-1).

Chair Hardesty:
I know some people had proposed a category B that should be raised to a category A. That solicitation to Commission members was not intended to limit anybody's direction to go up or down, it was just a request for nomination of crime types to be reclassified.

Assemblyman Anderson:
Regarding the JOCs and the potentially legal sentences, is there a process where the judge can do that sua sponte, on their own. What is the process for this? Do we need to put in some mechanism to force a review if you are potentially seeing an illegal sentence? How does that work?

Chair Hardesty:
I think it starts with a court training process, not only for judges, but for court staff. I do not know how frequently Mr. Jackson or Mr. Kohn see this, but I know that at the Supreme Court, we get a lot of even pro per writs or motions trying to correct the JOC because they either have the wrong sentencing range or cite the wrong statute, etc. Unless the issue is brought to the judge's attention, they are just going to sua sponte resolve those questions.

Mr. Kohn:
It seems we looked at this 4 or 6 years ago; the fact that we do not as a matter of course get the JOCs sent to our office. Now with computers, we can certainly look them up, but I do remember receiving the JOC in other jurisdictions as a matter of course. I could be wrong, but it would be helpful to make sure whatever documents went to the prison also come to the prosecutor and the defense attorney.

Chair Hardesty:
There are potential remedies but there are issues that need to be looked at for sure. I want to invite Commissioners to add any crimes to this list of 37 (Agenda Item XII A-1).

Mr. Higgins:
I think there are some financial crimes here; a whole section of filing false liens against public officers. I know it is a terrible thing when it happens to people, but I am not sure these would be in the same category as the major violent crimes. That would also include a crime for turning back your odometer, NRS 484D.335. As pointed out before, the unauthorized sale of insurance and then the unlawful use of a scanner, which was a high tech crime task force crime where a waiter takes your credit card, scans it and sends the number to someone else, NRS 205.605. This is certainly a crime, but I am not sure it needs to be in that higher category. Also, first time gaming offenses are there, too, NRS 465.088, but maybe we do not want to go there. The financial crimes, though, ought to be more appropriate as category Cs.

Chair Hardesty:
Anyone want to join Judge Higgins in adding those crimes to the list?

Ms. Bisbee:
I do.

Mr. Spratley:
I agree. In discussing the category B felony of taking property not amounting to robbery with a value of $3,500 or more, if someone is at a Starbucks and sees a bag hanging off a chair and they grab it and walk out, there could be a MacBook Pro with some software so the value could quickly rise above $4,000 or $5,000 because of that one electronic device. Should that be a category B felony? I do not agree with all the things on this list, especially the ones that are violent crimes against law enforcement officers and things like that. I am sure we will have discussion there.

Chair Hardesty:
Does anyone else want to join in on supporting these crimes being looked at?

Mr. Callaway:
I support adding those crimes to the list. In my own submission, I took into account seven factors, looking at them from a law enforcement and public safety aspect. The No. 1 thing I considered was violence. We have a rising violent crime rate epidemic across the country right now, so if it was a crime of violence, I could not see moving it down. The No. 2 factor I looked at was repeat offenders. If you have been in the system multiple times, I was not interested in trying to move that category down. The No. 3 factor was abuse against children and the elderly. The No. 4 factor was prisoners who escape or crimes that involve prisoners in custody. If they are already in the system and they are making an effort to escape or to commit crimes while in custody, what are they going to do on the outside?

The No. 5 factor for me was drug crimes that involve drugs used against other people; like date rape drugs, GHB. If I am using those Schedule I controlled substances against someone else to commit a crime against that person, to me that did not warrant being moved down. Then, No. 6 on my list was crimes that have a significant collateral consequence to victims. A lot of time we talk about the collateral consequences to offenders, and that is something we should consider, but what we often do not talk about is the collateral consequences to victims. I bring this up because when you have sovereign citizen groups that go out and target multiple public officials and put liens against them for the sole purpose of disrupting their lives, that has significant collateral consequences on victims. So does using a scanner to steal someone's identity. When you cannot get a loan or sell your home, and sometimes you are arrested because someone has used your identity and they have warrants out for your arrest and the police think it is you, when it was someone else using your identity. As we look at these categories, it is simple to look on paper and say, "Oh, a lien against a public official; why is that a category B, it should be less." For a lot of these things, there is more to it than just what it appears on paper. Many of these discussions were had at the Legislature during the hearings. I think that is why sometimes these items get listed as the category they are, which brings us full circle back to the discussion of a sentencing commission. Personally, I am opposed to adding financial crimes that may have collateral consequences on victims and impact their ability to get loans and in some cases, end them up in jail until it is figured out.

Mr. Kohn:
I agree with Judge Higgins in those cases he listed.

Mr. Jackson:
Referring to the second table (Agenda Item XII A-2), two of those crimes Judge Higgins identified are already on the list—"knowingly selling a motor vehicle whose odometer has been fraudulently altered," on page 1, and the one about gaming crimes, first offense on page 2. I also agree with what Chuck Callaway just said and I think this discussion will help move us forward. Although burglary is on the list, differentiating between commercial burglaries during normal business hours versus a residential burglary is important. It is not just burglary.

Talking about the seven factors for a sentencing commission, I think judges have more knowledge about these issues and can talk about the trends we see within our jurisdictions, including the sentencing ranges a judge will typically assign to a certain type of crime. Those crimes made my list. Judges are not sentencing, for example, to the 6 year maximum sentence on the crime of obtaining money by false pretenses. We do charge that in Douglas County and we do get the convictions. The last two we had convictions on involved a person who had previous felony convictions and still did not receive a recommendation either from Parole and Probation or from my office of the

maximum 6 years. One was a 16-48 and the other was a 60 month maximum. Those shaped what my recommendations are for this Commission.

Chair Hardesty:
Did we get the numbers of those bills that Judge Higgins wanted to add?

Mr. Anthony:
I can go back through and add them.

Chair Hardesty:
We will not be finishing this discussion today, but we have general consensus to add these bills to the list, at least by four Commissioners, so we can get the numbers and add them to the list for upcoming meetings.

Mr. Jackson:
I believe there are some crimes on this list which would have unanimous support to reclassify them from category B to category C. We could possibly go through those fairly quickly. We may have to continue the debate on some of the others. I know prosecutors typically take a stronger stance. I could go over my list and give my thoughts of what I am seeing as far as sentences are being pronounced by our judges.

Chair Hardesty:
That might be a good way to start; it is always nice to undertake a project like this on a positive note.

Ms. Welborn:
It would be helpful for me if we could see these submissions to compare. For example, I worked with Mr. Kohn and Ms. Armeni and we listed things like leaving burglary as it is in statute, but to change it for commercial and unoccupied vessels, so we have some different recommendations. Of course we will discuss this as we go through the list of crimes, but it would be helpful to see the submissions on paper, not necessarily today but for when we engage in this exercise again.

Assemblyman Hambrick:
I have an outsider's comment. On page 3 (Agenda Item XII A-1), the second and third item refer to possession of a firearm or of teargas by an ex-felon; does this term mean the person is no longer a felon? This may be wordsmithing to an extreme. How can you become an ex-felon?

Chair Hardesty:
By their prior conviction.

Assemblyman Hambrick:
But they are still a convicted felon. They will be a felon the rest of their life unless they are pardoned by some higher authority.

Chair Hardesty:
I do not recall whether the term in that statute is a defined term. I acknowledge that the language is a poor choice, but I think refers to someone with a felony conviction and the ex refers to someone no longer incarcerated. It is worth noting, but the Legislature adopted that phrase, so I do not know who should defend that language.

Assemblyman Anderson:
My two cents is that I thought we got on the subject of the category B felonies because we were looking at prison space. So I think we should automatically review anything that is over a certain number of people in prison. I also think we should talk about all the drug offenses, because that is where the most fertile ground is and where I think we will find more agreement, either because drug offenses are usually nonviolent, although not always, but I think we might find agreement there.

Chair Hardesty:
Here is a method I suggest and then we can see what we might accomplish in the next hour. I am going to invite Mark Jackson to identify the crimes he thinks will generate a consensus of Commissioners that we could push from category B to category C. Then, as to each crime, everyone can raise their hands if they agree or disagree and we can vote. Secondly, we might as well step up and tackle the burglary issue. Third, we can talk about the drug crimes and get input from everyone. We can then continue the discussion at our next meeting on crimes that are in dispute or that require debate. After Mr. Jackson talks about his list, I will invite Mr. Kohn to offer any other crimes he would like to add.

Mr. Jackson:
I will be referring to Agenda Item XII A-2, the table with the additional information from NDOC. On page 1, the second crime, “obtaining money, rent, or labor by false pretenses, value $650 or more,” a violation of NRS 205.380, I recommend this crime move to a category C felony with a prison term of 1 year to 5 years and the fine remaining at no more than $10,000.

The next crime listed there, “knowingly selling a motor vehicle whose odometer has been fraudulently altered,” a violation of NRS 484D.335 has no inmates currently in prison under that offense. I want to share a story about an inmate released last year who I prosecuted. His name is William Wilkins and I charged him with this crime. He was going to auctions in California, purchasing salvaged vehicles, bring them to Nevada and obtaining a valid certificate of title. He then sold the vehicles throughout the State. We only had four sold in Douglas County, but he sold more than 70 vehicles in northern

Nevada. Almost all of the vehicles came with the story that the vehicle was purchased for his daughter when she went to college, etc. He would roll the odometers back or purchase new odometers through the mail. He had been previously convicted in Oregon for the same offense on two occasions and sentenced to prison for both of those convictions. I argued for the maximum sentence and a fairly conservative judge in Douglas County sentenced him to 18 months to 60 months. That is about as bad a fact pattern you will find, including the previous convictions, but nevertheless, the judge did sentence him to 5 years for the maximum. I recommend that crime be reclassified to a category C felony with 1-5 years and the fine remaining at not more than $10,000.

The next three crimes on page 1 (Agenda Item XII A-2) are theft valuing at $3,500 or more, grand larceny valuing at $3,500 or more and grand larceny of motor vehicle, value to be proven to be $3,500 or more. There is language provided by NDOC under the "Fine" column for the first two of the three crimes that says the judgement of conviction (JOC) should stipulate with respect to certain statutes. I recommend a discussion to drop those crimes to a category C with felony a penalty of 1 year to 5 years. We can all come up with some fact patterns and reasons why a certain crime may, in fact, be a category B and deserving of a 1-10 penalty. However, I can tell you that at least in Douglas County where we are getting these convictions, I have not seen a 1-10 year sentence, except in the case of someone with prior felony convictions and prison time. Otherwise, we are typically seeing the ranges between 36-60 months.

The grand larceny of the motor vehicle is not seen much in the rural areas of the State. I know this is a big problem in Las Vegas. A lot of those vehicles that are stolen go down south. Obviously, the 1-10 year sentence range is not working. It is not being a deterrent and I do not know if southern Nevada judges would be sentencing people to the 1-10 year penalty there. One possibility would be to do this with prior convictions for the same or similar type of offense—if they had prior convictions, make it a category B, but a first offense could be a category C with a 1-5 year penalty.

The next crime on the list, "maintaining a drug house, first offense," NRS 453.316, which is often referred to as a flop house. We see these in an unoccupied home or building, more so in Clark County. I have prosecuted on this and have never received a 6 year maximum on that offense, so I recommend that crime go to a category C with a 1-5 year sentence range.

Chair Hardesty:
Mr. Jackson has identified six crimes. I will go through each of them and ask if anyone wants to pull one or more out of consideration for changing to a category C felony.

On the first one, "obtaining money, rent, or labor by false pretenses, value $650 or more," a violation of NRS 205.380, does anyone disagree with Mr. Jackson's recommendation? Seeing none, how about "knowingly selling a motor vehicle whose

odometer has been fraudulently altered," a violation of NRS 484D.335, does anybody disagree with his recommendation? Seeing none, the three theft crimes—theft valuing at $3,500 or more, grand larceny valuing at $3,500 or more and grand larceny of motor vehicle, value to be proven to be $3,500 or more—does anybody disagree with Mr. Jackson's recommendations?

Mr. Callaway:
I would keep grand larceny of motor vehicle, value to be proven to be $3,500 or more, NRS 205.228, at category B but drop the penalty to 1-6 instead of 1-10. As Mr. Jackson alluded to, we have had a serious issue with grand larceny auto in Clark County. We were ranked very high in the country. Our numbers have come down but it is still a serious problem, so I am open to reducing the sentence.

Chair Hardesty:
I get the point, but I was approaching these as first offenses. How do you feel about making a new crime where there is a second offense, or allowing consecutive sentences, but is that a reason to make it a category B? If category B is viewed as more serious, violent crimes, could you deal with this with consecutive sentences or enhancements instead of treating it as a category B on a first offense?

Mr. Callaway:
I think that recommendation would be good if we were going to make it category C for first offense only and then category B for subsequent offenses. If we are going to remove it entirely into category C, then with good time credits not being allowed in category B but being allowed in category C, if someone gets a 1-5, I would defer to Connie Bisbee as to what that really means in terms of their sentence. If they are a habitual car thief, serving a year or two and then they are out again, that is not good, but I would be open to your suggestion for first offense only.

Chair Hardesty:
If we first address this as a first offense, we can put a footnote to circle back to address second or enhancements to it. Anyone object to this? Seeing none, we go to the next crime, maintaining a drug house, first offense, NRS 453.316, does anybody object to Mr. Jackson's recommendation on that one? Apparently not. We are off to a good start. Those six offenses could make a motion, Nick Anthony, where we could formally vote not only on the change in the sentencing length but also the reclassification of the crime. I want to make sure we circle back to the issue of second or subsequent offenses on the grand larceny of cars valued more than $3,500 as Mr. Callaway and Mr. Jackson both mentioned.

Ms. Welborn:
For the record, the ACLU of Nevada is doing this exercise, and we do agree with Mr. Jackson. Our No 1 thing I have kept in mind, which will hopefully be in

Senator Ford's bill to restore civil rights to ex-felons, is to ask of each crime, is this crime such that it warrants losing, potentially for your lifetime, your civil rights? To Assemblyman Anderson's point from earlier, we are here to address the problems of prison overcrowding and mass incarceration in the State, so for those reasons, we agree with Mr. Jackson.

Mr. Callaway:
If we lower a category B felony to a category C, theft of $3,500 and above for instance, then does the theft that is already in category C have to be lowered to a category D?

Chair Hardesty:
Good question. When we are done with this process, we will then have to take a look at what consequences exist with respect to crimes in category C to see whether proportionality requires movement of those downward to category D.

Mr. Jackson:
Regarding Ms. Welborn's comments, I appreciate them. I understand her concerns and Assemblyman Anderson's concerns about the prison population in the State. Again, this goes back to the last three interims, including this interim, where we have not had the specific data driven drilldown study we truly need to determine who is occupying that. We can look at what crime a person has been sentenced on, but it does not give any of us access to what the PSI report is about prior sentences and all the factors relied on by a judge in determining what that judge believed was an appropriate sentence. I do recognize that there is a large prison population in the State.

There are two crimes that did not make my list but one is what Mr. Spratley brought up, NRS 205.270, taking property not amounting to robbery, a value of $3,500 or more. That follows the same rationale I addressed with respect to the theft and grand larceny. Also, NRS 205.275, receiving or possessing stolen goods. If that were to remain a category B felony, then we would be saying that just receiving or possessing stolen goods is a worse offense than stealing those goods in the first place. That would not make a lot of sense. Based on what Commission members have stated with respect to what has been addressed on the theft or grand larceny crimes, we need to add NRS 205.275 to the list.

Chair Hardesty:
Does anybody disagree with those statutes being added to the list? Okay, so those would become category C with a 1 year to 5 year sentence range.

Mr. Jackson:
On page 2, (Agenda Item XII A-2), the fourth crime from the bottom, "theft from a vending machine, value of $3,500 or more," NRS 205.2707, for the same reasoning, could go to a category C felony with a 1-5 year sentencing range. Below that, gaming

crimes, first offense is one that Judge Higgins also spoke of to reduce to a category C, 1-5 years.

Chair Hardesty:
Does anybody disagree with Mt. Jackson's recommendations on this page?

Senator Mark A. Lipparelli (Senatorial District No. 6):
With respect to the gaming crime, first offense, there can be a wide range of those. Some are open to reductions, I agree, but there are others where a first offense could be a significant attempt to bilk a casino, like a conspiracy to rob through a player tracking system, or some fairly sophisticated first offense which could be pretty material. I would be a little concerned about that.

Mr. Jackson:
In Douglas County, we have the Stateline corridor and those gaming establishments. I have prosecuted gaming cases up there where the thefts have been in excess of $1 million from some inside schemes that involve pit bosses and dealers, for example, and other crimes that involve conspiracy with employees and people committing these crimes. Not only is there the potential to stack these offenses, there are some other offenses that can be prosecuted also.

It struck me that this offense is a 1-6. In those gaming offenses, where all I had was this statute to charge, I was not having a judge sentencing these individuals to the 72 months on the maximum end. We were instead seeing 36 months to 48 months sentences, so that was my rationale behind those first offense gaming crimes. I understand and agree with all of Senator Lipparelli's concerns that there are certain types of gaming crimes that are deserving of much more than 1-6 years, but we have a significant number of statutes we could use to charge those individuals.

Chair Hardesty:
Senator Lipparelli, with that explanation, would you be okay to go to a 1-5 and a category C or do you want further debate or research?

Senator Lipparelli:
I think Mr. Jackson makes some good points. There is probably some other garden variety charge like fraud if it is of a magnitude like that so we may be able to draw in other statutes that would solve that problem. I am probably okay.

Chair Hardesty:
We will put it on the list as okay to reclassify at this point. I am going to suggest that staff circulate a copy of NRS 465.088 and all the Commissioners can take a look at it. I think when you read the statute, your comfort level will be a little higher. We can provide

other statutes that deal with other offenses that could be charged for gaming crimes if you like.

Mr. Spratley:
I missed that first one recommended on page 2 (Agenda Item XII A-2).

Chair Hardesty:
It was fourth from the bottom, theft from a vending machine.

Mr. Spratley:
The reason I missed it is because we were talking about grand larceny of motor vehicle being moved from a category B to a category C. But then also in the list we were given to consider was receiving or transporting a stolen vehicle worth $3,500 or more, NRS 205.273. Those are the mules that are moving the stolen cars.

Mr. Jackson:
That was my next one on page 3 (Agenda Item XII A-2), fifth from the bottom, "receiving or transporting a stolen vehicle, value proven to be $3,500 or more," NRS 205.273. For the same reasoning and rationale, I recommend this be a category C. Why is there an asterisk on the chart?

Chair Hardesty:
It is mandatory restitution, which it should remain.

Mr. Callaway:
Without the statute in front of me, similar to the gaming statute, my only fear is that we are getting into the realm of the chop shops whereas the first crime could be the joyrider, the kid who steals a car to drive across town. The second category involves taking stolen vehicles, moving them around, taking parts off and it can become a more organized crime instead of just grand larceny auto first offense. I would like to see the details of that statute.

Chair Hardesty:
We can do that, but, again, we have five categories of crimes. Even if you have someone engaged in running a chop shop, this is a first offense. I want to make the observation that in setting the category and sentencing range, we are talking about first offenses here, not the most extreme consequence of this crime process. We talk about the emotional aspect of criminalizing behavior and then we cite the most severe issues surrounding crime. The result is, everything is a category B felony. If that is the approach, let us get rid of all the categories and make everything the same. What we are focusing on here is to ask ourselves, "Is this the second worst crime in the State?" Not in my view.

Mr. Callaway:
Point well taken and I am certainly not saying it is the second worst crime in the State, but what I am alluding to is that there is a significant difference between, in my mind as a police officer, grand larceny auto, where someone could be a teenager joy riding in a stolen car versus someone in organized crime stealing a specific brand of vehicle to take parts off and sell or use to build other vehicles. Without seeing the details of this statute, I am not comfortable moving it down to the same category as simple stealing of a motor vehicle.

Chair Hardesty:
We will get a copy of this statute to you and defer on this crime for now.

Mr. Jackson:
The last one on page 3, (Agenda Item XII A-2), the theft of a fire prevention device. I bring this up because the sentence for this is under NRS 205.222, our grand larceny punishment statute, so if we reduce grand larceny first offense from category B to category C, we would also have to change that. If this Commission did not believe that was appropriate, we would need to make some recommended language to the Legislature so they would remove the reference to NRS 205.222 and instead set that specific 1-10 sentencing range. We will probably hear from those dealing with fire protection. We all understand the gravity of the theft of these fire prevention devices and the risk to residents and owners of these buildings. It is just another example of how one change affects another one, as Mr. Callaway just said.

Chair Hardesty:
Does anybody disagree with the reclassification and changes in sentencing range for theft of a fire prevention device? Seeing none, Mr. Kohn, I invite a you to go through this process, excluding burglary and drug offenses.

Mr. Kohn:
On page 1 (Agenda Item XII A-2), the bottom of the page, “failure to obey signal by officer and causes property damage or operates a vehicle in a dangerous manner,” NRS 484B.550, if it had personal injury I would agree with it being a category B, but otherwise, I think we should look at that one since it just mentions property damage, assuming that is the entirety of the statute.

Chair Hardesty:
How do others feel about taking that crime to a category C, assuming it is limited to property damage as opposed to personal or bodily injury. The fine amounts make very little sense to me. The fine amount for this crime is less than any others, so this would go to a category C, 1-5 felony.

Mr. Jackson:
This is our felony eluding statute, failure to obey a signal by an officer that is likely to endanger persons or property. There is no requirement that it has to result in property damage. We are fortunate that we do not have a lot of them. However, these have been some of the scariest scenarios, not only for law enforcement but also for the public throughout Douglas County. We have had some of these felony eludings that have taken place up at the Lake Tahoe casino corridor where there are pedestrians crossing the street. We have had individuals hurt and some who fortunately jumped out of the way of these vehicles. We have had vehicles going through residential neighborhoods, at speeds in excess of 100 miles per hour. It has changed the tactics of law enforcement, depending on where the felony eluding starts. We border two California counties and those are some of the roads people like to get to. These are the ones where the adrenalin is the highest, not only for the person trying to elude the officers, but also for the officers themselves. Because it falls into some of the categories Chuck Callaway addressed at the beginning of this discussion, I would be opposed to dropping that crime from category B.

Ms. Welborn:
Mr. Kohn, weigh in on this and correct me if I am wrong, but I think part of the conversation was taking out the property damage over a certain amount and keeping the substantial bodily harm in the statute as a potential compromise.

Chair Hardesty:
While Mr. Kohn is thinking about that, is there any evidence that a 1-6 year sentence range and a $5,000 fine operates as a deterrent on this crime? Is there any reason to believe that sentencing this individual to 60 months maximum in prison versus 72 months in prison makes a difference? Will one year really make a difference, between 1-5 and 1-6, in deterring this first offense?

Mr. Jackson:
This goes back to the A.B 510 credits that currently apply to our category C, category D and category E felonies. That is the other criteria I was relying on and keeping in mind when thinking about reclassifying some of these crimes. This crime, because of the nature and the danger of it, should not be earning good time credits for the offender.

Senator Ford:
I am not an expert on criminal law, but it with this felony eluding behavior, would the person also be charged with criminal assault?

Mr. Jackson:
That would depend, but if they drive toward someone, it could be assault with a deadly weapon, yes. If pedestrians are jumping out of the way and at the time, if the person eluding the officer did not alter their vehicle course to avoid pedestrians, it could be

felony assault. In the open road, exceeding speed limits, but with not near-collision, we would not be able to charge assault with a deadly weapon.

Senator Ford:
That is helpful. I was just wondering if, as a matter of course, this type of offense could be accompanied by an assault charge. To the question about whether 1-5 years versus 1-6 years would makes a deterrent, I wonder if when people are committing these offenses, they know the difference between a category B and a category C felony and that the former gets good time credits but the latter does not. So that goes back to the question of whether one year makes a deterrent. Am I missing something there?

Mr. Jackson:
One of the things they taught us in law school is that the purposes of the criminal justice system includes several factors—general deterrence and special deterrence, as well as the punishment component. Not allowing these individuals to be able to get the good time credits goes purely to the punishment aspect, which is something to be considered when fashioning an appropriate sentence. I do agree with you that it would have no affect whatsoever on deterrence. I am not aware of any case where someone would have thought about that at the time they made the decision to elude officers.

Senator Ford:
I tend to agree with Mr. Kohn on this. It should not remain category B, so I would support it going to a category C.

Mr. Callaway:
In light of accidents that have occurred across the country with innocent civilians being killed as a result of police pursuits, we have changed our policies considerably when it comes to vehicle pursuits. Now, our pursuits are very low; we only pursue someone when the chance of them escaping poses a significant risk to the public. Those would be cases of a drive-by shooting or an armed bank robbery. We are no longer chasing somebody down because they shoplifted or because their taillight was out and they did not stop when we tried to pull them over.

That said, I will go back full circle to Dr. Austin's presentation, and this is something that frustrated me when we talked about these categories. When I look at this crime, there are 95 people in the prison system with this offense, and with our pursuits at a minimum, it makes me wonder what the circumstances are behind these 95 sentences. My guess is that his crime is being charged, along with the other crimes at the time of the arrest, like when a person robs a bank, shoots at an officer, runs and we have a pursuit. We catch them, charge them with bank robbery, battery on an officer, and this charge. Through the court process, this is the crime that sticks. I am speculating, but I see that in cases, similar to the burglaries, where maybe the person went in with intent

to commit another crime but they were charged with burglary and ultimately, the plea bargain they take is burglary.

I agree with Mr. Jackson in keeping it as a category B felony. I do not believe it is a deterrent. That is a whole different discussion of whether crime is a deterrent or not. I have people ask me why should we make this law or that law and the analogy there is that people still run stop signs, but does that mean we should not have stop signs in place? I know I am being facetious, but my point is that I would like to see some background behind these 95 people—what were they originally charged with, and then we can have a broader discussion. If this is the charge that is sticking on them, a broader discussion, aside from taking this out of a category B and moving it to a category C, would be if they are being charged with these other more serious crimes, why are those not the crimes that they are serving the time on rather than this one?

Chair Hardesty:
Let me clarify one thing. The number 95 is not the number of defendants serving time on this crime; it was the number of cases where this showed up in the judgement of conviction (JOC), so it could very well be that there are 95 individuals only serving this crime, or more likely, there are persons serving time for this crime and other crimes. That this appeared in 95 judgements of conviction out of the 13,300 people sitting in NDOC. Is that right, Mr. Deal?

Mr. Deal:
Yes.

Chair Hardesty:
So it is entirely possible that this crime is part of a group of crimes for which an individual has been sentenced. This returns me full circle to this point: assuming the defendant has been convicted of other crimes relating to these events, in addition to this one, why would this one be a category B offense as opposed to a category C offense, when the other issues surrounding their behavior have been addressed, either by plea bargain or by conviction through a jury trial? Separately from that, assume for the moment that this is the only charge found to stick to a particular defendant, why should that be a category B felony?

We have bantered around here what some of the lawyers have been taught in criminal law, but in sentencing decisions, we take into account the punishment, the restitution of the victim, the deterrence the sentence will have on others who commit the same behavior and segregation, which is the need to protect the public from the individual. I think most people would agree that those are the four basic considerations used by judges in sentencing. To return to the point I was making before, on either end, why would this be a category B offense, which according to legislative history, these categories were structures based upon the most serious to the least serious offense?

Mr. Callaway:
I think that brings back the point I made at the last meeting, which is that there is subjective thought that goes into these crime categorizations and we could debate them forever for that reason. From my perspective, if you defy a law enforcement officer and risk citizens by trying to escape, putting the citizens at risk—your family and my family out on the road—in my mind, category B, 1-6 year sentence range with no good time credits is more appropriate than a category C, 1-5 with good time credits. I guess we get into the subjective discussion of does the punishment fit the crime and that is where I think we all have differences of opinion.

Jorge Pierrott (Lieutenant, Parole and Probation, Department of Public Safety):
We discussed potential injuries and dangers that these people pose to the community as well as the officers in pursuit. I will share the perspective we have as Parole and Probation (P&P) officers. When we supervise these individuals under their sentence, the term they are sentenced to is determined whether they are category B or category C. If they have restitution, maintaining it as a category B felony will allow P&P to collect restitution and make those victims whole, whether they had their vehicles or properties damaged, by the actions of these individuals. By reducing it, we now consider good time credit and the amount of time they will be on probation, and that will also limit the amount of money we can collect for their victims. That is an issue we need to consider also; it restricts our ability to make the victims whole, and oftentimes those individuals are going to get off probation earlier or if they go to prison, they will get a sentence or parole grant that is much shorter than an individual sentenced under a category B felony.

Chair Hardesty:
We could get into a discussion about how effective the Division of Parole and Probation is at collecting restitution. I do not know if we want to go down that road. The Division has resource limitations, major changes in the approach to whether to collect restitution, and there are officers who say they are not collection agents so they will not do that. To address that, many of the judges around the state started imposing civil judgements against these defendants to assure victims they would get a judgement and could collect on it without having to go to court beyond what the criminal justice system could do in collecting that restitution. The collection rates are not great; I think you would acknowledge that. So if we are going to say we will measure this by how much we collect in restitution, then none of the theft crimes should be transferred to category C either. Because for every Cadillac that gets stolen and cannot be returned, there will be a restitution award and you will need more time to collect it because it is a category B offense. Is that the rationale?

Mr. Pierrott:
That is just an opinion. Of course, if we have more time to do our jobs, we should not make a decision based on what we can and cannot do based on our resources. We should be given the opportunity when we can.

Mr. Higgins:
The statute includes misdemeanor eluding as well as the more eluding causing bodily harm or death, so that is still a category B felony. It does say any bodily harm, so it does not have to be substantial. So the worst of it is still in the same category as the non-bodily harm. The sentencing range is different; it is 2-20 on the death and bodily harm, so there is a distinction between those, which in my opinion would be a reason to knock the non-bodily harm or death to a category C felony.

Chair Hardesty:
Is that a subsection? We do not have subsections here.

Mr. Higgins:
Subsection 4 is the bodily harm or death; subsection 3 is the property damage or risk or endangerment to other people. There is a distinction between those and the sentencing ranges.

Chair Hardesty:
We had started this process to achieve consensus. Obviously, there is not consensus on this one. We will return to it and vote on it later.

Mr. Kohn:
I appreciate Judge Higgins' comment, because I did not artfully explain that, but I knew there was a distinction between property damage and personal injury.

At the top of page 2 (Agenda Item XII A-2), the attempts. There is no one in the NDOC column there and I do not understand that because so many cases in Clark County do get reduced down to attempts, so I do not know why there is a zero at the end of that column. I would ask the NDOC to look at that again.

Chair Hardesty:
There is a note there though, so I do not think they finished their review of this category. It says, "Needs more work," so I think they recognize that needs more study. I do not think they completed their review of that.

Mr. Kohn:
Okay, because so many of our cases get reduced to an attempt and I would very much like to think that we could re-look at attempts as being a category C, because the whole

idea is that is what we negotiate down. I do not know how much this is done in the rest of the State, but in Clark County it is significant.

One question I did have because I could not hear everything Mr. Deal from NDOC was saying. Going back to the last crime, the failure to obey a signal by an officer, there are 95 people in prison with that. Does that mean it is the highest crime?

Chair Hardesty:
No that is what I tried to explain earlier. That 95 has nothing to do with the number of defendants. It could, but it might not. It has to do with the number of charges where that showed up on a judgement of conviction (JOC). It could have showed up more than once in someone's JOC, and it could have shown up as part of other counts in a JOC. It does not represent 95 people charged and convicted with that crime. It could be more or less people; we do not know the number of people involved. It is just the number of times that crime was a subject in the JOC.

Mr. Kohn:
I understand that. I guess my question is, do they not have the ability to tell if that was the highest crime on the sheet?

Mr. Deal:
This is the number of active sentences with that offense in it that we found currently in prison. These numbers do not include sentences that have already discharged, been paroled from or pending sentences. These numbers are strictly just the guys who are on this offense at this time in prison.

Mr. Kohn:
Let us assume there are 95 people in prison that have this charge somewhere in their JOC. They could also have a category A felony as well as any one of these category B felonies. Is that correct? Or, is the category B felony the highest one?

Mr. Deal:
Yes, that is correct. We were not asked to provide this additional information. If you want to have us drill down further, we could look at every one of these offenses and pull up the individual inmate to see what other offenses they also have. I am not sure how long that would take, but we would be able to provide that information to you. I do not recommend looking at the highest offense because you miss things when you do that. if you want to look at a specific offense and see what other crimes they have been convicted of, we can do that. Someone mentioned before that the crime on the list may not be what the person was charged with. The presentencing investigation report (PSI) for an offender might show a significant criminal history or charges resulting in plea bargaining or a trial that resulted in subsequent convictions that are different than their initial charge.

Chair Hardesty:
That information might improve the conversation on all of these disputed crimes.

Mr. Callaway:
Correct me if I have this wrong, but the 95 under failure to obey could include the same guy because this inmate could be the one person in custody for, say, possession, manufacture of an explosive device, but he also has the eluding an officer charge. So the numbers in this column from NDOC could represent the same person, even though there are different categories.

Chair Hardesty:
Yes, it is possible. Maybe we need to have the statutes in front of us so we can refer to them. As Judge Higgins pointed out, there is a difference already in statute in the application of the failure to obey. Having additional data from NDOC to see how many other charges these people have, or whether someone is in here on this charge and it is their own would help in our discussion and debate

Mr. Jackson:
To Commissioner Kohn on the category B attempted crime on the top of page 2 (Agenda Item XII A-2), this is the one where the maximum penalty is more than 10 years because if it is 10 years or less, then an attempted category B becomes a category C. Take for example, the eluding felony that results in bodily injury which is a 2-20 year sentencing range. If that was instead to be charged as an attempted, which typically is almost always a fictional plea; the result of a negotiation—I cannot remember the last time we charged an attempted category B that carried greater than 10 years other than a negotiated plea—so if that is the intent and purpose, to create that as a category C felony, that will really affect those negotiations.

I think you are able to get those plea negotiations from prosecutors because instead of your client looking at a 20-year sentence, there is this range that goes up to 10 years by creating this fictional attempt of that particular crime that has an underlying greater than 10 years. Otherwise, if it drops down to a category C with the 5-year maximum, I do not know that prosecutors will jump from that 20 year all the way down to a 5 year through negotiations. Most likely, they are going to stack additional charges like pleading to 2, agreeing to consecutive crimes, etc. I see this more as a plea negotiation type of statute, which is how I have seen it charged throughout the State. If it is different in Clark County, that they are truly charging these attempted crimes as category B's, I would like to know.

Mr. Kohn:
I do not disagree with you at all. I was just so surprised that there was a zero at the end, even with the "Needs more work." I was just curious if there was some attempts I was not aware of. We can move on.

I look at the fourth crime down the list on page 2 (Agenda Item XII A-2), "possession of components of explosive or incendiary device," NRS 202.261, and I see a zero in the NDOC column on the right. Knowing the times we live in, maybe we just pass that one. The next one down, "Unlawful use of a stun gun," NRS 202.357, also has a zero in that column. I just do not see where that is a category B felony.

Chair Hardesty:
You would offer that crime as one we would determine whether others agree with it?

Mr. Kohn:
I would start with the stun gun.

Chair Hardesty:
Does anybody disagree with reclassifying that crime?

Mr. Kohn:
I was going to make a comment about criminal anarchy and this year's presidential election, but I am not going to do that. There is a zero on the right hand column of criminal anarchy also.

Mr. Callaway:
I am trying to pull up the statute to look at. Does that statute also include ex-felons in possession of stun guns? If you are using a stun gun on somebody and it is not self-defense, it is a crime of violence, so I do not agree with moving it down to a category C felony.

Chair Hardesty:
I am beginning to increasingly learn that we could have a more considered conversation if everybody has the statutes in front of them. It might be more productive than having us guess about these crimes and their consequences. I do not mean to cut you off, Mr. Kohn, but I am wondering if it would be a more productive use of our time to get these statutes in front of everybody.

I am going to discontinue our process on this subject and shift gears to burglary on page 1 (Agenda Item XII A-2). I want to hear Mr. Jackson's thoughts on burglary crimes as it was among the highest number of vote getters to consider some part of the reclassification. Ms. Welborn also commented on the difference between a commercial burglary in the daytime and other forms of burglary. Let us get the statute, NRS 205.060, up. Does everyone in Las Vegas have access to the statutes?

Mr. Kohn:
I have it on my iPad and all of us have devices so we can get to it.

Mr. Jackson:
I had not put together language I would propose for amending this. However, as you can all see, under subsection 2 of NRS 205.060, everything listed within section 1 is a category B felony punishable by a term of not less than 1 year and not more than 10 years. My suggestion would be to pull the burglary related to petty larceny or petty theft—the typical shoplifting type of crime where a person enters a business, store or commercial building during normal business hours with the intent to steal property. That is currently a category B felony. In many cases, prosecutors will charge that as misdemeanor theft, or petty larceny. However, every session there is some anecdotal information provided to both Senate Judiciary and Assembly Judiciary about individuals being prosecuted for the category B felony for shoplifting clothes valued at $60 or for baby formula, etc. To be able to drop that down to a category C would be good. I am not speaking on behalf of all the district attorneys, but I have heard of this crime even going to a category D.

Chair Hardesty:
I see the point. Could you look at subsection 5? Does that address or mitigate the issue of an act within a commercial establishment during business hours?

Mr. Jackson:
If the person has previously been convicted of a felony, then they can still be charged with the burglary. Or, the two or more times of committing petty larceny within the immediate preceding 7 years.

Chair Hardesty:
Are you suggesting that even that individual would not be subject to the category B characterization of burglary”

Mr. Jackson:
That is correct.

Chair Hardesty:
Alright. I hope everyone understands what Mr. Jackson was suggesting. Even if the individual in a business establishment during business hours with intent to commit petty larceny had two or more prior petty larceny convictions or a felony conviction, it would still not be a category B burglary, it would be a category C. Does anybody object to that change?

Mr. Kohn:
I do not object, but I would like us to have the discussion and take it a little further based on what I see down here in Las Vegas. I have handled those cases, so I know they exist. I am worried that other felonies during business hours could get charged as a category B felony. I am thinking about the person who passes a bad check. Because

down here in Las Vegas, it is forgery, theft and burglary. More times than not, the district attorney wants the burglary to be the highest charge on the sheet. What I want to get away from are those crimes that are committed within business hours that are one form of theft or another, because that is where we see the most of them here. I do not want to make it more complicated other than I do want to get the cases I see the most.

Mr. Jackson made a comment earlier in regard to A.B. 510, and I truly appreciate his honesty and the fact that that is what this is about. With A.B. 510, makes a real difference as to what happens to somebody. If we want to cut down the prison population, we need to get the people out who are not violent and not dangerous to the community per se. I appreciate Mr. Jackson's concern about the petty larcenies and we have them. I am not saying we need to go back to the common law where it has to be a break-in at night time in the house of another, but somewhere in-between our broad statute now and the way we learned criminal law in law school.

Chair Hardesty:
So at least with respect to Mr. Jackson's proposal, you do not disagree; you just want to go one step further? Is that what I am hearing you say?

Mr. Kohn:
Yes.

Chair Hardesty:
Let me just stick with Mr. Jackson's proposal. Does anybody else disagree with it?

Mr. Callaway:
I support Mr. Jackson's proposal. In the 2013 Legislative Session, we worked with Assemblyman Frierson, who was the chair of the Assembly Committee on Judiciary. A statute was put in regarding retail theft rings, and then this section of the burglary statute was changed, requiring the two or more petty larceny convictions or the felony conviction for the commercial burglary. So I am not opposed to making that a category C.

Chair Hardesty:
I am sensing that at least that much we agree on. Burglary as a subject matter is not over. We can dig in a little more, based on Mr. Kohn's comments.

Let us turn to the drug issues and tackle that on a general basis. Mr. Anderson, you commented on those crimes. I am trying to figure out what information staff and I can put together to help further the conversation on these matters.

Assemblyman Anderson:
I would like to hear Mr. Kohn's perspective because he deals with these a lot and I do not see it at the level that you all see it. I would also like Mr. Jackson's ideas on it. I just think we have to talk about drugs when we talk about reducing the prison population.

Chair Hardesty:
As category B offenses.

Assemblyman Anderson:
Correct.

Mr. Kohn:
On page 3 (Agenda Item XII A-2), looking at the trafficking crime, the lower trafficking, third from the bottom, "Trafficking, schedule I drugs (NRS except marijuana), flunitrazepam, or GHB, 4 to 14 grams," NRS 453.3385, I recognize that down here in Las Vegas, most time the lower trafficking is the result of a plea bargain. But when I see 1,116 people in that column, it lets me know we are doing things wrong. I know we are going to discuss drug court on another day, but I had just become a Nevada attorney the year the trafficking laws went into effect. I understand where we were in 1985 and 1987, and what was going on in the U.S. with the war on drugs. But I think we have to get past it and completely look at the trafficking laws in all three categories. Justice Hardesty brought up the large trafficking in years past and the lack of discretion that the courts have on those. We looked at it for a while and then left it alone. I think we need to look at all of them, not just the low trafficking here, but we need to look at how we are handling drugs in general.

The other crime with the big number is on page 1 (Agenda Item XII A-2), next to the bottom of the list, "Import, sell, et cetera, Schedule I or II drugs, first offense," NRS 453.321. I know Mr. Jackson has mentioned this many times, that very few people go to prison for their first offense and I do not disagree. But I look at 141 active category B sentences per offense in that NDOC column, and for all I know, the 141 number and the 1,161 number are the same people, but I think we need to change our whole perspective on it. I do not think it should be a category B felony.

Senator Ford:
This is another example of me not knowing much about what we are talking about. I think it would be helpful for me to get an understanding about what 4 grams to 14 grams is. I do not know what that amounts to.

Mr. Jackson:
A Sweet'N Low sugar substitute package is 1 gram and a dollar bill is exactly 1 gram of weight. If you had 4 dollar bills in your hand, that would be 4 grams. That is where it starts for a Schedule I drug.

Senator Ford:
So if I have 4 Sweet'N Low packets, is it presumed that I am using that for personal use or for sale?

Mr. Jackson:
It does not matter. It is based on the quantity, so the fact that it falls within the trafficking levels, which begins at 4 grams, or more, which is the net weight. The way the statute reads is that it is the higher of the two weights, either what was represented by the person who provided it or sold it, or what the actual weight is. Sometimes, believe it or not, the people involved in drug trafficking and selling will actually cheat the person they are selling to by selling fewer drugs than what they agreed upon. If they told the buyer they were going to sell a half of an ounce, which is 14 grams, but it came in at 12 grams of actual weight, they still could be charged with level 2 trafficking because you look at the higher of the two.

Senator Ford:
I am trying to understand what the point is in determining that 4 Sweet'N Low packets are categorized as trafficking. Why 4 grams and not 40 grams? Where did we come up with the numbers 4 and 14 in determining that would be a trafficking claim as opposed to what I see on TV shows which are these big bricks of cocaine?

Mr. Jackson:
It is going to be the same response about how these sentencing ranges and all these crimes first came up, and I think there is some arbitrariness. Looking at other states with trafficking laws, Nevada has some of the strictest trafficking laws in the U.S. dealing with those quantities. At the time our trafficking statutes were first enacted, which was at the height of the war on drugs, probably the sole purpose at that time was the punishment aspect. That is where those particular weights came from. There are other states with a single level of trafficking, starting at more than 28 grams, which is typically the round off for an ounce of these Schedule I controlled substances excluding marijuana. Specifically when we are talking about methamphetamine, cocaine and heroin, that is a significant amount. There are 454 grams in a pound.

Senator Ford:
Is there a number where, as a practical matter, we can assume it will be more likely to be used for sale versus personal use?

Mr. Jackson:
There would be debate and I welcome that. I am very much looking forward to talking about these drug offenses under our uniform controlled substances act, NRS chapter 453. Some people we prosecuted say an eight ball, or 3.5 grams, is personal use for them over the course of one weekend, partying up at Lake Tahoe. If they have a couple

friends sharing with them, they are going to need more than those 3.5 grams and then again, that goes to them providing the drug to another individual.

Chair Hardesty:
There is a separate statute that specifies the schedule of drugs, breaking them down by weight. Mr. Anthony reminds me that the 1-14 grams came into our statutes in 1985. I do not think there has been an examination of the weights since that time in determining the schedules. There sure is a significant impact on the length of sentences, depending on where you are on those schedules. I do not think the statutes address the weights by drug. The drugs are separated out in some of the statutes and they shift, depending on drug types between Schedule I, II and II. In addition, the schedules are determined based upon weight, but I do not think the same weights necessarily apply today, depending on what the addiction issues and medicine shows. I do not think that debate has taken place since 1985. We are going to get some additional legislative history on this so we can take a look at it. the actual drugs are laid out in regulation as opposed to statute, so that is another issue to consider. To just say all Schedules I drugs are governed by 4-14 grams, that is only partially correct because the schedules change depending on drug type.

Mr. Jackson:
The primary intent of drug trafficking under NRS 453.3385 is looking at those drugs with the high potential for addiction that do not have any known medical use, so they are used solely for their the elicit nature—cocaine, methamphetamine and heroin. Of grave concern now is the date rape drug, although there is no date associated with this drug because this is a drug that facilitates sexual assault, GHB. Those drugs are determined under Nevada Administrative Code (NAC) Chapter 453 and those regulations are done by the State Board of Pharmacy. That is how we try to stay on top of some of the synthetic drugs that have become so popular, some of the synthetic cannabinoids as well as the substituted cathinones that are referred to as bath salts. Those are typically through those regulations and those emergency regulations

Mr. Kohn:
Here in Las Vegas, one of our biggest problems is opiates. Like so many things we do in society, we are fighting 1985 problems that are not relevant anymore, but we are out of date on the problems relevant in 2016. I have not done any drug cases in a very long time and do not feel conversant in this, but I would like to see us find a way to look at what other states have done in changing their laws more recently to keep up with today's problems as opposed to the problems we had in 1985 when we made 4 grams a trafficking offense

Senator Ford:
In one of our past meetings, I talked about what I heard that was going on in Connecticut. I know we have a new NDOC Director from Connecticut and my

recollection is that they addressed drug abuse and adjusted their statutes accordingly. I would be interested in a little more information to see if there is any applicability here. The next question is before 1985, what was the approach we took in our criminal code to address drug issues?

Mr. Jackson:
That was before we had our current felony categories. It was a much worse problem back then. I do not recall what the sentencing ranges were. The purpose of the trafficking statutes was to increase the punishments based upon those particular quantities. Senator Ford, I know you will end up reading this drug trafficking statute and it is very important to point out that no matter what the level is, of the three levels, the 4 grams but less than 14 grams is a level 1 that carries 1-6 years in prison. That is nonprobate-able. The judge does not have the discretion to just suspend sentence. Then there is the 14 grams to less than 28 grams which carries 2-15 years in prison. An ounce or more carries up to life in prison or for a definite term of 10-25 years. All of those are mandatory prison.

There is the ability to provide substantial assistance. We have a couple of caselaw decisions: *Parrish v. State* and *Matos v. State*, about the substantial assistance that is provided and then the judge would have discretion to grant probation. What we also commonly see throughout the State as part of the plea negotiation process for a person arrested for possessing or selling a trafficking quantity of, say, methamphetamine, is very often looking at a minimum of a one level reduction just through that plea negotiation process. When Mr. Kohn was talking about the trafficking crime third from the bottom on page 3 (Agenda Item XII A-2), this is only related to subsection 1 of NRS 453.3385, a level 1 trafficking that made the list. We need to look at all of it, starting at the trafficking to truly have a discussion and debate. We also definitely need to look outside the State.

Assemblyman Anderson:
Maybe looking at discretion on some of the lower level trafficking might be the fertile ground to examine. If we are putting people in prison unnecessarily and not giving the judge discretion to look at the bigger picture, that is where we could really make a difference. That way, the Legislature is not just doing a cut-and-dried process without regard to the circumstances. If there is someone, for example, trafficking in date rape drugs, by all means, throw the book at them. It seems different, but I do not know that you can provide for every little instance in statute. So giving the judge more discretion might be a good place to start because we obviously have a justice system that is pretty capable of making good arguments when needed.

Chair Hardesty:
This exercise has been productive in identifying some number of statutes we can agree on. Also, it has offered some direction about materials we need in front of us to carry on

a more considered assessment of each of these crime types. All the trafficking offenses are category B offenses, whether Schedule I or Schedule II first offense. My question is, why would there be a difference between a Schedule I being a category B felony and a Schedule II being a category B also? Is it because it carries a mandatory incarceration period? Should a Schedule I, first offense be instead a category C? Setting aside A.B. 510, what is the difference between those two?

Mr. Jackson:
The most abused drugs in the Nevada and the U.S. are prescription drugs. The U.S. makes up less than 6 percent of the world's population, yet we consume 60 percent of all the prescription drugs, more than 80 percent of the opioids manufactured in the world and 99 percent of all the hydrocodone manufactured in the world. That is the most often abused drug. Many of those prescription drugs are Schedule I, Schedule II, Schedule III and Schedule IV, so we are talking about the true illicit type of drugs, manufactured for the sole intent of getting high—methamphetamine, cocaine and heroin that are the most abused drugs and cause the greatest physiological and psychological and reliance on addictions. That is what the separation is between the two. These crime distinctions when enacted were trying to target the cocaine of the 1980s and some of the heroin that spilled over from the 1960s and 1970s. At that time, the methamphetamine was not in Nevada, it was primarily in southern California in the early 1980s.

Chair Hardesty:
Under subsection 4 of NRS 453.321, a controlled substance classified as a Schedule III, IV or V is treated as a category C felony. What is the difference between a first offense with Schedule I and a first offense with Schedule III, IV and V?

Mr. Jackson:
It would be really beneficial to have the schedules printed off from the NAC so everyone can see the differences. We are not seeing many of the lower drugs on that lengthy list as a problem.

Mr. Spratley:
The Schedule I drugs are primarily for getting high. We can bifurcate that out a little bit in the GHB, the flunitrazepam; those "date rape" drugs that we need to look at differently. One category is personal use to get high and feel better and the other is aimed at using against a person for the purpose of doing something else. So when you talk about the GHB, they mix it up and sometimes it is clear, sometimes it is light blue in a gallon bottle of a window deicer kept in a garage. Some buddies will want some, so they will pour it into a one ounce Visine container and a couple drops of that into a girl's drink in a bar and then she is out. How many drops are in that Visine container and how many ounces is it? Quite a bit. We need to look at those drugs differently than the way we look at the other illicit Schedule I controlled substances, maybe by creating a

separate statute, but I do not want to lump those in with heroin or methamphetamine because it is an offensive drug versus a personal use drug.

Mr. Kohn:
That is my point. I agree with Mr. Spratley and with Mr. Jackson that we are attacking the drug problem from a 1985 perspective instead of focusing on what is going on now. I do not know if this is something we can handle in one or two meetings or if we look at a sentencing commission, but I would like to hear from someone in the Las Vegas Metropolitan Police Department (Metro) or from the Washoe County drug teams as to what the problems are now and what we should be looking at. Cocaine is nowhere near as much in use today as is the abuse of prescription drugs and certainly, as both law enforcement officers have pointed out, when you are talking about a drug that can be used offensively to commit sexual assault, our laws are way out of date and I am not sure that is something this Committee can attack in the next few months. It is certainly something we need to bring to the attention of the Legislature for serious study.

Senator Ford:
The three things that come to mind about what I would like to see done with our drug statutes are these: is it for personal use, determine what amount is appropriate to be called trafficking, and the mandatory minimums or the nonprobate-able approach needs to be addressed. Those three things are what pop into my mind as what I would like to see used to overhaul the current drug laws. There may be other issues, and I agree 100 percent that GHB and those types of drugs that can be used offensively to rape people should be treated differently than other drugs that are for personal use. At least focusing on those three things can at least get us somewhere relative to addressing the drug problem here. Am I being overly simplistic?

Chair Hardesty:
Those are very valid issues and there may be more. My concern is that establishing quantities for trafficking depends on the drug. I do not know how those weights were established or why they were established. To add to your point, there needs to be better information about what is a trafficking amount. To me, trafficking is an act where one is engaged in trying to do something with the drug regardless of the quantity in a way that is different than just personal use. They are trying to either use it offensively as Mr. Spratley noted, in a so-called date rape situation, or in a conventional sense they are trying to sell it or get someone addicted to it so they can take advantage of that individual. It seems to me that how the drug is being used should be a component of determining the trafficking sentence.

The other thing that has always bothered me as a sentencing judge, is that a lot of these trafficking sentences and substantial assistance statutes were set up to go after the traffickers, but I submit that an awful lot of people who appeared in my department

when I was a judge were moles, not traffickers. They just happened to be carrying the quantity of drugs that qualified them as a trafficker.

You get some kid who gets paid $200 to drive a car with a huge amount. I do not remember his name now, but I could look it up. I sentenced him on a trafficking charge and the trafficking was mandatory 10 years to life. This was a 21-year-old kid with no priors. All the facts showed that he was basically driving from Sacramento to Salt Lake City and got picked up in Reno. When he was asked by the police officer if he could search his vehicle, the kid said, “Sure, no problem,” which tells me he had no idea he had that quantity of drugs in his car. That is an extreme, yes, but there are a lot of those cases sitting in our prisons and we are paying a lot of money to house somebody who fits within that category. To me, the question is, should the judge be in a position to assess whether this is really a trafficking case or some other conduct that should be sentenced in a different way?

I will be meeting with Mr. Anthony to address the agendas for the next couple of meetings and we will talk of some of the additional information needed to facilitate our debates on this subject and other subjects. If any Commissioners in the next 10 days have questions or information they would like us to compile to aid in the evaluation of these forty or so crimes, especially burglary and trafficking, send Mr. Anthony and me an email.

Mr. Higgins:
On the second item on page 2 (Agenda Item XII A-2), “Battery upon an officer, school employee, health care provider, taxicab driver, transit officer, or sports official performing his duty, substantial bodily harm or strangulation,” NRS 200.481, the reason I put that on my list is because I wanted that one considered to be raised to a category A felony. I think the prisons have indicated that there are so many offenses tied together there that it is hard to tell what everything is. So, for pure battery on a peace officer or protective person that causes substantial bodily harm, I think we should consider raising it to a class A felony.

Assemblyman Anderson:
We are on the same wavelength on a lot of things today. When we talk about intent to sell, we have little baggies put together with drugs in them. That is in objective indication that someone has intent to sell. The more we can find clear objective proof, the better. I want to emphasize also the importance of judges having the ability to look through the specific circumstances. It makes no sense to put a 21-year-old in prison who is probably just a mole and has not done anything else. He is somebody who could be saved. It seems like a horrible waste of money.

Mr. Callaway:
I wanted to make a suggestion to Mr. Kohn's remark about getting further information regarding the drug trafficking charges. I would recommend we have somebody from the High Intensity Drug Task Force (HIDTA) come in. We have a joint task force at Metro with our federal partners and it might be beneficial to have someone involved with that task force come in and give us an overview of maybe why those laws are the way they are and what they are seeing out in the street. When we are tinkering with things like this, we need experts to come in and provide their insight.

Chair Hardesty:
Great suggestion, and there is probably a counterpart up north. I will ask both of you to reach out and see who would be appropriate as a presenter. Contact Mr. Anthony on that. For some of the neophytes like me, having some description of these drugs, what they do and what quantities are needed or not needed to address the impact, both the addiction consequence and the impact on others. Hearing the quantity needed to knock somebody out in their drink was news to me today. I will close agenda item XII and open agenda item XIV, public comment.

Ms. Brown:
I received some information from inmate, Robert Jennings that he asked me to put on the record. I have submitted this document (Agenda Item XIV A). On page 2, he had asked to have his sentences aggregated and NDOC responded in 2013 that it was denied. Something not touched on regarding restoration of rights, it has come to my attention recently that about 3 years ago, an individual was arrested and the following year his conviction vacated. He had no condition of not having a firearm. He was rearrested in April on three counts of possession of firearms. He is still under arrest. I have a copy of the order. There were no conditions that he could no longer ever have guns and he was actually a bounty hunter and needed his guns. After the conviction was vacated, his guns were returned and had them for up to 2 years and then he has been rearrested in violation of firearms. It should be addressed somewhere.

Chair Hardesty:
I have received a submitted document for public comment from Mercedes Maharis (Agenda Item XIV B) Seeing no more people wanting to make public comment, I adjourn this meeting of the ACAJ at 3 p.m.

RESPECTFULLY SUBMITTED:

_____
Linda Hiller, Interim Secretary

APPROVED BY:

_____
James W. Hardesty

Date: _____

Exhibit	Witness / Agency	Description
A		Agenda
B		Attendance Roster
Agenda Item III	Wes Goetz	Submitted Documents
Agenda Item VII A-1	Diane Thornton, Research Division, Legislative Counsel Bureau	Legislative History NRS 213.1075 Governing Confidentiality of Certain Information Relating to Parole
Agenda Item VII A-2	Diane Thornton, Research Division, Legislative Counsel Bureau	Legislative History NRS 213.1243 Governing Lifetime Supervision of Sex Offenders
Agenda Item VIII	Connie Bisbee, State Board of Parole Commissioners	Suggested Change to NRS 176.035 and NRS 213.1212
Agenda Item X A-1	Nick Anthony, Legal Division, Legislative Counsel Bureau	
Agenda Item X A-2	Nick Anthony, Legal Division, Legislative Counsel Bureau	
Agenda Item IX	Nick Anthony, Legal Division, Legislative Counsel Bureau	Documents on the Restoration of Rights of Convicted Persons in Nevada

Agenda Item XI A-1	Nick Anthony, Legal Division, Legislative Counsel Bureau	Advisory Commission on the Administration of Justice Recommendation on Sentencing
Agenda Item XI A-2	Nick Anthony, Legal Division, Legislative Counsel Bureau	Principles of Effective State Sentencing and Corrections Policy
Agenda Item XII A-1	Nick Anthony, Legal Division, Legislative Counsel Bureau	Potential Category B Felonies for Additional Study by the Advisory Commission on the Administration of Justice
Agenda Item XII A-2	Nick Anthony, Legal Division, Legislative Counsel Bureau	Potential Category B Felonies for Additional Study by the Advisory Commission on the Administration of Justice (with NDOC data)
Agenda Item XIV A	Tonja Brown	Submitted Documents
Agenda Item XIV B	Mercedes Maharis	Submitted Documents