

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eightieth Session
March 8, 2019**

The Committee on Judiciary was called to order by Vice Chairwoman Lesley E. Cohen at 8:07 a.m. on Friday, March 8, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Cheryl Williams, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

James W. Hardesty, Vice Chairman, Advisory Commission on the Administration of Justice
James E. Wilson, Jr., Private Citizen, Carson City, Nevada
Paola M. Armeni, Private Citizen, Las Vegas, Nevada
Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice
JoNell Thomas, Special Public Defender, Clark County Public Defender's Office
Darin Imlay, Public Defender, Clark County Public Defender's Office
Mendy Elliott, representing Reno Sparks Chamber of Commerce
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Kelvin Bell, Private Citizen, Las Vegas, Nevada
Kevisha Mathews, Private Citizen, Las Vegas, Nevada
Quaron Brown, Private Citizen, Las Vegas, Nevada
Tonja Brown, Private Citizen, Carson City, Nevada
John L. Arrascada, Public Defender, Washoe County Public Defender's Office
Bill Hart, Deputy Alternate Public Defender, Washoe County Alternate Public Defender's Office
Marcos Lopez, Field Director, Americans for Prosperity Nevada
Gerald Lechner, Private Citizen, Las Vegas, Nevada
Laniqua McCloud, Private Citizen, Las Vegas, Nevada
Gary Peck, Private Citizen, Las Vegas, Nevada
Wiselet Rouzard, Field Director, Americans for Prosperity Nevada
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Mark B. Jackson, District Attorney, Douglas County District Attorney's Office
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Christopher J. Hicks, District Attorney, Washoe County District Attorney's Office
Christopher J. Lalli, Assistant District Attorney, Clark County District Attorney's Office
Lynn Muzzy, Private Citizen, Minden, Nevada
Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada
Dylan Shaver, Director of Policy, City of Reno
Michael Cathcart, Business Operations Manager, City of Henderson
Jason Welch, Detective, Reno Police Department

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office
Jan Muzzy, Private Citizen, Minden, Nevada
Brian McAnallen, representing City of North Las Vegas
Eric Spratley, Executive Director, Sheriffs' and Chiefs' Association
Elizabeth Ortenburger, Chief Executive Officer, SafeNest, Las Vegas, Nevada
Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety
Jamie Rodriguez, Government Affairs Manager, Office of the County Manager,
Washoe County
Dagny Stapleton, Executive Director, Nevada Association of Counties
Christopher P. DeRicco, Chairman, State Board of Parole Commissioners
James E. Dzurenda, Director, Department of Corrections

Vice Chairwoman Cohen:

[Roll was taken and Committee rules and protocol were explained.] I would like to go over opposition, support, and neutral. Please remember when it is time to testify in support, it is for the entire bill as drafted. Even if there is a comma you want to change, you have to testify in opposition. If you testify in opposition, you are opposed to the bill or like the bill but would like some changes to it, and neutral is for informational purposes only.

I am going to open the hearing on Assembly Bill 236. I will invite Assemblyman Yeager and Justice James Hardesty to the table to present the bill.

Assembly Bill 236: Makes various changes related to criminal law and criminal procedure. (BDR 14-564)

Assemblyman Steve Yeager, Assembly District No. 9:

Good morning, Vice Chairwoman, members of the hard-working Assembly Committee on Judiciary. Seated with me at the table this morning is Justice James W. Hardesty of the Nevada Supreme Court. We are here this morning to present Assembly Bill 236. With your permission, Vice Chairwoman, the two of us will get through the presentation and then I will open it up for questions.

Today is International Women's Day; thus today is a most fitting day to hear A.B. 236 because the number of women in prison in Nevada has grown by almost 30 percent in the last 30 years. That population is projected to grow another 14 percent over the next decade. The incarceration rate for women in this state is 43 percent higher than the national average. Seventy-nine percent of women sent to prison in Nevada are sent there for nonviolent offenses. Fifty-two percent have mental health needs. Fifty-five percent are first-time felony offenders.

As this Legislature and, particularly, this Assembly celebrates the historic milestone of being the first female-majority Legislature ever in our country, our criminal justice system is failing women and, thus, failing Nevada families. The justice system is not just falling short when it comes to women; it is falling short as a whole. It is certainly falling short in the category of responsible government because offenders continue to reoffend and revictimize, and the costs

to taxpayers continue to rise. In Nevada, the criminal justice system has too often not been a system of corrections as much as a system of incarceration without doing much to meaningfully correct the drivers of criminal behavior. Instead of trying to solve the problem, the approach has more often been to warehouse an offender: out of sight, out of mind. Nevada taxpayers deserve better. They deserve much better.

All of us came to the Legislature with the goal of making meaningful changes for our communities. Assembly Bill 236 is probably the single most important and transformative criminal justice bill in the history of this building. If we enact A.B. 236, we will have achieved the goal of meaningful change because A.B. 236 will make our communities safer while also saving taxpayers money.

Assembly Bill 236 represents months of hard work and significant engagement from many individuals, many who are in this room today. Work on this bill started over six months ago when our Nevada leaders collectively acknowledged that our state has a problem—our prison population is growing at an unsustainable rate at an extraordinary cost to our taxpayers. If we do not correct our course, we will spend an additional hundreds of millions of dollars on incarceration. That is real money that neither we, the 80th Legislature, nor future legislators will be able to invest in other important state priorities. The cost of doing nothing is unsustainable and unacceptable.

Today begins the process of accomplishing the goal of developing public policy to make our state safer and smarter. Before I hand the presentation over to Justice Hardesty, I want to point out that we are really at the midway point of this process. I want to alleviate any fears that this bill is somehow a done deal. Although a tremendous amount of work has already been done by the Advisory Commission on the Administration of Justice (ACAJ), a tremendous amount of work still remains to be done here at the Legislature. I have come forward with one amendment today ([Exhibit C](#)) that you will find on the Nevada Electronic Legislative Information System (NELIS). That amendment deletes the entire section 53 of the bill. I came forward with that amendment because I have listened to concerns and I have acted on those concerns.

There will certainly be additional amendments to this bill, perhaps many of them. No bill is perfect and this bill is no exception, but this is a bill that incorporates the 25 recommendations that made it out of the ACAJ on an 11 to 4 vote. I remain committed to continuing to work with all the interested parties on potential changes to the bill as long as those interested parties come forward with meaningful suggestions that meet the dual goals of increasing public safety and being more responsible with our taxpayer dollars.

I will now turn the presentation over to Justice Hardesty, who I would like to thank for vice chairing the ACAJ with me. It was a pleasure to work with him, and he was tremendously helpful in the effort that brought us here today.

James W. Hardesty, Vice Chairman, Advisory Commission on the Administration of Justice:

Good morning, Vice Chairwoman and members of the Committee. I speak to you today not as a Justice of the Supreme Court, but rather as the vice chairman of the Advisory Commission on the Administration of Justice. As you know, the legislation that created the ACAJ includes judges, a justice from the Nevada Supreme Court, and various stakeholders throughout the criminal system. The ACAJ asked that I serve as vice chairman.

As I prepared for my comments, and I do not want to take too much time with this, I went back to some testimony that I offered to the Assembly on February 13, 2007. At that time I said, "I applaud the Assembly's effort to review the corrections, parole, and probation systems in our state." As a lawyer and a judge, I have had the privilege of working with a number of professionals in the system who have given testimony before this Committee. They are an outstanding dedicated group of men and women, and my remarks and suggestions are not intended in any way to be critical of the job these professionals do for us. Rather, I suggest that the three branches of government join in a cooperative effort to assess our approach to the system in our state and develop new ways for dealing with incarceration, parole, and probation. We need to undertake a comprehensive review of our prison population and determine whether better, less expensive alternatives exist to reduce the population before we spend more dollars on overcrowding. We must conduct a comprehensive evaluation of the inmate population using a new criterion that recognizes an inmate's immutability to supervision, rehabilitation, and treatment. The Legislature should review the statutes providing for release to a residential confinement, and we should stop the process of category creep in which categories of sentencing mushroom from D's to C's and C's to B's.

When truth in sentencing was enacted in 1995, the Legislature had included a provision that created an Advisory Commission on Sentencing. Its objective—its responsibility—was to report to the Legislature what exactly had been the effect of the truth in sentencing statutes.

In the ensuing ten years, virtually nothing had been recommended to the Legislature, and in six of those bienniums, the Commission had not even met. It was not until after the 2007 Session that the Advisory Commission on Sentencing was reconstituted and began meeting again for the first time in 2008. I have had the privilege of serving on that commission since that time, sometimes as chairman and sometimes as vice chairman.

What has been a constant theme throughout this period was the need for data to assist the decision makers—policymakers—to make informed decisions about the criminal justice system, and to evaluate the approaches that many, not just me, had been advocating for in 2007.

In 2015, as I mentioned to this Committee, as chief justice, I had urged the leadership of the Legislature and then-Governor Sandoval to seek the assistance of the Crime and Justice Institute (CJI) to select Nevada as a "Justice Reinvestment" state. There were numerous advantages at the time. The Governor, the leadership of the Legislature, and I joined in

writing a letter requesting that we be considered by the U. S. Justice Department's Bureau of Justice Assistance and the Pew Charitable Trusts for selection as a Justice Reinvestment state.

One of the reoccurring problems that has existed in the 12 years since I have been associated with the ACAJ is the inability of staff, agencies, and the like to generate meaningful substantive data that provides direction and analysis of where we are in our criminal justice system.

Unfortunately, we were not selected in that year, but in 2017, Mr. Len Engel from the CJI reached out to me and asked if Nevada would be interested. Again, then-Governor Sandoval, the leadership of the Legislature, and then-Chief Justice Michael Douglas made another request asking that Nevada be considered. We were in competition with three other states. With the assistance of our state leadership, our Governor, and the Attorney General at the time, we were selected.

The Crime and Justice Institute and its staff joined forces with the ACAJ in the summer of last year [2018] to begin to offer data assistance that we have never seen before. I want to thank their staff for their hard work and dedication. They have been a tremendous asset to the state of Nevada. As I mentioned when I presented to you the Nevada Sentencing Commission's recommendations, the CJI staff dedicated in excess of 9,000 hours. That work bears importance to what is being discussed today. The value of it is incredible to the State of Nevada. These were not folks just sitting around coming up with ideas to develop a bill—what is now Assembly Bill 236—these were people who spent their summer in closed closets looking at the files of inmates in the Department of Corrections and examining the files in the Department of Public Safety's Division of Parole and Probation. They were also meeting with judges and almost all of the stakeholders in the criminal justice system, one-on-one, to get their input, suggestions, and thoughts regarding the system.

As I said when I presented to the Nevada Sentencing Commission, while reasonable people may disagree about the solutions that are laid out in the bill, what is true is that the data that was presented is unquestionable and was not questioned during the course of the ACAJ presentation. While reasonable people may disagree about comparisons that were offered to ACAJ by the CJI staff with other states, our data was abundantly clear. I say that because it is critical that we make data-driven decisions. One of the questions in front of the Legislature is, What do you see from the data?

I would like to refer you to a report that you may have read. I do not know if it is in front of you today ([Exhibit D](#)). The report that was generated for the ACAJ, dated January 2019, was in collaboration with the Legislative Counsel Bureau staff and the CJI. It is certainly something that needs to be in front of you as you consider this bill, as you consider the information that is presented, and as you consider the remarks and testimony of others who come before you.

What is significant about the report is that in each of the 25 recommendations, the data that was connected with those recommendations is discussed. It is important to take into account the data that has been offered as a reason for looking at these potential resolutions or solutions that have been offered. This is not to suggest for a moment that the recommendations that have come forward to you came forward by way of unanimity. There were extensive debates in the subgroups that you will hear about. The solutions and the options that were laid out in the report and, frankly, other options, were presented and debated during the course of the subgroup work effort. If you have the time, I strongly recommend that you view the tapes of the testimony that were made in the subgroups during the course of their dual hearings in November and December where you can see the debates that took place.

What is exciting for our state and what should be exciting for the Legislature is, for the first time in over 24 years, people actually debated the substance of some of these significant questions. As I said before, reasonable people can differ. I will tell you, I was on the losing end of some of these recommendations. But as they are presented, they come to you with a majority vote of the ACAJ, and I said there were mixes. Depending on the topic, some people were in the majority, some were in the dissent.

In any event, it is now up to the Committee to hear those recommendations and some of the data that opens the door for this discussion. With that, I will ask Assemblyman Yeager to proceed with his next presentation and the PowerPoint presentation ([Exhibit E](#)).

Assemblyman Yeager:

Thank you, Justice Hardesty. What I would like to do is go through a very high level of some of the high points of the data and go through some of the bill. We tried to summarize all these data presentations into about ten slides worth of data. I understand there will likely be questions about the data. I do not know if we will have a chance to get into some of those today. I am certainly willing to meet with any of you and have our partners from CJI talk about data and how we got there. However, before we get to the bill, I would like to go through some of that. We have a PowerPoint ([Exhibit E](#)) with some of the highlights; you should have that on NELIS as well.

One of the first areas that the ACAJ examined was the growth in the state's prison population and you will see this on page 2 ([Exhibit E](#)). The growth in the state's prison population is not something that occurred in just the last few years—the growth in the state's prison population has been growing since 1978 and continues to grow, as you can see on page 2—919 percent growth since 1978. The size of the prison population [page 2] is a result of the number of people coming into prison as well as the amount of time they spend in prison. In Nevada, both admissions to prison and time spent in prison have increased, driving up our prison population.

Over the past ten years, Nevada's prison population has increased 7 percent [page 3]. This recent growth is an outlier when compared to the rest of the country. Over the past ten years, through a combination of changes to sentencing and release policies and the continuing

decline in crime rates, a majority of states have reduced their incarceration rates. Despite the continued crime decline in Nevada, we still continue to lock up a growing number of people and for a longer period of time.

When taking a deeper look into who is coming into prison, the ACAJ saw that two-thirds, or nearly 66 percent, of admissions were for nonperson offenses [pages 4-6]. These are offenses that do not have an element of violence to them, such as property, drug crime, or other offenses. We also saw in the data that more than 40 percent of admissions had no prior felony convictions on their records.

The other big part of the admissions story is the number of people who return to prison from supervision—either parole or probation—after a prison sentence [page 7]. This number has climbed significantly over the past ten years, as you can see, with parole violators growing 43 percent and probation violators growing 15 percent.

When trying to understand the underlying causes of these returns to prison, we saw that a large number of individuals returning to prison from parole and probation was the result of a substance abuse problem—44 percent [page 8].

Similar to the growth in the number of those entering prison with a substance abuse issue—I am sure it is not a surprise to many of you—we saw a large increase in the number of individuals who are entering prison with a mental health issue, up 35 percent over the past ten years [page 9].

The other key driver of the prison population growth is the increasing amount of time people are spending in prison [page 10]. This is the result of longer minimum prison sentences and inconsistent parole rates over the past ten years. You can see there has been a 20 percent increase in the amount of time spent in prison since 2008.

The ACAJ found that this growth is largely due to increases in minimum and maximum sentences over the past ten years [page 11]. What is important about these increased sentence lengths is that they have increased for all offense types, not just violent offenses.

After the ACAJ reviewed the drivers of our prison population, we then took a look at where our prison population will be in ten years if we do nothing to change the course we are on [page 12, ([Exhibit E](#))]. The most recent analysis, conducted over the past ten years, found that we will add more than 1,200 people to our prison system over the next ten years and will surpass 15,000 people in prison. The Department of Corrections has reviewed and agrees with these projections.

The ACAJ conducted what we called the "cost of doing nothing" analysis [page 13]. Based on the prison growth projections, if status quo continues, Nevada will need to spend an additional \$770 million to address this growing population over the next ten years. This cost includes new capital construction for a new prison as well as ongoing operation costs of those new facilities or new units in existing facilities.

However, the package of ACAJ recommendations, drafted into A.B. 236, would avert 89 percent of the projected prison growth [page 14]. This averted growth would avoid \$640 million in additional correctional costs over the next ten years [page 15]. Again, that is \$640 million over the next ten years if we were to enact the policies in Assembly Bill 236.

Now that you have seen a quick recap—of what amounted to ten hours of data presentations to the ACAJ—what we intend to do is to take you through some of the main provisions of A.B. 236.

If you recall when we started, Justice Hardesty spoke of how the ACAJ broke into two subgroups to review the data and make findings [page 16]. One of the subgroups focused on front-end diversion and sentencing issues, and the other focused on the back end or supervision issues. We will now cover the policies that were recommended by our respective subgroup. I will turn it over to Justice Hardesty, who chaired the sentencing subgroup, to get us started with the recommendations that came out of his subgroup.

James Hardesty:

Other sources of information to which I would like to refer the Assembly members are the PowerPoint presentations [([Exhibit F](#)), ([Exhibit G](#)), and ([Exhibit H](#))] that were made by the CJI staff during the Advisory Commission meetings that occurred beginning in August and going through November. There are about 300 pages of PowerPoint slides that break down the data in greater detail and show the progression of their study as they worked through this. Much of that is, of course, summarized in the report that I mentioned, but it offers the work product that CJI provided.

Recommendation 1 [page 16, ([Exhibit E](#))]: One of the most significant issues discussed by the ACAJ and the sentencing subgroup was the prevalence of those in the system with behavioral health issues. In thinking about how to handle this increasingly large population, the topic of crisis intervention training for law enforcement officials arose. Frankly, in some of the departments throughout our state, this is not a new issue. The Las Vegas Metropolitan Police Department has been very innovative in its work in this area. Such training provides officers with the tools to identify behavioral health symptoms and the skills to de-escalate a situation involving a person dealing with a behavioral health crisis. Sections 107 and 108 of the bill require this training for law enforcement officials to make sure they have the tools and resources they need to respond to individuals with a behavioral health need.

Recommendation 2: Another big issue in the sentencing subgroups was the lack of diversion options for offenders charged with a felony offense [page 17, ([Exhibit E](#))]. This is particularly concerning when there are so many individuals entering the system with no prior felony record. The second recommendation, which is included in sections 1 through 4 of the bill, expands the existing misdemeanor diversion program to nonviolent and, I repeat, only nonviolent as defined in the bill, first-time felony offenders.

Recommendation 3: Along the same lines of increasing the alternatives to incarceration that are available for nonviolent offenders, the third recommendation focused on removing the

existing barriers to presumptive probation [page 18, ([Exhibit E](#))]. Contained in section 24 of the bill, the subgroup recommended removing the failure to complete treatment, a failed prior supervision, or being on supervision at the time of the arrest. These restrictions disproportionately affect those with a behavioral health issue because of the known effects of relapse.

Recommendation 4: Again with the intention of addressing those in the system with behavioral health needs, the ACAJ looked at the data from the state's specialty court programs [page 19]. The data shows that those who entered the program on a deferred sentence with the option for a case dismissal upon successful completion were far more likely to complete the program successfully than those who entered the program as a condition of probation with no chance of a dismissal. As a result, sections 4 and 19 of the bill create a presumption for a deferred sentence for nonviolent specialty court participants. This would give those who successfully complete a program the ability to reenter society without a felony conviction.

Recommendation 5: Another interesting point about the specialty courts in the state is the regional variation in how a defendant's program eligibility is determined and the types of outcomes that result from participation [page 20]. As I mentioned, some courts allow for the case to be dismissed and others do not. In an effort to align specialty court programs with best practices, sections 20 through 23 and 26 through 31 of the bill require in-person clinical assessments to be conducted to determine eligibility for specialty court participation.

Recommendation 6: The bulk of Nevada's sentencing subgroup discussions centered on the specific nonviolent offenses leading to admissions to prison [page 21]. The first one is burglary, which was the number one offense at admission to prison. Our state's burglary statute is an outlier in comparison to other states. This is a topic that has been discussed over and over again at ACAJ discussions in prior sessions. When the ACAJ looked deeper into what types of burglaries individuals in prison were committing, they found that 63 percent did not involve a residence and 70 percent did not involve any victim. The sentencing subgroup spent a lot of time thinking about the right approach for Nevada and what makes sense for our system.

Recommendation 6, contained in sections 55 through 57 of the bill, distinguishes burglary between a motor vehicle, other building, commercial building, a residence, and home invasion. In addition to adjusting penalties, based on the structure involved in the burglary, the subgroup recommended increasing the penalty for home invasion to ensure those serious offenders are held accountable.

Recommendation 7: The next specific offense that is driving admission to prison is felony theft [page 22, ([Exhibit E](#))]. Nevada has one of the lowest felony theft thresholds in the country at \$650, with 43 states having a higher one. The ACAJ examined study after study showing no correlation between increasing the theft threshold and increased property crime. In fact, when Nevada last increased its threshold in 2011, the average property-crime rate decreased in the three years following the change. The sentencing subgroup recommended

increasing the theft threshold from \$650 to \$1,000 for a misdemeanor, making theft between \$1,000 and \$1,999 a gross misdemeanor and making \$2,000 and above a felony. The bill increased the felony threshold for several offenses to ensure consistency across various theft statutes or offenses in the criminal code.

Recommendation 8: Aside from property offenses, the next most common offense type in Nevada's criminal justice system is drug offenses, starting with possession, the fifth-leading offense at admission, which has grown 53 percent over the last decade [page 23, [\(Exhibit E\)](#)]. The sentencing subgroup extensively discussed the most effective responses to possession offenses and the reality that many of the individuals charged with these offenses have substance abuse addictions. These are the individuals we see cycling in and out of the system. The sentencing subgroup agreed that we needed to change the way we respond to possession offenses. While this no doubt includes an investment in community-based treatment and other supportive services, there was overall agreement that a prison bed and a felony label should not be the first option for someone convicted of drug possession. Section 113 of the bill reclassifies first and second convictions of possession as a misdemeanor with the third and subsequent convictions being a class E felony.

Recommendation 9: Likewise driving admissions to prison, the sentencing subgroup discussed commercial drug offenses such as possession with intent to sell [page 24]. Nevada's existing sentencing statutes require mandatory minimum terms. The subgroup recommended expanding judicial discretion and authorizing judges to grant probation and send individuals to treatment if the circumstances of the case warrant it, such as if the defendant is a drug addict or if other mitigating circumstances exist. This is contained in sections 112, 116, and 117 of the bill.

Recommendation 10: Next we turn to the difficult problem of our state's drug trafficking laws [page 25]. Nevada's trafficking statutes are rare in that they do not require an intent to sell, and our threshold weights are very low at 4 grams regardless of the type of drug. The sentencing subgroup probably spent the most time on this subject area and debated many different courses of action. The current law does not exclusively target high-level drug dealers in our state and often results in drug mules and trafficked women being sentenced to long periods of time without any ability for the judge to depart from the severe penalties imposed from our current mandatory drug trafficking statutes. The changes to trafficking in [A.B. 236](#), though, are just a starting point. I proposed during the subgroup and still maintain that, in addition to the changes in the bill, the Nevada Sentencing Commission should spend the next interim studying the impacts of different drugs and their quantities on public health and the criminal justice system. As we know, not all drugs are the same and the quantities of many drugs are extremely impactful, even low quantities. These weight thresholds will be further discussed and evaluated with specific attention to the individual drugs that are affecting our state in the interim by the Sentencing Commission if you pass those recommendations presented to you. This area is discussed in sections 118 through 123 of the bill.

Recommendation 11: The sentencing subgroup also looked at what offenses had the most significant impact on the increase in time served [page 26, ([Exhibit E](#))]. One of those included the long sentences required by the habitual criminal statute. Section 86 of the bill establishes consistency in our state's laws by aligning the habitual criminal statute in the use of prior convictions with the state's existing sealing statute. For those of you who may not be familiar, Nevada has a set of statutes that identify when defendants can seek the sealing of their records. The subgroup simply aligned those existing statutes with the use of habitual criminal convictions in certain cases. There are a number of other crimes unaffected by this statute and proposed changes.

Recommendation 12: Beyond specific offenses, the sentencing subgroup discussed practices within the system that are impacting this increase in time served [page 27]. The data showed that minimum and maximum sentences were increasing over the past ten years and that judges concurred with the sentences recommended by the Division of Parole and Probation officers contained in the presentence investigation report (PSI) 75 percent of the time. When looking at how this PSI recommendation is derived, the ACAJ saw that many subjective factors, those unrelated to public safety, such as a person's financial ability, family stability, and their honesty were factored into the PSI assessment score. Sections 12 through 15 of the bill remove the sentence recommendation from the PSI report and establish training for judges on how to use the information contained in the PSI to make sentencing decisions. Indeed, I hope this provision of the bill would mandate additional training in sentencing in the criminal justice system.

Recommendation 13: Last but not least, the sentencing subgroup discussed the 212 offenses that are categorized as felony B offenses [page 28]. These offenses are important to talk about in the context of increasing time served because people convicted of a felony B offense are serving nearly a year longer than they were five years ago. The subgroup identified 12 nonviolent offenses from the discussion that had taken place by the ACAJ in 2016 and, with the assistance of the ACAJ work in 2016, at least 10 of the 12 nonviolent offenses were suggested then and are suggested now to be reclassified as category C offenses. A number are addressed in the theft sections and the others in sections 84, 111, 125, and 130. I would add that much work still needs to be done in this area.

In May of 2007, Senator Terry Care raised the question to those who spoke about our incarceration system: Are we engaged in category creep? And certainly in the period of time leading up to 2007 and since, I think it is clear that we have been. One other important point about this area, the ACAJ in the last decade identified the fact that, almost always, the Legislature, when deciding to criminalize behavior, did not debate the length of sentence or the period that should be served as part of the criminal statute, but rather frequently deferred or defaulted to a category B selection.

Even in 2017 the Legislature was urged, when we adopted the policies from The Council of State Governments, that in criminalizing behavior the Legislature should debate what is an appropriate period of incarceration associated with conduct.

As you can see, the subgroup covered a lot of ground and heard from a variety of perspectives. Not every member initially agreed with every recommendation, myself included, but the majority of us who discussed and debated these measures, looking at this data, studying the research, and drawing from our own experiences in the system, believe this is the best path forward. I share Assemblyman Yeager's invitation to discuss these in detail as the session progresses. Improvements can be made without a doubt. And with that I turn the presentation back to Assemblyman Yeager to tell you about the policies within Assembly Bill 236 that came from his subgroup.

Assemblyman Yeager:

We are halfway through, Committee, and I will try to speed up a little bit as we get through the last few recommendations. I am going to discuss the recommendations that came out of the subgroup that I chaired starting with recommendation 14 [page 29, ([Exhibit E](#))].

Recommendation 14: One of the interesting data points the ACAJ examined was how the parole grant rates fluctuated over the past ten years and the impact this has had on the prison population. Many of you have heard Director Dzurenda talk about the prison population dipping over the past two years and this is largely the result of significant increases in parole grant rates. In order to maintain that consistent release rate, sections 97 through 99 of the bill codify an existing practice of the Board of Parole Commissioners to grant parole without a hearing for certain low-level offenders.

Recommendation 15: Similarly addressing parole options, the subgroup wanted to respond to the alarming growth of the over-55 population [page 30]. The data shows that this population increased by 70 percent in the last ten years and, with significant medical needs, this continues to be costly for the Department of Corrections. Section 91 of the bill expands eligibility for medical release to individuals who are within 24 months of death, and section 93 creates a geriatric parole process for inmates of a certain age who have served a certain amount of time. The current law authorizes medical release when a person is determined to be within 12 months of death. I would like to note that these are not mandatory. They are discretionary; no one would be automatically released under either of these provisions.

Recommendation 16: The subgroup reviewed the data findings presented to the ACAJ related to the community supervision population—specifically the data findings which showed a large increase in the number of individuals returning to prison from parole and probation [page 31]. Most of the bill's sections that I am going to walk through here are responding to this issue. One of the strategies discussed, which is supported by the research and has been implemented in many states around the country, is to focus supervision resources on the most serious offenders and shorten the length of supervision for those individuals who do not pose a public safety risk. In Nevada, nearly two-thirds of probation revocations occur within the first year of probation, and one-third occur within the first six months. A significant majority of probationers who are not revoked within the first year complete probation successfully. One of the ways to front-load resources is to tailor probation lengths to the seriousness of the offense. This allows Parole and Probation officers to focus their time supervising individuals

convicted of more serious crimes. Section 34 alters probation lengths to correspond to felony categories. This would allow the Division to focus its limited resources during the first few months of probation, the period when the data shows individuals are most likely to fail. To similarly accomplish this, sections 16 and 17 establish a process to streamline the early termination of probationers who are complying with conditions of probation.

Recommendation 17: Another strategy discussed by the subgroup was to improve the way we respond to behavior while on community supervision with the goal of changing behavior before it gets to the point of revocation [page 32]. Thirty-nine percent of prison admissions in 2017 were for failure on community supervision. The subgroup agreed that prison should not be the default response to every violation. Section 18 of the bill requires graduated sanctions be used when responding to technical violations. The Division of Parole and Probation recently created a graduated sanctions matrix and has begun implementing it, so this largely codifies a new practice that is happening already. Sections 25, 32, and 33 tailor conditions of probation to public safety rather than simply compliance with unrelated prohibitions.

Recommendation 18: Again to address this issue of increasing revocations reentering prison, sections 35 and 101 establish limits on the time an individual on probation or parole can be incarcerated for a revocation due to a technical violation [page 33, [Exhibit E](#)]. This only pertains to violations that are not a new gross misdemeanor, a felony, or absconding, meaning not showing up at all to probation.

Recommendation 19: The subgroup also examined the reasons individuals were being returned to prison for technical violations [page 34]. As I mentioned earlier, 44 percent of failures on supervision are the result of a substance abuse problem. The subgroup agreed that we need to better identify the factors that are driving someone's behavior or their noncompliance, such as substance abuse, and proactively address these issues if we are going to have a chance of making our community safer. To that end, sections 94 and 95 of the bill require that conditions of supervision be tailored to the individual risk and the needs of the offender and that individualized case plans be used to guide supervision decision-making. Again, this is a policy that the Division of Parole and Probation has started implementing, with the implementation of risk and needs assessment last year.

Recommendation 20: Another key issue the subgroup discussed was the gaps in reentry services and support [page 35]. Section 92 of the bill seeks to address some of those gaps by requiring the Department of Corrections to provide transportation, clothing, and medication to offenders leaving custody. Section 100 requires that the reentry plan, which the Department of Corrections and the Division of Parole and Probation currently collaborated on, address factors beyond a person's prospective housing and that the plan start six months before an offender's parole eligibility date.

Recommendation 21: In thinking about the types of offenders returning to prison, we saw that recidivism rates were growing for female offenders, and that returns to prison constituted the largest increase in admissions growth for females [page 36, [Exhibit E](#)]. Section 90

targets this population by requiring the use of risk and needs assessments to guide institutional programming, addressing the specific needs of female offenders, which research has shown differ greatly from those of male offenders. Additionally, sections 89 and 96 require staff from both the Department of Corrections and the Division of Parole and Probation to receive training on trauma and domestic violence. During the two roundtable discussions with victims' advocates that occurred as part of this process, trauma and domestic violence were identified as common characteristics of the female prison population.

Recommendation 22: To understand whether the new policies in A.B. 236 are successful, the ACAJ determined that it would be important to monitor and track the implementation of these policies and measure the impact of the changes [page 37]. Sections 5 and 6 establish new duties for the Sentencing Commission to function as an oversight body for this legislation with the responsibility of collecting and analyzing data from the state's agencies related to the reforms, submitting a report to the Legislature, and developing a formula to calculate the averted cost savings.

Recommendation 23: Now to the part of the bill we all have been waiting for—reinvestment [page 38]. This process is called "justice reinvestment." Here is the reinvestment: one of the goals of the Justice Reinvestment Initiative is to shift resources to programs, policies, and strategies that increase public safety by reducing recidivism. In many states, this has included expanding treatment for substance abuse and mental health. Sections 103 and 104 establish a mental health field response grant program for law enforcement jurisdictions to seek specific funding designated for the many proactive measures agencies have initiated to address individuals with behavioral health needs.

Recommendation 24: Sections 7 and 8 of the bill likewise prioritize reinvestment in targeted areas such as reentry, behavioral health needs, and transitional housing [page 39]. It also sets up a local Justice Reinvestment Coordinating Council that will have a member from every county in the state of Nevada to oversee the impact of the reforms on a local level and allow local stakeholders to advocate for targeted funding and local initiatives.

Recommendation 25: Seeking to fill identified gaps in the system, sections 45, 49, 52, and 102 reflect the priorities of the Victims' Roundtable that were covered as part of this process [page 40]. They address the types of counseling required by perpetrators of domestic violence and clarify the existing definition of "victim" in the state of Nevada.

Lastly, to circle back to the impact this bill would have: It would avert nearly 90 percent of our state's projected prison population growth and avoid future spending of \$640 million [page 41]. How often do we talk as a body of what we might like to do if we only had the resources? Here is a plan that saves \$640 million over the next ten years. As I stated in the beginning of this meeting, this is a long, comprehensive bill—130 pages and almost as many sections. I welcome continued feedback and plan to schedule working groups with interested parties to discuss the bill further, but I want to reiterate the cost of doing nothing. If we do not make changes, we will continue to see our prison population grow, and we will continue to pay into a system that cycles people in and out at increasing and alarming rates.

Without action from you as a Committee and from this Legislature, we will sink \$770 million into building more prisons rather than into other areas of public policy that desperately need funding.

I want to thank you all for your time and attention. This was a long presentation. I want to thank the ACAJ members, many of whom are present today and that you will hear from, for their work on this issue. It was a lot of work, but it was meaningful and, with that, we will do our best to answer any questions.

Assemblywoman Nguyen:

I have a question on the pre-prosecution section. I know a lot of work went into this prior to Marsy's Law and the election in November. How do you see that working together?

Assemblyman Yeager:

Marsy's Law is constitutional rights to victims of crime. I do not see the diversion programs affecting that law at all. I think any victim would be properly noticed and have a chance to come into court to let the judge know of his or her opinion on whether a diversion program is appropriate. The diversion programs listed in the bill are not mandatory, so a judge is always going to have that discretion after hearing from interested parties, including the victim, to make the decision that the judge feels is right. I believe the purpose of Marsy's Law was to allow victims to be heard and a place for them to make their opinions known. I think as long as a judge does that in the context of making a specialty court decision, it would not run afoul of Marsy's law.

Assemblywoman Nguyen:

I have another question about the section on drug trafficking. I saw those amounts; obviously, they are significantly different than what is in current law, and I think there needs to be some addressing. Did you guys have any discussions about how you came up with those new amounts? I always felt the existing ones were arbitrary, and I do not know if they are just another arbitrary bump or if there was something that went into that and if there was any discussion about making it drug-specific.

Justice Hardesty:

There was a lot of discussion. Speaking for myself, I am concerned that weights are arbitrary, whether in our current statute or, frankly, within these options. As I expressed in my presentation, I would hope that a charge of the Sentencing Commission would be to examine how we address drugs. I have expressed before that I am not sure the so-called war on drugs works. It has to do in large part with not taking into account the fact that drugs are different. Weights are not always the best approach to determining their impact, and I think that is an important conversation the Sentencing Commission should have as part of their charge going forward.

I would refer you to the report dated January 2019 ([Exhibit D](#)). The ACAJ discussed not only the data surrounding these issues, but also discussed options that were provided.

I believe there were three listed there. Mr. Callaway suggested a fourth option; all of that is on the record. A majority vote of the ACAJ selected the one that is before you.

I would like to make a point—in the context of trafficking we also have this "possession for sale," which is part of this discussion. Other options were presented; for example, Mr. Callaway's suggestion is listed as an alternative policy option (a) [page 27, ([Exhibit D](#))]. There was also policy option (b), referring the study of weight thresholds to the Sentencing Commission. What the subgroup came up with was a combination of the first option—what you have in front of you—as well as having the Sentencing Commission continue to study this more deeply in the next biennium.

Vice Chairwoman Cohen:

Were there any places on any of the decisions that were unanimous from the ACAJ?

Assemblyman Yeager:

The subgroups voted out recommendations that went into the whole ACAJ. There were recommendations out of the subgroups that were unanimous—in fact, the recommendations out of the subgroup I chaired, I believe, were unanimous. I will let Justice Hardesty speak to his subgroup, but to answer your question, we took the report as a whole with all 25 recommendations to the entire Advisory Commission. That was an 11 to 4 vote, though you will hear from other stakeholders today that there were many who were in favor of many of the 25 recommendations but not all of them. It was simply an up or down vote on the entire report by the time we got to the whole ACAJ.

Justice Hardesty:

I think I ended up with the thorny subgroup. I do not recall, but my best memory would be that none of the recommendations from my subgroup had a unanimous vote—maybe one or two. There was a diversion of opinions and the splits were even different.

Assemblywoman Miller:

Thank you both so much for your presentation. This is something that personally excites me. Therefore, I feel the need to get it on the record to complement what Justice Hardesty said earlier, that 2007 is when you first heard about the recommendations for the Advisory Committee. Let us take a look at 2007 because in 2003 the newly elected Governor Jennifer Granholm of Michigan had announced the Michigan prisoner reentry initiative. I see the heads nodding. I developed and became a director of a prisoner reentry program in 2006. Yes, in Michigan—there are two states that I have lived in, so two states that I know extremely well. We are going back to 2003 and 2006. In 2007 Justice Hardesty addressed Nevada saying this is what we need. Here we are in 2019. Assemblyman Yeager talked about the potential risk of not initiating this and the increasing amount of people who would be incarcerated and the millions and millions of dollars that the state would have to exhaust on this.

If we look at a state like Michigan that has been doing this for almost two decades now, they have actually closed prisons. There have been a dozen prisons closed in that state, and they are in the process of closing more. Not all of it is because of reduced inmate populations, but they do have significant reduction in inmates in their prisons, almost 12,000 fewer inmates than they had two decades ago.

They also have one of the lowest recidivism rates in the country right now. If we were to look at where Nevada could be 16, 18, 20 years from now, this is the moment when we have to decide where we want to be. This is not about not holding people accountable. It is not about not ensuring that our community is the absolute safest it can be. This is the moment, in 2019, when we decide what we want our state to look like 20 years from now.

That being said, I am going to ask a very light and fluffy question. In section 7 of the bill, subsection 3(e) talks about the Nevada Local Justice Reinvestment Coordinating Council having the ability to provide grants out to the counties for programming. It states the council is "created by section 8 of this act for the purpose of making grants to counties for programs and treatment that reduce recidivism of persons involved in the criminal justice system." Will there also be an interest in attracting federal funds to support what Nevada is doing?

Assemblyman Yeager:

First, thank you for your comments. One of the difficulties of the Legislature over the past couple of decades—we are only here every other year, 120 days, in this building—is that it can be very hard to think long-term. We tend to think in two-year cycles. This is an effort for this Legislature to decide where we want to go 10 or 20 years from now. None of us are going to be here in this body unless there is a constitutional change to term limits. There will be new people filling these seats. I hope we will be in a place where those people are thankful for the work that we did 20 years ago because our communities are safer and because there are more tax dollars to be able to prioritize in other areas. I thank you for that perspective because it is an important one.

Assemblywoman Miller:

Will we be looking at Department of Justice funding, Department of Labor funding—there are federal funds—and be trying to attract those?

Assemblyman Yeager:

The answer to that question is, absolutely. We want to do that, and one thing I did not mention is that this is phase one of the justice reinvestment effort. If this bill or some version of it gets implemented, there is a phase two where the state and the agencies continue to get technical support from the Crime and Justice Institute to implement these policies because we cannot just hand it to a department without resources and say, Good luck. Phase two of this process comes with resources from a public/private partnership that includes the federal government, and part of that process is to try to find as much of a federal match as we can. I just want to say for this local Coordinating Council, this seeks to address some of the concerns you have heard in opposition, particularly from some of our more rural counties,

that they just do not have the resources to do some of these things. This is the goal of where those resources would come from, and the real beauty of it is it is up to the local government to decide where to invest that money. Maybe their needs are not the same in Lyon County as they are in Storey or Elko Counties. It will be a local decision whether to invest in some of those programs.

To get to your question, we certainly want to leverage every potential dollar we have to get federal matching monies.

Assemblywoman Miller:

Along with that, I know we always appreciate what it is like for our rural counties, but sometimes I think we forget all 50 states have rural counties. Those challenges are not specifically unique. We have our own unique challenges in our own rural counties, but rural counties are not something exclusive to Nevada. We have our parole and probation at the state level, so would there be any move toward having more support at the county levels for that? Because, as you said, the counties really need to work on their services locally.

Assemblyman Yeager:

That is the hope. We are always going to have the Division of Parole and Probation as a state agency, but certainly counties have a role to play here and have the resources that are available at the county level. So one of the whole points of this initiative is to get folks in the room talking to one another so we know what is out there and we can leverage those resources. That would absolutely be the hope, that Parole and Probation is going to benefit from beefed up county resources because of the monies available in this bill.

Assemblywoman Miller:

I appreciate your recognition that we cannot just hand this bill over and that this is really the beginning of a culture shift here in Nevada. I thank the both of you.

Vice Chairwoman Cohen:

We have about ten minutes for questions. I ask members to be brief and remember, you can certainly ask offline. Also, because this is such a large bill, if you are referring to a specific section, if you could please give us a page number that would really help.

Assemblywoman Hansen:

You have convinced me, Assemblyman Yeager, that you are an overachiever, and I greatly respect you. I appreciate the work done by so many. Following up on Assemblywoman Nguyen's question on Marsy's Law, in section 1, as we talk about diversions, my concern is that diversions can take quite a bit of time—maybe two or three years—and then if they fail, is the victim's right to a timely solution to the problem being preempted by the diversion, as far as their right to a timely resolution?

Assemblyman Yeager:

Thank you for your kind words. I suppose that is a possibility, but I want to point out why I do not think it would happen in reality and that is because, when the judge is constructing

a diversion program, the judge has the discretion to set that up. There is nothing in the bill that mandates that it be three years, five years, however long, so we trust our judges to do these sorts of things.

In a case, for instance, if a victim were particularly interested in being involved in the process, I anticipate that victim would come forward at the time of the diversion request and make those issues known. I think a judge at that point would weigh all the factors and perhaps decide that the diversion is not appropriate because it is not a guarantee under this bill. I would anticipate that, if a judge heard from a victim that he or she was worried about a long and drawn-out process, a judge could structure a more appropriate length of diversion, perhaps with more intensive requirements that would be done. I guess the bottom line on that is that I am going to trust our judges to do the right thing because, as a Legislature, we are not mandating it. We are just opening it up, and as long as the victim continues to have a voice in that process, I do not believe it would run afoul of what Marsy's Law considers. Truthfully, I do not anticipate a diversion program being years and years when talking about a first-time, nonviolent felony offender.

Assemblywoman Peters:

The cultural implications of those increases of first-time felonies is really staggering, and I think there is something to be looked at socially. I also just want to make a statement. As I look through this document, I realize one of the directions we want to go is to protect women and offer services for women who are overly incarcerated. I do not think that language is in here. I think that needs to be addressed—what kind of protective services we can bring into our criminal justice system.

My question is, we talk about sentencing reform, but is that meant to apply retroactively on some of these cases?

Assemblyman Yeager:

Generally speaking, it would not be retroactive. The effective date of the bill, whenever it is effective, means that it would apply to any sentencing that happened after that date. We would not be going back and looking at prior sentences. Although, from a fairness perspective, we may want to do that as a Legislature. It becomes extraordinarily difficult to do, particularly in the context of making sure victims had their day and had their say, to go back and undo some of that. It would just apply going forward.

Assemblyman Edwards:

Having sat on the Judiciary Committee for the first time, I find it interesting that we have so many things that we are trying to either criminalize or increase the penalties on. This seems to do the exact opposite. I am wondering if the consequence of that is going to result in putting a bigger burden on the local jurisdictions? Will the reduced penalties and so on actually end up putting the prisoners in some kind of incarcerated state or more at the local levels, and are those local levels consulted to know if they can handle it?

Assemblyman Yeager:

I do not think so, and here is why: The system we have now, particularly with Parole and Probation, is a system where offenders spend significant amounts of time in jail waiting for a judge to make determinations about whether they are actually going to prison. Those are jail days that are already being taken. In fact, this bill actually requires, in one of the sections, that the revocation hearing happen quicker than 15 days. That should actually be a pressure release to the local governments. In addition, I will say this: By potentially reducing crimes to misdemeanors, that would trigger county jail days. With that being said, the goal of the bill is to provide treatment. The goal is not to say you are going to get a misdemeanor and now you are going to do six months in jail versus a year in prison. The goal is for treatment. If that is successful and it has proven to be successful in other jurisdictions, those are likely people who are not going to spend time in jail beds. More than that, hopefully they are going to address whatever issue they have so they are not continuing to cycle through the system, which really stresses the local resources in terms of judicial jail.

Assemblyman Edwards:

Your Recommendation 23, where you are trying to provide those programs, did you deduct the cost of those from the \$640 million of proposed savings?

Assemblyman Yeager:

I will have to get back to you on that. I am not sure of the answer right here and now. Give me some time to look at that and I will let you know.

Vice Chairwoman Cohen:

We still have some Committee members who have more questions, but I would like to get the rest of your presentation and support in. If we have more time, we will get to those questions.

Assemblyman Yeager:

I do want to note that there are a lot of questions. This is a very large bill and, unfortunately, we do not have a lot of time, but I will gladly make myself available to anybody afterwards, as will Justice Hardesty or any of our partners at the Crime and Justice Institute. Please do not feel that you will not have time to get the question answered. It may not be possible to do it this morning. You all know where to find me.

James E. Wilson, Jr., Private Citizen, Carson City, Nevada:

I am one of the two district court judges in the First Judicial Court of Nevada, which covers Carson City and Storey County. I am a member of the Advisory Commission, and I am here in support of Assembly Bill 236. I support the bill because I believe it will improve public safety. It is important that you know I am only speaking for myself. I do not represent the First Judicial District Court or any other court or any of the other judges.

I have some experience with the criminal justice system from some different perspectives, and I want to take a couple of moments to share some of that with you. I grew up here in Carson City. Between college and law school I was a deputy sheriff in Carson City;

I worked in the traffic division, patrol division, and was on the special weapons and tactics team. I shared with most, if not all, of my fellow officers the belief that if someone committed a crime, they needed to be punished. Punishment meant jail or prison, depending on the category of the crime.

After law school, I went to work as a deputy district attorney in Elko County. I was a prosecutor. After 18 months, I became the district attorney, and I remained the prosecutor. In those days in Elko, we did not see drugs near the extent that I see them as a judge today. That was not a majority of our docket. We did not have diversion programs, and we did not have specialty courts. My belief system was the same. If somebody commits a crime, they should be punished; again, that was jail or prison.

I left the district attorney's office and went into private practice. I was a solo practitioner here in Carson City for over 20 years. I did a little bit of criminal defense as part of that practice. In the late 1990s I became a reserve police officer for the City of Sparks for five years. I received the police training necessary for certification. I was trained, and I was issued a gun and a badge. I was on patrol with street officers. I would like to say that was because of a deep drive to serve the public, but the truth is, I loved police work. I find it fascinating. I found it rewarding. I have high regard for law enforcement. I became a judge in 2009 and I came to the bench with the same basic attitude of "commit a crime, be punished." I have had more life experience than I had earlier. The job has changed my beliefs on how we deal with crime.

My wife and I have five children and ten grandchildren. Public safety is important to me, not only for the public but for my family. I have a vested interest in how this process works. I also want you to know that I have seen it from the perspective of a victim. Ironically, my home was burglarized, ransacked, and our brand-new Suburban was stolen while I was the district attorney of Elko County.

We have had a car in our driveway that someone entered and stole property from. As a judge, I have sent many people to prison. In the beginning, looking back today, I regret some of those decisions. Some of those people would have been better served had I not sent them to prison, at least at that point in the process.

I have been a judge for ten years, and I have sentenced people to prison thinking that traumatic experience would change their behavior, that it would make them better citizens. When I have seen them come back after committing a new crime, I had to start questioning that. It changed my beliefs. I believe we need to address crime in a different way.

In Carson City we have a felony drug court, a misdemeanor drug court, and a mental health court. We have access to a veterans court, and I have seen people who have gone through those programs manage their mental health or their addiction at least as effectively, if not more effectively, than those who have been incarcerated.

My experience tells me that sending someone to jail or prison does not cure them of mental health issues and does not help them manage their addiction. My experience tells me that sending them to jail or prison does not make them better citizens, particularly in prison where they are subjected to coercion, violence, and manipulation. It does not prepare them to be a better citizen when they are released. It does not improve their behavior. I am speaking in general terms.

When I send people to prison, they come out with the mental illness, the drug addiction, or both that they went into prison with, and they have added to that the trauma of having been incarcerated. They have the same drivers that sent them there in the first place when they come out again. It does not make sense to me.

Another perspective I have: In the First Judicial District, like everywhere outside of Clark and Washoe Counties, the judges do everything. I spend most of my time doing family law matters. This problem of drug addiction and mental health and having it not treated affects that area tremendously. It destroys the people who are addicts; it destroys their families. We can cause further harm. Most of the people whom I send to prison are male; most of them leave a mother of a child or children behind who now has to get along without whatever income that person was making. When he gets out of prison untreated and returns to that family, the child or children in that family continue to be subjected to the consequences of dad's addiction, dad's mental health issues, or both. Addressing it from the criminal standpoint makes sense. It makes sense from a family perspective to treat them rather than send them off for punishment.

Some people definitely need to be in prison; there are some people who are predators—they are dangerous and repeat offenders. There is not a way to manage them safely outside of prison. I am not saying close the prisons—nothing close to that. Again, I support Assembly Bill 236 for one reason. The economics are a consequence, a happy benefit. I support this bill because I believe it promotes public safety and will do a better job of protecting our citizens than the current system we have.

Vice Chairwoman Cohen:

Do we have any questions for the Judge? [There were none.] We will now go to those in support of A.B. 236. We will have 20 minutes, but I would like to get back to some of the Committee members who have questions for the presenters if we can. I would like to remind people, because we have several people who are signed in to speak, I am asking that you not just read your testimony. If you have written testimony, please submit that testimony; "ditto" is okay. Again, if there are points that have been made, please avoid that. We will start with the testifiers down in Las Vegas.

Paola M. Armeni, Private Citizen, Las Vegas, Nevada:

I am here today to testify in support of Assembly Bill 236. I support that bill both as a member of the Advisory Commission on the Administration of Justice (ACAJ), as well as an attorney in the field in which this legislation will impact ([Exhibit I](#)).

I have been an attorney in Las Vegas for the past 15 years, practicing primarily in criminal defense both in federal and state court. I have observed first-hand the gaps that exist in our state's criminal justice system. As a member of ACAJ, my goal has been to work toward identifying a solution to address some of these challenges. Assembly Bill 236 is an important first start. Since August of 2018, the ACAJ has participated in the Justice Reinvestment Initiative. That opportunity was a gift for our state. The process involved taking a data-driven look at our state's criminal justice system. This analysis looked at what is driving our state's prison population, what alternatives exist to respond to individuals with substance abuse and mental health issues, and how our state is and is not adhering to best practices for reducing recidivism. The process was eye opening, and we learned a lot as we took this data and compared it to other states. We learned that nonviolent offenders who were in prison were there for longer periods of time. It confirmed that our burglary statute was extremely broad and all-encompassing; our drug trafficking laws compared to those of other states were more punitive; and law enforcement has few diversion options when working with individuals with behavioral health issues. As a result of that, those people are arrested and contribute significantly to our prison population. We have also learned that a lot of people were failing probation and parole conditions and were, therefore, contributing to the growth of our prison population.

Assembly Bill 236 addresses many of the issues that we as a state have been talking about for years. We have talked about the harms and inefficiencies in mandatory minimum sentencing for property and drug offenders. We have talked about the need to change supervision practices from an emphasis on surveillance to a focus on support. However, we have not yet been able to make appropriate policy changes. It has always been talk with no action. Assembly Bill 236 is our action and provides a stepping stone for us to start addressing problems.

Not only is this bill the product of robust discussion and debate amongst stakeholders from many disciplines with varying philosophies about the criminal justice system, the bill was developed in direct response to Nevada-specific data. This makes it unique from the criminal justice efforts that came before it. The changes included in A.B. 236 are not policies picked out of a hat. They are data-driven solutions specific to the challenges facing Nevada's criminal justice system. Other states that have enacted similar measures have seen both a decrease in crime and incarceration rates and an increase in the state's treatment capacity. I am encouraged that with the implementation of A.B. 236, Nevada will see similar results.

I expect that A.B. 236 will usher in a commitment to fairness, accountability, and safety to our criminal justice system. It seeks to protect our communities by reducing the number of people cycling in and out of the system. Less recidivism means fewer crimes and fewer victims. It aims to bring fairness by tailoring sentences more appropriately to the severity of conduct. And it ensures our prison beds are reserved for the most serious and violent offenders. For all these reasons, I urge you to vote yes on A.B. 236.

Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice:

I urge you to support Assembly Bill 236. I have been testifying before the Legislature in Nevada urging that we not increase penalties wholesale without looking at other options and other remedies. This bill does that. We have, as Justice Hardesty indicated, undergone a creep of our ongoing enhancement of penalties, making things more severe to the point where Nevada has become an outlier in many of the areas that this bill addresses. I think this bill was the collective effort and a decade of hard work on behalf of the stakeholders across the state. Even I could find things to complain about in this bill, and as Nevada Attorneys for Criminal Justice stated in its letter ([Exhibit J](#)), this bill is an amazing combination of work that reflects the hard efforts of a lot of people, although we may not love everything in it. It is a good bill and I urge you to pass it. It will address public safety, economics which have gotten out of hand in our criminal justice system, and more importantly, it will address remedial measures where we can actually be treating people instead of just incarcerating them.

JoNell Thomas, Special Public Defender, Clark County Public Defender's Office:

I want to applaud the Committee for its work. I appreciate everything that has gone into this and taking a forward-thinking approach. I particularly echo Judge Wilson's comments. The impact on families and the community is a direct benefit of the proposed changes. Again, I thank the Committee for all its work.

Darin Imlay, Public Defender, Clark County Public Defender's Office:

I have an office with 120 attorneys. We handle approximately 25,000 criminal cases a year. We are strongly in support of Assembly Bill 236. I think it gives Nevada the opportunity to move forward in its criminal justice reform. I want to touch on three provisions in the bill. One deals with the diversion and specialty courts. My office staffs a number of the specialty courts in Clark County dealing with substance abuse, mental health issues, and a veterans court. We have a co-occurring court. We also address some of the issues for juveniles. I know that is not addressed in here, but it is a diversion program for kids with autism and things like that. What we have found is that these programs work. They reduce recidivism. It is going to prevent our clients from continually coming back into the system. It is going to prevent them from continually filling up the jails and our prisons, because if we address the underlying issue, then in general society there will be fewer victims because recidivism will be reduced. We know that. That is what the evidence throughout the country has shown: that these programs work. If we invest the money up front, then it will save a tremendous amount of money on the tail end. Most importantly, it is going to protect society, protect the community, and protect my clients.

In regard to the revocation changes, Assemblyman Edwards asked about the impact this would have on local jails. As far as the Clark County Detention Center is concerned, our clients spend almost 45 days just waiting for a revocation hearing—sitting in custody—just because of the sheer volume. Having the graduated sanctions and technical violations laid out is going to increase the likelihood of persons on probation successfully completing their probationary term. Part of the bill says, if they pick up a new gross misdemeanor or felony, that is not a technical violation, and they could still end up going to prison. Society is going

to be protected from someone continually reoffending. For technical violations, we are going to increase the likelihood that a person will successfully complete his or her term of probation. If they successfully complete the term of probation, again, recidivism is going to drop dramatically.

Lastly, regarding burglary: the judge mentioned his car being burglarized as well as his house. On my way walking over, had I decided to open a car door and steal some change out of the car, it would be a category B felony. I would be facing 1 to 10 years in prison. It makes no sense that there is no difference between that and burglarizing someone's house. There needs to be clarification on the burglary charges in the state of Nevada.

We always fall back to category B, which increases the prison sentences. This bill will address a number of the underlying issues, both for probationers and for those who come into the criminal justice system before they are even placed on probation with diversion programs and specialty courts. Reducing recidivism will have a tremendous positive impact on our society.

Mendy Elliott, representing Reno Sparks Chamber of Commerce:

We are in support of Assembly Bill 236. We would like to applaud Justice Hardesty and Assemblyman Yeager's efforts to support criminal justice reform with the introduction of A.B. 236. The Reno Sparks Chamber of Commerce recognizes and values the balance that is needed between regulation and enforcement.

The Chamber's public policy statement supports prison and parole reform, and it reflects a greater emphasis on realistic sentencing and rehabilitation that provides job skills training and lower-cost alternatives. True reform must also eliminate obstacles to reentering and participating fully in society. Supporting better education and job training programs inside prisons can help incarcerated people become more productive citizens upon their release.

Making it easier and less expensive for inmates to stay in contact with their families can help break the cycle of reimprisonment and poverty. Restoring fundamental rights that many formerly incarcerated people are still denied can empower them to have a voice in our republic democracy.

The Chamber also recognizes that there is an opportunity for public service requirements for certain offenders as part of their sentences with emphasis on community service and at a reduced cost to taxpayers, potentially saving \$640 million and additional corrections costs over the next ten years.

The Chamber anticipates there will be ongoing dialog with respect to criminal justice reform and, therefore, we have a heightened interest in section 8 which establishes the Nevada Local Justice Reinvestment Coordinating Council, which will assist with future legislative recommendations and will interface with local jurisdictions with potential opportunities.

We want to be part of the solution as we as a state work through this session, and we are anxious to work with all parties to develop a road map for these reforms in order to reduce our recidivism rate in Nevada.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:

I want to thank the ACAJ and the Crime and Justice Institute for all of their hard work. I am a member of the Nevada Sentencing Commission and was formerly a member of the Advisory Commission on the Administration of Justice and I am speaking on behalf of myself and my legal director, Amy Rose, who was on the ACAJ and deliberated many of the policies before you today.

During those presentations it became clear that Nevada is moving in the opposite direction from the rest of the country. Our prison population is growing while most other states are putting fewer people behind bars. I think Nevada often feels a sense of pride in being one of a kind and unique. In this case, being a rebel is not in our collective best interests. For that reason, I encourage this Committee to vote on A.B. 236.

The ACAJ's examination of the criminal justice system in our state illustrated the path that we are on—which involves sending more people to prison and for longer periods of time. It is not only fiscally unsustainable but, in fact, it does not improve public safety, and for some people it actually increases recidivism rates.

Our system is currently sending people to prison who have an addiction or mental health challenges, which is a gross injustice. Their criminal behavior is a consequence of their needs not being met in the community. If we want to curtail criminal behavior influenced by behavioral health challenges, we need to address the cause of that behavior and not criminalize that behavior.

We are also deeply troubled by the number of women we are sending to prison. These women are often victims themselves—victims of years of abuse and trauma—and the vast majority are mothers. They are often sent to prison for nonviolent crimes such as drugs or property offenses. Prison only exacerbates the cycle of trauma and abuse that these women experience. We can and should do better.

Assembly Bill 236 makes important changes to our system, changes that we should be very proud of if this bill passes, but the bill does have its shortcomings. The first shortcoming we see is the fact that it does not apply retroactively. This means there are thousands of Nevadans who are serving time in the Nevada Department of Corrections on grossly disproportionate sentences. If this bill applied retroactively, we could correct that and address the prison population more immediately.

Even if we pass every single component of the bill as it is currently written, we will not eliminate all of the future growth, and none of these polices will reduce our current prison population, which exceeds the capacity of the prison system. I want to emphasize this.

We will still be adding more people to the prison population, which requires us to funnel more taxpayer resources into the prison system, which means less money for other programs. However, we should not miss the opportunity we have right now. We cannot fix 30 years of problematic policy decisions in one bill or even one session.

Vice Chairwoman Cohen:

Ms. Welborn, I am really sorry but we have a lot more people to get to. I am going to ask you to wrap up and remind everyone to please be as brief as possible, and if you have written testimony, please give that to the committee secretary so we can see it.

Holly Welborn:

We will do that. Thank you so much for hearing me. I made most of my points and I appreciate your time.

Kelvin Bell, Private Citizen, Las Vegas, Nevada:

I am speaking for myself as well as Toastmasters International. I want to applaud the participants in terms of the development of Assembly Bill 236 and ask that you approve this bill. One of the things that I see as a possibility to enact within the structure of your consideration for ongoing distribution to the people is making sure you put in additional measures such as the Toastmasters International. They have a communication and leadership program both within and outside the prison system. It allows people to develop their communication skills, which also increases their employability and their effectiveness in the community. This will allow them to seek appropriate jobs, avoiding the temptation of committing crimes in order to support themselves. I also support the 25 recommendations for changes that were presented by Assemblyman Yeager and Justice Hardesty and support the efforts to get this bill passed.

Kevisa Mathews, Private Citizen, Las Vegas, Nevada:

I am here to share my story about being an abused mother of four children. They put me in jail when I was 3 1/2 weeks pregnant. I had to sit in jail for 7 1/2 months. Imagine sitting in jail spending your time trying to fight a case. I could not afford it. I was a single mother dealing with being battered. I have a mental illness, but they did not help me with my mental illness or having been abused, so I had to go back to what I used to know and what I used to do. It was horrible for me. I support the bill because it will be more effective for people who cannot afford it, such as single mothers and single fathers.

Vice Chairwoman Cohen:

Thank you for sharing your story.

Quaron Brown, Private Citizen, Las Vegas, Nevada:

I am here on behalf of myself. I am also a volunteer for Americans for Prosperity, and I am also learning at Toastmasters International. In the Pledge of Allegiance, there is a line that states, ". . . one nation under God . . . with liberty and justice for all." I am in support of this bill because it will help a lot of people. I myself was incarcerated for a nonviolent offense; I was not caught with anything. A person said I did something, and I did a federal stint of

five years. I represented myself and I saw laws and the loopholes in laws which are placed there against a lot of minorities and nonviolent offenders. I am in support of this bill. A lot of people—minorities in impoverished areas—deal with a lot of mental health and other issues that are not being addressed. If these issues are not being addressed, public safety is going to be unbalanced.

I have found through research that programs cut costs on average—"programs that address the prisoner's mental health or substance abuse problems may reduce the cost of crime by \$0.92 to \$3.31 per taxpayer dollar spent on prison reform and long-run incarceration costs by \$0.55 to \$1.96, for a total return of \$1.47 to \$5.27 per taxpayer dollar" [*Returns on Investments in Recidivism-reducing Programs*, Council of Economic Advisors]. If the taxpayer is starting to save money, to take that money and allocate to things such as mental health and programs to help people, it will help public safety and society become a better place, and then we will fulfill the words of the Pledge of Allegiance.

Vice Chairwoman Cohen:

Thank you, sir, and thank you for sharing your story.

Tonja Brown, Private Citizen, Carson City, Nevada:

I would like to echo the previous comments. I have been attending the ACAJ since 2007 and, over the years, all I have seen is that the prison population continues to grow, and the mental health crisis continues to grow. With the passing of Assembly Bill 236, it would be a start. As an advocate for the inmates and the innocent, we strongly support this bill.

John L. Arrascada, Public Defender, Washoe County Public Defender's Office:

I am here to speak in support of Assembly Bill 236. I am here as a stakeholder in heading the office of the Washoe County Public Defender's Office, but I am also here in support as a fourth-generation Nevadan. I am here to speak on behalf of the fifth generation: my twelve-year-old daughter and my six-year-old son.

This is an opportunity for generational change and a shift in the paradigm in the criminal justice system. Back in the 1980s, the balance was shifted toward punishment as a focus on deterrents, and that has not happened. We have failed, and for our next generations we have to focus on what we can do within the criminal justice system to make our community safer, and our society a better place to live.

We have data-driven analyses and support that rehabilitation stops recidivism. I would say, conservatively, in our office over 90 percent of the cases that come to us are clients who suffer from addiction or mental health issues. If that can be addressed, the end result will be a better society and a better place for the next generation of Nevadans. I echo everyone else's support and thank you for your time.

Bill Hart, Deputy Alternate Public Defender, Washoe County Alternate Public Defender's Office:

We are speaking in support of Assembly Bill 236 as well. The criminal justice system is not about filling prisons. It is about solving problems. I think we have learned that warehousing

does not make us safer, and it costs a lot of money. I think this bill will comprehensively try to address a lot of these problems, and that is why we support the bill fully.

I want to give one example. Not too long ago in court, I saw someone sentenced to a minimum of 16 months in prison and a maximum of 72 months. The crime was stealing \$2 in change from an unlocked car. We are paying to house criminals in our prison system right now for such crimes. I also encourage the Committee to look up the weight of 4 grams, 14 grams, and 28 grams and determine whether you think these weights are appropriate.

We can do what we have been doing and get what we have been getting, or we can change and make our community safer and save a lot of money.

Marcos Lopez, Field Director, Americans for Prosperity Nevada:

We urge all of you to support Assembly Bill 236. Assembly Bill 236 makes far-ranging reforms across Nevada's criminal justice system from pre-prosecution diversion down to probation policy ([Exhibit K](#)). Assembly Bill 236 helps expand options for pre-prosecution diversion programs to make sure that more people experiencing mental illnesses, intellectual disabilities, or substance abuse issues can get access to treatment. Our limited prison space can be reserved for more dangerous criminals.

This also provides law enforcement with a variety of options besides incarceration for individuals with behavioral needs that will improve community-police relations, officer safety, as well as the relationships in both of them.

The bill also includes several sentencing reforms such as the needed raising of Nevada's felony theft threshold to ensure that punishments are more proportioned to the crimes committed and that sentencing enhancements are reserved for serious offenders.

Finally, A.B. 236 includes a thorough set of reforms to our probation and parole system. Too many people transition back to their communities near the end of their sentences and are back in prison for minor technical violations that do not reflect them posing a danger to society.

Vice Chairwoman Cohen:

Sir, I am sorry, but it looks as though you have your statement. I want to make sure we get to some more people.

Marcos Lopez:

If I could just get my last point in. We support this bill in its overall larger role, but we do believe the next role of this Committee should be to reduce or completely eliminate mandatory minimums. These policies remove the judge's discretion to sentence people according to the facts of the case.

Vice Chairwoman Cohen:

Sir, I am going to ask that you stick to the bill. Asking us to do something is not part of the bill.

Marcos Lopez:

Okay. Overall, we believe this is an effort in moving this in the right direction to address the high prison population. This is a bill that is small on crime and soft on taxpayers—helping our state make better decisions to reduce over-incarceration and keep communities safe.

Vice Chairwoman Cohen:

I am sorry, sir, I see that you are reading. Can you please wrap it up with a final sentence and turn in your testimony?

Marcos Lopez:

Over 95 percent of prisoners will eventually rejoin us, to our communities, so it is in our best interest that we position them in the best position for success.

Vice Chairwoman Cohen:

We are running very short on time, so please make it very, very brief so that we can accommodate everyone.

Gerald Lechner, Private Citizen, Las Vegas, Nevada:

I am in support of Assembly Bill 236—bail reform. Nine out of ten defendants who remain in jail before trial are there based on their inability to post a bail bond. Low-income individuals may struggle.

Vice Chairwoman Cohen:

Sir, this bill is not about bail reform. Can you please stick to the bill?

Gerald Lechner:

Okay. I believe that sending an individual to jail should be a function of their criminality, not their income.

Laniqua McCloud, Private Citizen, Las Vegas, Nevada:

I am a local activist as well as a forensic specialist. I strongly encourage the Committee to support A.B. 236. Coming from a forensic specialist side, I see the lack of competency evaluations that are provided to individuals who are sent to prison. Not going back to bail reform, but when they initially come in and they cannot afford to bail out, they are not offered or provided the initial competency to figure out if there is a mental illness program available. I believe with that there should be support.

Gary Peck, Private Citizen, Las Vegas, Nevada:

I have been working for the past year with a broad-based criminal justice reform coalition. It includes leaders from faith-based communities, members of the bar association, and

community members who have been directly impacted by what we believe is a broken criminal justice system.

I am here mostly to speak for myself. I served more than 20 years ago on the Supreme Court Commission on Race, Economic, and Gender Inequality in the justice system. I applaud the Commission. I applaud the legislators for taking up this bill. I hope it will get the nonpartisan support across the aisle that it deserves and that reflects the kind of nonpartisan support you have seen here today from members of our community.

I do want to home in on one particular issue. It is rather astounding to me as a person with a social science and law background that the bill does not include a mandate to collect data that is going to be reported out, broken down by race, economic status, and by gender. The report issued by the commission I served on more than 20 years ago made plain that the system is replete with those kinds of biases. I think if you are interested in moving forward, as some of your members have said, in the future, to continue to fix this broken system it is important that you gather the kind of data that will enable you to identify the kinds of problems with respect to these biases that are absolutely imperative if we want a system that honors constitutional values, equal justice under the law, due process, and fairness. I would urge you to include that kind of mandate. There is simply no excuse 20 years after that report was issued—and all of the scholars agree—that our criminal justice system is replete with race, gender, and class bias. Gather that data, analyze it, and share it with the public and with others.

Vice Chairwoman Cohen:

I am sorry, Mr. Peck, I have to ask you to wrap it up. We want to make sure everyone has a chance to speak. We will come back up to Carson City, and I will ask the people at the table to speak very, very briefly, and then we have to move on to opposition.

Wiselet Rouzard, Field Director, Americans for Prosperity Nevada:

I strongly urge you all to support [A.B. 236](#). Let me start off by saying this: This is not a Democrat or Republican issue, this is an American issue. I, with 50,000 activists, have gone into different neighborhoods and it affects every home. The people you represent, I can assure you, have a family member or friend who is affected by this. We have been trying to remedy a process in a manner that has resulted in a return that has increased recidivism over 60 percent.

As my previous colleague said, literally in three to five years, 95 percent of the people currently incarcerated are going to be coming into society. The question we should be asking is, What kind of individuals do we want coming back into society serving us? We want productive members—people who have been corrected with the right, proper treatments. This bill actually diverts the resources so that we can get a better return on our investment. Our public safety can be enhanced and the individuals who are coming back into society can feel empowered and embraced to come back and serve with our community and ensure the mistake they made will not be repeated.

I urge you to support this; the people support you. We support you and it is truly the first step in the right direction to correct this. I applaud each and every one of you for giving us the time to speak. I come to you as a private citizen, former football player for the University of Nevada, Las Vegas, and I have seen it first-hand with my former teammates. The recommendations that have been laid out in this very comprehensive plan will result in a very, very fundamental process that we will all look back on and say, on this day, we did the right thing. Thank you for your time and I applaud you all.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:

What we have here is a problem. Everyone can agree there is a problem with our criminal justice system. We urge you to use the data that has been provided through the ACAJ with their recommendations to determine that we have to solve this problem today. Criminal justice is something that takes time to reform, but the time is now, and we have the opportunity today to make that decision to move forward. We urge you to support this bill.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

I just want to say to the Committee that hopelessness is the enemy of justice, and injustice prevails where hopelessness persists. What this bill does is move us from a fear and anger-based reality that we have been living in into a hopeful reality of change. It is not just a flat pie-in-the-sky hope; this is actually data-backed reform that people have spent countless hours looking at over time.

Out of fear we have let our communities tolerate things that have been intolerable: the rising prison rate; the rate of women in prison. Those are things that we normally would not accept. Doing things differently may make us nervous. I understand that and get that. I understand why the opposition may feel fearful about some of these changes, but one thing is true: We cannot just sit and do the same thing that we have been doing. It has not been working. As they continue to run all over this building and ask for increased penalties in other areas of the law and try to stomp out the hope that is presented by this bill, what I am urging you to do is pass this legislation.

The bill has studies. We talked about data since we have been here. It is going to look at what we are doing and the changes that have been made and it is going to see if we are moving in the right direction, and if we are not, then we can change course.

What I can tell you is that the old-way approach that has been and will be advocated by the opposition has not worked. It has moved us in the wrong direction, and it is time to try something new. People have actually studied these recommendations rather than just suggesting them. What I urge is your support on this bill to move us from a fear and anger-based reality that we have been living in to a hope-based future for—as Mr. Arrascada said—the next generations of Nevadans as well as ourselves.

Vice Chairwoman Cohen:

We are going to move to testimony in opposition. I would invite the opposition to the table. I know we have an organized opposition that is going to go first, so if you let them go first we will then move on to others in opposition and give you an opportunity to testify. The same rules apply; we are asking that you do not read testimony. Please turn that in to the committee secretary, and as we go on, please do not repeat the same points but feel free to state, "Ditto." Thank you.

Mark B. Jackson, District Attorney, Douglas County District Attorney's Office:

With me here at the table is Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department; Christopher Hicks, Washoe County District Attorney; and joining us in Las Vegas is Clark County Assistant District Attorney, Christopher Lalli. The four of us will be presenting the opposition to Assembly Bill 236.

I would like the record to reflect that Carson City District Attorney Jason Woodbury, who is the President of the Nevada District Attorneys Association, is in attendance, as well as Mineral County District Attorney Sean Rowe. Down in Las Vegas we have Lincoln County District Attorney Dylan Frehner, and we have White Pine County Chief Deputy District Attorney James Beecher here in Carson City.

It is also important to note that Chuck Callaway and I are both members of the Advisory Commission on the Administration of Justice. I have served in that capacity as the appointed representative of the District Attorneys Association for the past eight years, and Chuck Callaway has been a representative since its inception.

Assembly Bill 236 as written, as you know, makes very sweeping changes to 25 chapters in the *Nevada Revised Statutes* (NRS) related to our criminal law and criminal procedure. With 136 sections to this 133-page bill, it would be impossible to fully vet this bill in the time constraints that we have. I raised these same concerns in the ACAJ during our meetings in November, December, and January as many of the controversial recommendations that now comprise the majority of this bill were never fully vetted within the ACAJ. I truly appreciate the comments of Assemblyman Yeager and Justice Hardesty in introducing this bill in the recognition that there are issues with this bill that need to be worked out. The stakeholders do look forward to working with Assemblyman Yeager as we progress.

Prosecutors and law enforcement officers throughout the state do have many concerns with this bill. Simply stated, criminal justice reform should not sacrifice public safety. To do so would erode the public's confidence in law enforcement, and law-abiding citizens would lose faith in the criminal justice system. And while I appreciate some of the comments and concerns about women who are incarcerated, we should all still remain mindful of the number of women who are victims of crime and their rights as guaranteed to them under the *Constitution of the State of Nevada*.

With your permission, Vice Chairwoman Cohen, my opposition remarks will start off by opposing specific language, proposed reforms in the first 35 sections, and then

Police Director Callaway will provide some testimony related to those sections addressing major reforms to the crimes against property, specifically the burglary, home invasion, house breaking, theft, and larceny sections. Washoe County District Attorney Chris Hicks will then address some of the reforms related to the habitual criminal, geriatric parole, and granting a parole without any meetings sections. We would then finish with Clark County Assistant District Attorney Christopher Lalli providing comments on those reforms related to the Uniform Controlled Substances Act so there is no repetition.

Vice Chairwoman Cohen:

Thank you. I appreciate that, and gentlemen, if there are places where there is agreement with the bill, I think the Committee would like to hear if there are recommendations where you are in agreement. Thank you.

Mark Jackson:

I will begin by addressing sections 1 through 4. I do plan on addressing some of the comments and questions by Assemblywoman Nguyen, as well as Assemblywoman Hansen. This would amend the pre-prosecution diversion program statutes that were just enacted last session to allow courts to basically override a charging decision of a prosecutor in most misdemeanor cases before the plea is even taken, and ultimately then discharge the defendant, dismiss the criminal complaint, and allow the criminal record to be sealed. Sections 1 through 4 of this bill would allow that same process to occur for the majority of all felony offenses.

When the pre-prosecution diversion program was enacted in 2017 for misdemeanors [Assembly Bill 470 of the 79th Session], the most severe misdemeanors were exempted from the program. A person who is charged with a misdemeanor crime of violent, vehicular manslaughter, driving under the influence would not be eligible for the program.

For obvious reasons, it also excluded minor traffic citations. The reforms in sections 1 through 4 now add only one more exemption: any offense that resulted in death or substantial bodily harm to another. In other words, a person charged with murder, battery causing substantial bodily injury, or a crime of violence would not be eligible for this program.

There was discussion that the crime of violence is defined within that, but it does not specifically let prosecutors, defense attorneys, or judges know what a crime of violence is. The statute that is referred to within the bill, NRS 200.408, subsection 2(a), reads that a crime of violence is "Any offense involving the use or threatened use of force or violence against the person or property of another; or Any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony." Based upon those definitions, the majority of felony crimes committed by a person would be eligible for a pre-prosecution diversion and dismissal. Again, this would occur pre-plea. So a burglar who entered someone's house in the middle of the night and stole that person's property would be eligible to have the court tell the prosecutor who

charged the case that they are now further barred from prosecuting that case and taking it to trial because the judge wants to divert the case even pre-plea.

A sexual predator who is arrested and charged with child pornography on the computer or smart phone is somebody who could get one of those "get out of jail free" cards. Defense attorneys consistently argue that property crimes such as theft, larceny, embezzlement, fraud, and other forms of white-collar crimes are all nonviolent, that drug crimes are nonviolent, prostitution, racketeering, and certain sex crimes against children are nonviolent crimes. Those would all be eligible for a pre-prosecution diversion and again, pre-plea.

As asked by two of the members of this Committee, it is our position that the pre-prosecution diversion programs conflict with Marsy's Law, specifically, Article I, Section 8A of the *Nevada Constitution*, which became effective on November 27, 2018. Among the 17 enumerated rights is the right to a timely disposition of the case following the arrest of the defendant.

The pre-prosecution diversion program allows the defendant before entering a plea to be in that program and have it diverted up to 18 months. No input from the victim is described in the bill. If the defendant leaves a program or is ultimately violated in the program, whether it be 6 months, 12 months, 17 months down the road, they still have not entered a plea. There has been a delay in whatever that time period is that takes the case all the way back to the very beginning where the prosecutor will then be able to move the case forward through the criminal justice system.

Time is a word that is often used in the criminal justice system. Those that work in the criminal justice system may know that time is the enemy of the prosecutor and it is the friend of the defense. Criminal cases are not like a fine bottle of wine; they do not age well. Memories fade, witnesses or victims may move. A failure of the pre-plea diversion program takes the defendant back to the very beginning of the case. Now the case is potentially weaker, and that is not justice.

Part of the sales pitch on allowing the pre-prosecution diversion programs for misdemeanors were the efficiencies in diverting these cases pre-plea. That argument may have carried some weight dealing with misdemeanors, but it falls on its face when we talk about felonies. The reason behind that is, we have a bifurcated court system in the state of Nevada.

All criminal cases begin in a court of limited jurisdiction, most frequently our justice courts—misdemeanors, gross misdemeanors, and felonies. But the justice courts do not have jurisdiction over the gross misdemeanors and felonies. That jurisdiction lies with our courts of general jurisdiction in the district courts. A pre-plea on a misdemeanor case would still stay and remain with the justice court. But our system of justice requires that, in order for the case to get from justice court to district court absent a waiver, the prosecution is required to put on evidence at a preliminary hearing. Some people refer to it as a mini trial. In a case involving the victim, that victim is then put on the stand and has to testify, someone who already has been victimized and traumatized, and then is put through the very good, effective

examination by the defense attorney. Then the case can get bound over to district court. There is a delay in that process right then. While there has been a probable cause determination now by the judge that the crime has been committed and the defendant may have committed a crime, it now goes up to district court and then the district court can override that charging decision and prosecution decision by the prosecuting attorney, divert the case, and ultimately discharge, dismiss, and seal.

The last issue that we have with sections 1 through 4 is that they violate the separation of powers doctrine under the *Nevada Constitution*. On December 6, 2018, the Nevada Supreme Court issued an opinion in *State v. Second Judicial District Court*, 432 P.3d 154 (2018). The opinion held that a portion of a statute under NRS Chapter 176A was "in effect a prosecutorial veto over a judge's sentencing decision." In fact, section 30 of this bill addresses what was deemed unconstitutional by our Supreme Court and attempts to correct that. In that case and the opinion written by Justice Stiglich, the court noted, as with the *United States Constitution*, the structure of our state *Constitution* gives rise to the separation of powers doctrine through its discreet treatment of the three branches of government. The court added that Nevada's *Constitution* goes one step further. It contains an express provision prohibiting any one branch of government from impinging on the functions of another. The court recognized that it is the prosecution's function in deciding how to charge and prosecute a case. It is the court's function at sentencing.

The principle gleaned is that once a defendant's guilt has been determined and the prosecutor's charging and prosecution is complete, the judiciary's discretion is all that remains. By enacting a statute that gives discretion now to a court to prevent a prosecutor from performing his primary executive function, and that is to prosecute the case, the only function that would be left in these cases is for the prosecutor to prepare and sign the initial charging document.

Moving on to sections 16 through 23: Section 16 amends NRS Chapter 176A by adding sections 17 through 23. Section 17 would require Parole and Probation to seek the early discharge of defendants from probation if no conditions were violated during the preceding year, the probationer is current on supervision fees, and "is in good standing" with restitution payments. This proposed reform disregards Marsy's Law: two sections—to have the safety of the victim considered before any post-judgment release decision is made, and to a full and timely restitution. If all the person has to be in good standing, there is no requirement that they have to pay restitution in full. Marsy's Law requires full and timely restitution to the victim. As written, this reform would allow defendants to escape the responsibility of paying full restitution.

Section 18 requires Parole and Probation to use graduated sanctions for technical violations and defines technical violations as "any alleged violation of the conditions of probation or parole that is not the commission of a new felony or gross misdemeanor and does not constitute absconding." Based upon that definition, a probationer or a parolee could drive under the influence, use illicit drugs such as heroine, methamphetamine, or cocaine, beat his

wife, steal up to \$1,000 from a mom and pop store, or commit hundreds of other misdemeanor crimes and avoid revocation of probation or parole.

Section 19 appears to create a brand new deferral for prosecution for basically any type of case. This section requires courts to defer judgement for any person placed in the specialty court program unless the court finds the person poses a risk to public safety and must be under probationary supervision, and ultimately discharges the defendant and dismisses the proceedings without adjudication of guilt. It does say that the conviction could be used for additional penalties for subsequent convictions or for setting bail, but then it allows and orders the defendant's record to be sealed.

The questions would be, How can it be used for enhancements if it is sealed? When a record is sealed, it is sealed and it is deemed to never have occurred. Prosecutors are not going to know. The judges are not going to know. It is sealed. No one in Clark County will know about someone in Washoe County, Carson City, Douglas County, or vice versa. Same thing as it cannot be used for a bail argument because it is sealed.

Section 22 gives discretion to courts to send just about anyone who claims he has a substance abuse disorder to go to treatment if diagnosed as such and then to discharge the defendant and dismiss the case.

Section 23 mandates the sealing of a defendant's case who had his case dismissed for attending the drug treatment program. Again, this brings up the same sealing issues as the previous two sections.

Section 24 provides that a person found guilty of a third or subsequent offense of possession of a controlled substance is not entitled to mandatory probation but may be granted probation. Most troublesome, however, is that this section also eliminates the current law that would prohibit a person from receiving mandatory probation if that person was on probation or parole when the crime was committed, had previously been on probation or parole for a felony, or had previously been assigned to a program of treatment and failed to successfully complete the program.

Many of those individuals, based upon our experiences as prosecutors and law enforcement officers, are considered public safety risks. That is why those laws are currently on the books and remain there.

Section 27 amends NRS 176A.260 to allow treatment for mental illness and requires a court to "defer the defendant's sentence in accordance with section 19 . . . unless the defendant poses a risk to public safety." If deferred, then this will result in discharge and dismissal. This brings up the same sealing issues as previous sections. But the issue of most concern with this section is, it would not allow a district court judge to place a mental health court defendant under the supervision of Parole and Probation. Other sections within this bill do allow placement under the supervision of Parole and Probation. This one specifically prohibits that. This poses a significant public safety risk.

Section 33 removes from NRS 176A.420 that a refusal to submit to a drug test is grounds for revocation of probation. It is our position that that, again, goes to accountability. I appreciate the comments about accountability, but still, our criminal justice system was built upon certain cores of retribution, incapacitation, deterrents, restitution, and rehabilitation. If you take away the rest, all we are left with is the rehabilitation. There has to be an accountability within our criminal justice system.

Section 34 amends NRS 176A.500 and significantly reduces the period of probation. Gross misdemeanors would be reduced from 3 years' probation currently to 12 months. All felonies would be reduced from 5 years to 18 months for category E felonies, 2 years for category C or D felonies, and 3 years for category B felonies. We recognize it does allow a court to extend for an additional 12 months. But the way I read this bill as proposed, that is only if the defendant needs additional time to complete a specialty court program.

There is simply no reason to reduce the periods of probation. What incentive is there for a prosecutor—because we negotiate cases daily—to agree to recommend probation knowing that there is really no probation-type of tail for supervision, as opposed to just seeking incarceration? These changes would also have significant impacts on the rights of victims pursuant to Marsy's Law—again, going to the safety of victims and full and timely payment of restitution.

Lastly, section 35 makes major changes to how probation and parole violations will be handled. This would prohibit the courts from revoking the probation or parole of violators for "technical violations." Probation in our system was never intended to be a right; rather, it is a privilege. Not everybody is entitled to it. As written, a judge could not violate a probationer for using illicit drugs, failing to follow a treatment program, failing to maintain employment, failing to seek employment, failing to pay any required fines or fees, or failing to report any changes in residence. This section only allows for a full revocation for a "fourth or subsequent revocation." Accountability of convicted defendants nearly ceases to exist.

With your permission, Chuck Callaway could provide testimony on the next section.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

I am going to speak very fast to sections of the bill that I have concerns with out of respect for your time. I wanted to make a couple of quick comments before I get into those sections. First and foremost, I wanted to assure you all that, as a member of ACAJ, as a member of the Sentencing Commission, and as a member of the Attorney General's Substance Abuse Working Group, I do not come to you today as some calloused, hard-on-crime individual who wants to see people put in prison and the key thrown away. That is far from the truth. I would like to see nothing more than our prisons emptied out and would like to see nothing more than our crime go down and the quality of life in our neighborhoods improve.

With that being said, the Las Vegas Metropolitan Police Department fully supports programs that reduce recidivism, programs that divert people from prison, programs that provide services, and programs that assist with reentry. I have talked before about how valuable Pastor Ponder's program, Hope for Prisoners, is. Before I get into the specifics of the bill, I wanted to take a moment to caution you. I was not going to talk about this, but based on some comments you heard this morning about data, I want to caution you about taking the data you see at face value. I will give you a couple of examples.

We heard how the prison population in Nevada is skyrocketing and how we are way above the rest of the country. When you look at that, it is a comparison to way back in the 1970s. I moved to Las Vegas in 1987, and our population was pale in comparison. We currently have over 2 million people in our jurisdiction alone in Clark County, not counting 43 million tourists a year who come into the valley. Please take into account that our population has boomed, so when you look at those crime rates, I would like to quote from Director Dzurenda's budget presentation, slide twelve, which was given on January 29, 2019. If you look at that slide, and quoting Director Dzurenda's presentation, "Nevada Department of Corrections is realizing a modest decrease in total inmate population since May 2017." I am trying to make a point about data and how the data can be looked at in different ways. There is a report online at bjs.gov [Bureau of Justice Statistics] that talks about a study of a number of states about violent offenders who were released from state prisons, and Nevada was included in that study. That study showed that 57 percent of violent offenders serve less than three years in the prison system. Seven out of ten violent offenders served less than five years in the prison system. I would encourage you to go online and look at that study.

Finally, just to make a point about data, a comment was made that in 2003 Michigan started reform measures and that they are way ahead of us in this. I would love to look at what Michigan has done—I am sure we can learn from them. Just a quick Google search shows that in 2016—that was the most recent data I could find—Detroit was listed as number two in the nation for violent crime, and Michigan overall had a 15.6 percent higher average violent crime rate than the rest of the nation.

Moving into areas of the bill that I have concerns with, first and foremost I want to sincerely thank Assemblyman Yeager for being willing to listen to our concerns. I think it is a huge step in the right direction to remove section 53 of the bill, which would have reduced the penalties for a prohibited person in possession of a firearm. In a time where we are seeing significant crimes committed by offenders with firearms, I think that is a very proper thing to do and so I thank Assemblyman Yeager for that.

Secondly, I would like to talk briefly about sections 55 through 60 of the bill, specifically to the burglary statutes. Again, quick reference to data, the Criminal Justice Institute (CJI) provided information during the interim to ACAJ that said one of the number one types of admittees into our prison system was burglars. We had 400 burglars who went to prison in 2017.

In the Las Vegas Metropolitan Police Department's jurisdiction alone, we have on average 12,000 burglaries reported every year. That is just in our jurisdiction. If only 400 people went to prison for committing a burglary, that means the vast majority of those cases are either plea-bargained to a lesser crime or the offender is getting away. This is not taking into account burglaries that are not reported by the victims, which we believe there are a significant number of those that are not reported.

In sections 55 through 60, I fully support creating tiers of burglary. I think that would be beneficial to the system, but one area of that section that I do have a concern with is reducing auto burglary down to a gross misdemeanor. I worked community policing for a lot of years, and when you go to town halls and have a first Tuesday event and get citizens into a room, one of the things they are constantly concerned about is burglaries and auto burglaries in their neighborhood.

I have the ring device on my doorstep that shows when someone comes to your door, and they send out notifications; I get six or seven a day. I just got two while I was sitting in here, where people are saying, Hey, someone stole a package off my doorstep, someone broke into my vehicle, someone tried to steal my car, or has anyone seen this person? This is a serious thing for quality of life in the neighborhood, in our communities. I do not believe reducing that crime down is appropriate. When you reduce that down to a lesser offense, it makes it very difficult to apply resources to solve those crimes.

My sister-in-law is a property crimes detective, and she has a huge stack on her desk of property crime cases. Many of them never get investigated because we do not have suspect information, and so, when we reduce these crimes further down, they are going to be put on the bottom of the stack. Your constituents are going to get upset because their vehicles and their property are being stolen, their vehicles are being broken into, and nothing is being done about it.

In California they passed Proposition 47 a few years ago. Proposition 47 reduced penalties for vehicle break-ins. They have since then experienced a significant surge in vehicle break-ins and property-related crime. There was actually some legislative proposal, I believe, this session in their legislature to actually raise some of those crimes back up because of the issues they are seeing with that.

I also have concerns in the burglary statute about the removal of the language "day or night." I would want to clarify that and put on the record that that does not mean a burglary cannot occur in the daytime. Most of our burglaries occur in the daytime when people are at work trying to make a living, which is when someone is breaking into your home. I would urge that that not be limited strictly to nighttime.

I also have concerns with the language that requires a person to be unlawfully present to commit a burglary. I will give one quick example. There was a series of incidents where you have an elderly individual, a couple of people would ring the doorbell, she answers the door, and they say, May we use your phone? Our car is broken down, and it is hot outside.

She invites them in to use the phone, and while one person is using the phone and keeping her occupied, the other person is going through her jewelry and stealing her property. If that example happens, I do not believe we would be able to charge that as a burglary because they are lawfully on her property. She invited them in, and if we raise the threshold of these crimes to a higher level, then what they probably stole from her house would be a misdemeanor offense. I would like for you to take that into consideration.

Section 57 on page 65: This, I think, is a significant issue because with Assembly Bill 386 of the 78th Session, we worked very closely with both Assemblyman Flores and now-Commissioner Marilyn Kirkpatrick—then-Speaker Kirkpatrick—to address a significant problem we had with squatters. These folks often create fake leases, move into homes in your neighborhoods, and set up residency on properties they do not own. Traditionally, it was very difficult to get those folks out of that property. The only way to get them out was through eviction. It is frustrating to have to go through a 30-day eviction process to get someone out of your home who does not live there and who crawled through a window to set up residency. We made changes to that statute to make it the stricter penalty of a gross misdemeanor to give us tools, and on the civil side, to expedite the processes to get people out. I think the current language in section 57 undoes that. Again, if you want to get a town hall full of angry people, have squatters in their neighborhood. Trust me, the Northwest Area Command gets calls every day about squatter issues, and it is a serious quality-of-life issue in neighborhoods.

Throughout this bill the threshold for felony theft has been raised up to \$2,000 from the \$650 that it currently is. It was raised in our state, I believe, in 2013 from \$250 to \$650. I am not opposed to raising the threshold higher than what it currently is, but I believe \$2,000 is a big jump—even California's from Proposition 47 is \$950. The Criminal Justice Institute compared us a lot to the state of Florida throughout their studies. Florida has a \$250 threshold for a felony crime.

Also, I know Assistant District Attorney Christopher Lalli will speak to some language in the bill so I will not go into great detail. I will just talk for a second and then I will wrap it up. When you look at individual recommendations in this proposed bill—individual recommendations may make some sense—and you say, Yeah, sure, then when you take these things in totality, that is different. You raise the level for drug trafficking seven times what it currently is. You lower the penalty for possession of drugs by people who are addicted, suffer substance abuse, and need treatment, and then you lower that down to a misdemeanor offense so there is no incentive for them to get treatment. They can pay a fine or get a ticket and they are out; there is no incentive for them to get treatment. Then you lower the penalties for stealing and breaking into vehicles, which are how they fund their habit. You create an environment, again, that impacts the quality of life. It impacts our neighborhoods, and I would go so far as to say it impacts our economy. If you are a tourist and you come to Las Vegas and have your vehicle broken into and your property stolen, you do not want to hear that we do not consider that a very serious crime. You are not going to come back to Nevada. You are going to go to Disney World or somewhere else.

I will wrap up by saying I appreciate that Justice Hardesty and Assemblyman Yeager were willing to work with us on this bill. I definitely want to work on this. I believe we can come to a happy medium that helps make positive reforms to our criminal justice system, and at the same time does not throw public safety out with the bathwater. I look forward to working with them on this bill in the Woodshed. With that, I will turn it over to District Attorney Christopher J. Hicks.

Christopher J. Hicks, District Attorney, Washoe County District Attorney's Office:

I am the Washoe County District Attorney and I am a career prosecutor of 17 years ([Exhibit L](#)). I have spent those 17 years dedicated to studying and working on the very system to which you are considering making some profound and troubling changes. I also proudly serve on numerous statewide commissions whose focus is to improve our criminal justice system and to look into how it can be run the most effectively for everyone involved in it.

While I sit here in opposition to this bill, it is important to note that I myself, and I am sure all my colleagues, support analyzing our criminal justice system. We support logical criminal justice reform. That is why we serve on these committees, and that is why we regularly extend a hand to the other side. I am hopeful that we can do so in this case.

In regard to criminal justice reform, there has to be a balance. It is important to analyze our criminal justice system, particularly when you are looking at drastic decreases in our prison population, when you are looking at more opportunities for criminals, and when you are looking at taking away the punitive measures that courts have. You have to balance that with public safety. You have to balance that with victims' rights, and sections of this bill simply do not do that.

I am going to go through three sections very quickly. I have a couple of examples to give you some context as to what the significance of these changes would be. Initially, I want to submit to you many of these sections will have a significant impact on public safety and they will disregard victims' rights.

Section 86 involves Nevada's habitual criminal statute. The new language makes that law virtually useless. The habitual criminal statute—to give it some context for you—is used on repeat offenders: those individuals who routinely victimize the community, committing crime after crime after crime after they have been given opportunities of probation and specialty courts. They continually show they are not willing to change. It is up to the prosecutor to seek it, but ultimately the court is the one that determines if someone should be declared a habitual criminal. It is important that the court have the ability to increase those sanctions. You need to have the ability to say enough is enough at some point when someone routinely victimizes the community.

Section 86 of the bill establishes a "lookback period" that prevents using a prior conviction to support a habitual sentencing enhancement. The lookback provision would prevent a court from even considering the sentencing enhancement in many cases because many prior

convictions would fall outside the time limitation. To give you some context, I have a case example of a habitual criminal case that we recently prosecuted in Washoe County.

In 2017, Kevin Clausen was convicted of attempted murder, battery with a deadly weapon, and robbery with a deadly weapon. Clausen approached a 7-Eleven employee outside of the store, held a gun to her, and shot her in the head. Fortunately, the bullet went through the soft tissue of the scalp and did not kill the victim. At the time of the offense, Clausen had 20 criminal convictions, including 7 felonies. He had been on probation twice and had been revoked once. His convictions dated back to 1985. He had 30 years of criminal behavior. His offenses included a robbery with a knife—victim; domestic abuse—victim; felon in possession of a firearm—weapon offense; and possession of a gun with an altered serial number. Those were some of his priors.

We sought a habitual criminal enhancement based on the serious facts of what he had done and his horrible criminal history. We used certified copies of prior convictions from 1987—there were two—and from 1993, 2000, 2006, 2010, and 2015. As a result of the facts and his history, he was sentenced as a habitual criminal by the judge to life in prison. Had the language that is proposed in this bill—and the proposed lookback provision—been in place, this seven-time convicted, violent felon would not have even qualified for the habitual criminal enhancement. We could not even seek it. We are talking about a man who had 7 prior felony convictions and 20 total victim crime convictions. He is a serious drain on our society. I would urge you to look closely at that language.

Section 93 is the so-called geriatric release provision. It allows offenders over 60, including sex offenders, violent criminals, second-degree murderers, voluntary manslaughterers, sexual assaulters, and those who have committed every serious crime except first-degree murder, to be paroled after serving the first ten years of their sentence. If they are over the age of 65, they can seek parole after serving just seven years, and this does not require a demonstration of a medical need. Think about that. These provisions allow the Parole Board—individuals who have been appointed to a board to nullify a judge's sentence—to release violent and dangerous offenders. I did not have to look hard to find a disturbing example of, in context, how this bill could apply to real-life defendants.

Just this last December in Washoe County, we prosecuted a man by the name of Jeffrey Fluckiger. He had sexually assaulted a young girl for years. It started when she was just seven years old. He would dress her up in fishnet stockings and rape her repeatedly while filming it. The videos are horrific and unforgettable. He did this regularly to this little girl for five years. Her life is shattered. She will face obstacles for the rest of her life trying to overcome what was done to her. He was found guilty by a jury. In fact, half of the jurors showed up at sentencing because they wanted to see how much time he would get because they rendered the appropriate verdict. He was convicted and sentenced to 12 life sentences with parole eligibility after he serves 271 years. Mr. Fluckiger was 57 when he was sentenced, and under this new section he could be released after serving less than 8 years in prison. That cannot be the policy that this Committee wants to put in place in our state.

If you applied the Clausen example—the habitual criminal with seven prior felony convictions of whom I spoke—he was 52 when he received a life sentence for shooting that woman in the face. He would be eligible for geriatric release at 62 after just ten years have been served, and I would submit to you that men like Kevin Clausen are a danger at 62 years old; they are a danger at 70 years old.

Lastly, I just want to touch on section 97, which amends NRS 213.1215 by adding that a prisoner who meets certain criteria may be granted parole without a meeting. You have heard discussion of Marsy's Law; I call it the Nevada Victims' Bill of Rights. This is a blatant violation of Nevada's Victims' Bill of Rights, which, as you know, was overwhelmingly supported by voters in our state just this last November. That bill states that each person who is a victim of a crime is entitled to be present and to be heard at all parole release proceedings. Section 97 seeks to release prisoners without notifying victims or considering their input or their concerns.

I missed the initial presentation, but I am also excited to hear that there is a willingness to work on this bill. What you have before you are prosecutors and law enforcement, people who want the same things you want. We want a good criminal justice system, and we want people to be rehabilitated, but we have to balance that with public safety and victims' rights.

What we are telling you is very real. It is based on our experiences; it is what we see on a daily basis. I recognize we must strive to seek balance and identify where true reform is needed. Once that is done, I also recognize we have to take action. However, in regard to the sections of this bill addressed in opposition today, it would be foolish to disregard what we all have to say in consideration of this legislation. I thank you very much. I now turn this over to Mr. Christopher Lalli in Las Vegas.

Christopher J. Lalli, Assistant District Attorney, Clark County District Attorney's Office:

I have been a prosecutor in the Clark County District Attorney's Office for 25 years. Today I speak in opposition of Assembly Bill 236. I agree with the comments made by my fellow prosecutors and members of law enforcement who have addressed you thus far.

I begin my comments by addressing the provisions in sections 118 and 119 of this bill. Although well meaning, Assembly Bill 236 as written yields illogical results which will negatively impact public safety in our communities. Sections 118 and 119 significantly impact the crime of trafficking a controlled substance.

Under the current law, possession of four grams of a Schedule I controlled substance is a low-level trafficking offense; Assembly Bill 236 raises this level by seven times to 28 grams. Under current law, possession of 14 grams of a Schedule I controlled substance is a mid-level trafficking offense; Assembly Bill 236 raises this level by more than seven times to 100 grams. Under the current law, possession of 28 grams of a Schedule I controlled substance is a high-level trafficking offense; Assembly Bill 236 raises this level by more than 14 times to 400 grams.

Why are low- and mid-level trafficking quantities raised seven times their current level? Why are they not doubled? Why not five times their current level? Why not ten? Why is the quantity necessary for high-level trafficking being increased 14 times? Was there empirical data presented to tell us what the right amount was? The answer is no. The truth is that these numbers are completely arbitrary. I agree with the comments suggested by Assemblywoman Nguyen on the arbitrariness in the trafficking statutes.

To make matters worse, trafficking of a controlled substance, which is currently nonprobational, will become a probational offense. Section 122 of A.B. 236 makes low- and mid-level trafficking probationable, thereby eliminating the deterrent effect our statutes have.

I would like to talk about the opioid epidemic in our state and how A.B. 236 measures up in addressing that crisis. As a board member of our Nevada High Intensity Drug Trafficking Area (HIDTA), I am familiar with their 2018 threat assessment [*2018 Nevada High Intensity Drug Trafficking Area Threat Assessment*]. I can tell you that opioid addiction commonly begins with a consumption of prescription medication. Many times an addicted person turns to heroin because it is more readily available and far less expensive. Page 7 of the threat assessment tells us that heroin produced in Mexico is the only heroin available within the Nevada HIDTA, with the two types characterized as Mexican black tar followed by brown.

The report continues as follows: "Heroin abuse remains a major health and safety concern for Nevada and the nation. Heroin abuse can often be deadly or lead to addiction, other criminal activity, broken families, homelessness and disease. From the law enforcement perspective, heroin availability and use remain prevalent" This is based upon data from both Clark County and Washoe County. It continues, "Over the last two years, the LVMPD has reported an increase in heroin related arrests and a 3 year high in 2017, while Washoe County reports an increase in each of the past 3 years."

Under Assembly Bill 236, possession of 27 grams of heroin would be a simple misdemeanor. An average dose of heroin is anywhere between 20 and 100 milligrams. Twenty-seven grams is equal to 27,000 milligrams; this means that possession of anywhere between 270 and 1,350 doses of heroin would be a simple misdemeanor. This utterly defies logic. A person possessing 1,350 doses of heroin is obviously trafficking in this controlled substance, and in so doing—as recognized by our Nevada HIDTA—is posing a grave risk of health and safety to our state. This legislation does a disservice to the opioid crisis here in Nevada.

One point worth mentioning: section 118 of this bill adds the requirement that there must be some indicia of sales in order to be convicted of trafficking.

Section 119 specifically eliminates our ability to convict a person for simply possessing a trafficking amount of drugs. In other words, your possession is insufficient and knowingly possessing 50 pounds of cocaine is not trafficking; it is a misdemeanor. Likewise, your knowingly possessing 100 pounds of heroin is not trafficking; it is also a misdemeanor. If you knowingly possess 200 pounds of methamphetamine, it is not trafficking; it is

a misdemeanor. Again, we see utterly illogical results from the application of this legislation.

I think it is important to address section 113; the seminal provision of this section reduces all categories of drug possession to a misdemeanor. Why is this recommendation being put forth in the 2019 report of the ACAJ ([Exhibit D](#))? There are two reasons stated in that report [page 26, ([Exhibit D](#))]. First, prison admissions for simple possession of a controlled substance is increasing, and second, simple possession offenses make up a disproportionate number of community supervision failures. The logic to reduce these to misdemeanors is because more people convicted of possession of a controlled substance (PCS) are going to prison and more of them are failing probation.

The problem with this logic is that no one, at least in Clark County, who pleads guilty to simple possession of a controlled substance was charged with that crime. In virtually every case, these defendants were originally charged with significantly more serious offenses: transporting a controlled substance, low-level trafficking of a controlled substance, and in some cases, mid-level trafficking of a controlled substance. I would dare say that virtually every person originally charged with simple possession of a controlled substance in Clark County pleads guilty to a misdemeanor or has had his or her case dismissed. There are three attorneys on this Committee who practice criminal law in Clark County who can verify this. They are Assemblyman Yeager, Assemblyman Fumo, and Assemblywoman Nguyen.

The problem identified in the 2019 report of the ACAJ is not resolved by the purported solution. If [Assembly Bill 236](#) passes, trafficking cases that are currently resolved to a felony crime of simple possession will now be resolved to a misdemeanor. If [A.B. 236](#) passes, transporting cases that are currently resolved to the felony crime of simple possession will now be resolved to a misdemeanor. This bill utterly fails in addressing the concerns put forth in the report. What is worse, there are significant unintended consequences that will result. Last year my office received just over 25,000 cases which included singular charges of PCS or contained a PCS charge along with other charges. If [Assembly Bill 236](#) passes, not all, but a significant number of these cases will fall within a municipal jurisdiction creating a significant economic impact on the city attorney offices. I would agree with Assemblyman Edwards that there are significant costs that will be put forth to other areas of the criminal justice system.

What will happen to misdemeanor PCS cases submitted to the district attorney's office in Clark County? Well, under our current laws, there is an incentive for a defendant to plead guilty to a misdemeanor in these cases. He will not suffer a felony conviction. More importantly, the reduction to a misdemeanor creates a motivation for these defendants to receive some counseling, thereby addressing their drug issue. If the incentive of reduction from a felony to a misdemeanor is removed, there is far less incentive for these defendants to receive help. If these cases are no longer quickly resolved, there will be a substantial impact to the criminal justice system in southern Nevada. There will be a substantial impact to the forensics laboratories in southern Nevada. We currently accept these felonies with presumptive drug tests which are sufficient for preliminary hearing purposes but are not

appropriate to establish proof beyond a reasonable doubt. Reducing these cases to misdemeanors would overwhelm our laboratories and make prosecution utterly impractical.

Moreover, as we have seen in places like California, reducing PCS cases to misdemeanors will disincentivize law enforcement from citing or arresting individuals who possess controlled substances. The result will be a significant reduction to the quality of life in our communities, experienced not only by those who live here but also by the millions of tourists who visit us each year.

To address a few other sections: We oppose sections 111 and 112. To change NRS 453.316 and NRS 453.321 from category B felonies to category C felonies is completely arbitrary, much like the amendments proposed here to the trafficking statute.

I have already addressed sections 113, 118, and 119. We oppose sections 120 and 121, which create arbitrary amendments to NRS 453.339 and NRS 453.3395. At a minimum these sections should be referred to the Nevada Sentencing Commission as recommended in the 2019 report of the ACAJ [page 27, ([Exhibit E](#))] to formulate a more holistic approach to addressing these problems.

Finally, I would like to thank Assemblyman Yeager for the tone he has expressed and taken today. He acknowledges there are problems with this bill, but I want to assure everyone on this Committee that we, as prosecutors, are able to embrace change. The question is, What change is appropriate? I can tell you, Assemblyman Yeager, I look forward to working with you more on this bill.

Vice Chairwoman Cohen:

Thank you, gentlemen, for your presentation and so that everyone is in the loop, the main opposition has had the same amount of time as the support. We do have some questions from the Committee members. I am going to ask that they be as brief as possible and I will remind everyone—I am sure, gentlemen, that you would agree—that you will be open to answer questions offline if members would like to speak to you.

I am going to start with page 120 of the bill. Mr. Lalli, I want to make sure we are clear that 28 grams of anything starts the felony. We are not talking 100 pounds, we are talking 28 grams. Am I misreading that?

Christopher Lalli:

Unfortunately, I would have to respectfully disagree. Under the proposals in this legislation, the prosecution would have to demonstrate some indicia of sales; possession alone is not the crime of trafficking. I would respectfully disagree with the interpretation of the Vice Chairwoman.

Vice Chairwoman Cohen:

My understanding is that is not correct, but maybe the presenters will address that when they come back up.

Assemblywoman Tolles:

If Director Callaway and District Attorney Lalli would please submit your testimony to us in writing so that you could give us specific examples, that would be helpful as we analyze this bill and move forward into discussions.

Assemblywoman Krasner:

I was one of the commissioners on the ACAJ, and we all worked together trying to do many of the same things. We all had the same goals, and the majority of us felt that the bulk of this bill was good. There were a few sticking positions, and you guys did a great job talking about them.

I had a concern then and I have a concern now about the habitual criminal provisions in section 86. Someone came into my office yesterday, and I brought up my concern about somebody who is a rapist, who rapes in Florida, serves a few years, and then that ten-year period is ticking. Is it ticking while he is in jail too? He gets out, moves to the next state making his way west, rapes again repeatedly, and finally after four years he gets caught. Now his ten years are up, so if he is caught in that state and he appears before a judge, would it look as though he had a clean slate? I just have some concerns, and if you could clarify that habitual criminal statute for me, I would appreciate it.

Christopher Hicks:

For category A felonies the lookback period, according to the language, is ten years. Category B, C, or D is five years. I would submit that these lookback periods render that statute useless. There are very few situations that I can think of with that kind of time constraint and with the reality of graduated punishment as someone commits more and more felonies that you would ever have three prior felonies that you could use for enhancements. In your example, no, you could not seek a habitual criminal enhancement, much like in the example I gave, and I have many. That was not a cherry-picked one. All of those felonies drop off and you can have someone with a 30-year history of felony convictions, and he might not qualify for habitual criminal enhancement under this language. Most of the time he would not.

Assemblywoman Nguyen:

I just want to clarify something because I find these examples that we have been given about a seven-time violent habitual criminal extreme, that your hands are tied and, essentially, these changes in Assembly Bill 236 take away any ability you may have. My reading of this, and I can follow up with the presenters, is that it does not touch NRS 207.012, which is the mandatory violent habitual criminal statute where district attorneys, like you, have to file and there is no discretion. This does not touch that. In your example of a seven-time violent felon, you would still have that ability.

In Assemblywoman Krasner's example about a serial rapist who is going around raping people, it still would be covered under this habitual statute because this does not address it. Am I reading that wrong, or do you not see that there is another violent habitual statute that is not touched by this bill?

Christopher Hicks:

The section of the habitual criminal statute that you are referring to refers to very specific violent crimes and actually requires a prosecutor to seek the habitual criminal statute. In my 17 years as a prosecutor, I have only seen one case in my office that has qualified under that statute. The reason is that those enumerated crimes are of such a serious nature that most of the time the person is locked up for a number of years without ever needing to seek the habitual criminal statute or without having the opportunity to commit that third crime.

The example I referred to is absolutely accurate. I can give you the case; I can tell you his criminal history. Under this new language, the court would only be able to consider one of his prior felony convictions. I did submit remarks today, and I have an exhibit attached to the testimony ([Exhibit L](#)). There are numerous examples that I pulled up in just an hour of preparation on this particular section that addresses multiple situations where people would not be able to be declared a habitual criminal.

I have to tell you that this is an incredibly important part of our sentencing structure. At some point, as our Nevada Supreme Court has recognized, there has to be increased sanctions for habitual offenders. I hate to use this example, but it is almost like how you would deal with a child. You punish them one way and if it does not work, you have to do it a little worse, and you have to deal with it until they can figure it out. It is sad, it is unfortunate, but sometimes people just never figure it out, and we have to err on the side of public safety.

Vice Chairwoman Cohen:

I am going to ask you gentlemen and Mr. Lalli to please step back. If there is anyone else in opposition, I am asking you to come forward, both in southern Nevada and Carson City. If you have prepared testimony, I ask you to submit that rather than just reading it. Again, "ditto" and "me too" work just fine.

Lynn Muzzy, Private Citizen, Minden, Nevada:

There is some irony that the Legislature has just passed a background check bill in the name of safety, but you are contemplating gutting the criminal justice system of actual deterrence of crime. These released criminals will not come to the rural counties where everyone is armed. They will go to Las Vegas and Reno where they have the ability to get social services. Your constituents will lose their streets and sidewalks and be victimized following California down the Proposition 47 rabbit hole. They will abuse the very law-abiding people that you should be protecting from street crime. I heard no serious consideration of the effects on victims of crime. What I did hear was a road map for criminals to follow to get little or no punishment.

Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada:

I will turn in written testimony today ([Exhibit M](#)). I would like to make three main points. One is that we are concerned with weakening the felony threshold as it relates to organized retail crime. This is where organized gangs work the stores and steal large

amounts—sometimes thousands of dollars at a time, sometimes multiple times a week—from different retail organizations. We believe this would be a threat to that.

Second, we are concerned with the dismissal of mandatory ceiling for all theft and fraud-related felonies. As a hiring employer, you want to know who you are hiring, you want to know if they are convicted of a felony, and we believe this may put employers and employees at risk.

Lastly, we are worried about the weakening of the habitual criminal enhancement statute. That is of major concern to employers as well. I want to thank the district attorneys and law enforcement that made many of our points, and again, I will turn in my written testimony.

Dylan Shaver, Director of Policy, City of Reno:

Our 327 sworn law enforcement officers are responsible for keeping the streets safe in about 65 percent of Washoe County, and this is a job they take very seriously. As such, I am here to express our opposition to the bill based solely on two sections, if you will bear with me, the first being section 55 on page 62 ([Exhibit C](#)). This is the section that changes the burglaries, petty larcenies, and things like that. For us this represents a workload issue more than anything. The City of Reno is laboring under the same 3.64 property tax cap that has been imposed across the state. That is how we are funded, and as such, we have 327 officers, the same number as we had in 1991. We have had, in our experience, people making a career out of this type of behavior and that creates more work for the department. So loosening these standards in the manner expressed in section 55 would create more work for us—not necessarily a make-or-break deal, just something that we wanted to put on the record.

A larger issue for us on the bill is section 105. These are the sections that require law enforcement agencies to establish a policy and procedure for interacting with persons with a behavioral health issue. We actually support this in concept. We want to make sure that the officers that we have out there in the street every day receive some measure of protection should this bill go into effect. We do not want to create a situation where an officer who misidentifies somebody who may have one of these disorders and is then held liable for not following that procedure. We also do not want to create a situation where those procedures not being followed appropriately disrupt the district attorney and all of Mr. Christopher Hicks' good work in attempting to prosecute that case.

That is a big concern because in section 105, it specifically goes back to NRS 176A.045 which then refers back to NRS 433.164, which defines mental illness as a "clinically significant disorder of thought, mood, perception, orientation, memory or behavior which seriously limits the capacity of a person to function in the primary aspects of daily living, including, without limitation, personal relations, living arrangements, employment and recreation." That definition is very broad so as to capture as much as we can for our mental health services. But when it comes to law enforcement, expecting a police officer to identify by sight, right in that moment, somebody with a memory disorder that may affect their living arrangements is probably too high of a bar for them to clear.

We have expressed our concerns to the proponents of the measure, and we look forward to working on this bill.

I would like to close by thanking the Committee for taking on such a big issue. It is a big question to be answered: whether this will increase or decrease recidivism in crime in the long run. The fact that you have that in mind, that we are working towards the same goal, and that our police are your partners in achieving that goal is amazing. If we may be of service to you, your Committee, or the sponsors of this measure, we stand at the ready as always.

Vice Chairwoman Cohen:

Thank you, and before we go on, I believe Assemblyman Watts has a question for the main opposition. You do not have to come back and answer. I think he just wants to make sure you address an issue.

Assemblyman Watts:

The response to my questions can be taken offline. I appreciate folks coming and meeting with me beforehand to lay out some of the concerns, and there was a lot laid out. I was trying to keep up. I want to echo, first of all, what Assemblywoman Tolles has requested of you. Please get all of the remarks and suggestions to us in writing—to reinforce what I think the Vice Chairwoman stated earlier—it would be really helpful for me. I would appreciate your addressing specific sections, but if you could also look at the 25 recommendations and provide the Committee with which recommendations you support and which you currently oppose. Please bring amendments you think could make the recommendations more palatable and which you oppose in their entirety. I think that would be really helpful for us as we go through and try to process the bill.

Vice Chairwoman Cohen:

I do not think there is anyone else in Las Vegas, but if you are there and you would like to give opposition testimony, now is your chance to come up.

Michael Cathcart, Business Operations Manager, City of Henderson:

First, we would like to concur with many of the statements made prior to us from the Las Vegas Metropolitan Police Department and the Washoe and Clark Counties District Attorney's Offices. We just want to hit on a couple of items in the bill that affect municipal government and affect our criminal justice system with the City of Henderson.

First, one of the major crimes we deal with in our courts is domestic violence. We have a bit of concern about the inclusion of the batterer's intervention program. We would ask that it be built out a little more, and some vetting of the programs be put into the bill. The current programs we have are governed by NRS 439.258. Those are approved by the Division of Public and Behavioral Health in the Department of Health and Human Services. We would like to see some sort of vetting of these new programs similar to the programs that are happening now.

We also have a concern about the fiscal impact. We have been looking at our fiscal note, although we have not filed it yet, and it is not due until next week. We are working on it. Our initial estimate is that we could see from 1,500 to 2,000 additional controlled substances cases. That would require us to hire more attorneys, more support for those attorneys, and depending on how many trials you go to, we would have to look at court personnel as well. We are continuing to look at what the cost would be if these changes are made. We look forward to continuing to work with Assemblyman Yeager and bringing those concerns to him to see if we can work through those issues.

Jason Welch, Detective, Reno Police Department:

I am currently employed by the Reno Police Department. I have been there 15 years. I am assigned as a detective to the repeat offender program. I will touch a little on what that entails. In my current assignment, I investigate strictly individuals who are classified as repeat offenders. Obviously, we have talked about the repeat offender statute, which is of enormous concern. There are approximately 400 individuals to investigate on my caseload that my team and I work on. My team is comprised of detectives from the Reno Police Department, Sparks Police Department, and the Washoe County Sheriff's Office. There was also a member of Parole and Probation with us. We are assigned to investigate these individuals who qualify and meet the habitual criminal definition under the *Nevada Revised Statutes*. With that said, when you look at the statute in place now, I believe it only requires three prior convictions to be classified as a habitual criminal. All of the people we investigate and who are assigned to our unit have five or more. They far exceed the number of prior felony convictions required to be qualified as a habitual candidate. I have a lot to talk about, but for the sake of time, I will keep it brief.

There are a lot of challenges already in place for us when we go to court and we seek a habitual enhancement. These individuals whom we investigate have been involved in crime their entire life, which makes it challenging. They are not the 20-year-old kid—they are 35 years and older. They are individuals who have spent the majority of their lives committing organized crime and who have moved into the realm of organized crime. It ranges from, not only the examples that Mr. Hicks gave, which are excellent examples—I was part of one of those investigations when I was on patrol—to organized retail theft, organized identity theft cases such as making and passing fake checks, possessing fraudulent laboratories, and things of that nature.

These individuals know the system. They play the system—for lack of a better way to say it—with the resources that are already in place. My point is this: With the reduction of penalties in so many sections of this bill, it is my belief that it will be very difficult for my unit, the district attorneys' offices, and law enforcement as a whole to develop good, strong cases on these individuals. They are going to learn about the changes and use those changes to benefit themselves. A good example of that would be an individual who is involved in organized retail theft and goes out stealing on a daily basis. You can look at it as it being their job—they work 8 to 5 committing crimes. They may go to different Home Depots three or four times a day throughout Washoe County. They will steal \$50, \$200, \$300 worth of power tools, which is well under the \$650 limit, and they know that. They know when

they take items valuing that amount of money, it is essentially a misdemeanor. We are raising the values of theft enormously. Essentially we are giving these individuals the ability—not necessarily to commit more crime—to steal more, higher value items or possess more controlled substances without risking being convicted of a felony. Not only that but when we put a case on them, it is going to be more difficult to seek that habitual enhancement.

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:

I want to take this opportunity to put our opposition on the record. I do have prepared remarks, but for everyone's sake and time and consideration, I will ensure that I email them to the committee secretary so you will have them for reference ([Exhibit N](#)).

I do want to highlight a couple of different provisions that have not been spoken to and have had minimal interest thus far. One of the things specific to the Washoe County Sheriff's Office is that we house the largest detention facility within northern Nevada. The savings estimated in this presentation over the course of time may help the state defer the cost of raising prison population, but at the expense of local government.

We are entrusted with the care and custody of these new classes of inmates as pre-trial detainees, sentence misdemeanants, and gross misdemeanants representing the local jurisdiction with the largest facility in northern Nevada. We are concerned about the financial burden that would occur if [Assembly Bill 236](#) were to be passed.

Due to the broad spectrum of crimes that shall be reclassified, it would be difficult to estimate with any degree of certainty the impact to the detention center alone. [Assembly Bill 236](#) does not provide up-front monies for programs and infrastructure or capital improvement projects. It also sets up local jurisdictions for failure.

I agree with the assessment that law enforcement is plagued with inadequate resources and abilities to deal with the growing substance abuse problems and mental health concerns that we run into every day on the job. We need the wraparound services at the time the individuals are released to ensure they do not return.

In 2015 we provided Advanced Roadside Impaired Driving Enforcement to our entire patrol division to help our officers better detect and evaluate the number of impaired drivers on our roadways. Our efforts have led to increased numbers of DUI detection and arrests for polydrug use. Declassifying serious drug categories to first-time possession misdemeanors will directly impact the safety of the innocent, motoring public on our Nevada roadways. Impaired driving puts all of us at risk on a daily basis.

[Assembly Bill 236](#) tells the community that dangerous drugs are no longer a concern, a mere misdemeanor, no more than a traffic citation. With our growing opioid epidemic, this is an irresponsibility on our part.

I want to thank you for the opportunity to address a few of my concerns today, and I encourage you to vote no on A.B. 236. I look forward to working with Assemblyman Yeager on making some profound revisions to this bill that will enhance public safety for Nevada.

Jan Muzzy, Private Citizen, Minden, Nevada:

I am speaking against A.B. 236 as it stands. I "ditto" everything that has been said prior to me. I would like to add that under section 86, I see senior citizens and low-income people as being easy prey and victimization, so much so that the quality of life is diminished even to loss of life.

On section 113 of the bill—about the possession of large quantities of drugs only receiving a citation—I see drugs like fentanyl did not appear to be addressed regarding the weight amounts of drug possession for trafficking crimes. As we know, fentanyl is very, very dangerous and hazardous to all of us in very minute amounts.

I see that the passage of this bill would promote drug use. Is this what Nevadans want when we are experiencing an opioid crisis? I think not. I urge you not to approve this bill as it stands.

Brian McAnallen, representing City of North Las Vegas:

I will not go into all the other issues that you have heard from the local governments, but we would concur with those and would like to associate ourselves with those comments of law enforcement.

Eric Spratley, Executive Director, Sheriffs' and Chiefs' Association:

"Ditto" to all the opposition before us as it applies proportionately to the other 15 counties not mentioned.

Vice Chairwoman Cohen:

If there is anyone left for opposition, this is your last chance. I see that some people have signed in as neutral. I want to make sure we are clear on the rules—neutral is not "I like the bill, but" or, "I like the idea of the bill, but." That is opposition. Neutral is simply giving information, so if anyone wants to rethink signing in as neutral and comment as opposition, please do that now.

Elizabeth Ortenburger, Chief Executive Officer, SafeNest, Las Vegas, Nevada:

We provide comprehensive domestic violence services for Clark County. We are the largest provider in the state, one of the biggest providers in the country, and as part of our services we provide a batterer's intervention program.

We currently provide batterer's intervention for 20 percent of the batterers coming out who are required to take the program. We wanted to share with you a couple of things. Judges do not take the attendance or behavior of batterers within those programs seriously as a point of

information. When they are watching football or behaving inappropriately, their sentences are not changed.

There is a deficit in payment. The *Nevada Administrative Code* requires that batterer's treatment programs like ours provide 5 percent scholarship funds. SafeNest is the only nonprofit provider in the state that goes well beyond that and subsidizes batterer's treatment programs up to \$75,000 to \$100,000 a year.

Finally, if we do not address childhood trauma as part of a batterer's intervention program, we are simply dealing with the issues that come out from the victimization, but we are not dealing with the underlying issue of why the battery is there in the first place.

Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety:

I am here to testify as neutral. As an ACAJ member and supporter of reentry and reinvestment, which is part of our mission, I did support the 25 recommendations. I did have concerns with some of them, and I did submit those concerns specific to the recommendations to the Committee ([Exhibit O](#)). I just wanted to get that on the record.

Vice Chairwoman Cohen:

Is there anyone else in neutral?

Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County:

We are here in neutral today. I appreciate the intent of the legislation. We are here today to discuss a fiscal impact to the county that this bill may cause, and we wanted to bring that information to your attention. The fiscal note is not due until next week, and that is something you will be getting. However, discussing this with our divisions, we do not believe we will actually be able to assign a specific number to this bill, since we are not sure how populations may shift or what the exact impact to us will be.

We do appreciate the portions of the bill that allow funding and grants to be available to us. One specific area that we would like to discuss further with the bill sponsor is the expansion of the diversion area and specialty courts. We are very supportive of these programs in Washoe County, specifically the Sober 24 program and the Crossroads programs. We do have concerns about expanding the populations that would be eligible for these programs without ensuring we are able to help offset the impact and to allow those successful programs to be successful in our area.

Vice Chairwoman Cohen:

I will just remind the Committee that we are a policy committee and issues with finances will be dealt with should this bill make it to the Assembly Committee on Ways and Means.

Dagny Stapleton, Executive Director, Nevada Association of Counties:

We are also neutral. I want to echo the comments of Ms. Rodriguez and clarify that her testimony today does not regard the merits of the policy—changes proposed in the bill—but

rather the fiscal and administrative impacts to counties. As you know, counties play a central role in our criminal justice system, such as funding and administrating district and justice courts, as well as county jails. Our members have not yet had the opportunity to compile the analysis of the possible impacts of the bill. That is the information that we wanted to share today. We want to do that, and we look forward to discussing those with the Committee and the bill sponsor.

We want to thank the ACAJ for their work on this, and I look forward to working with the sponsor.

Assemblyman Edwards:

I know you do not have any numbers yet, but could you tell us what areas you think will be impacted at the city and county levels?

Vice Chairman Cohen:

I think we will need to keep that for when the bill goes to the money committee.

Assemblyman Edwards:

I am just looking from a policy angle.

Dagny Stapleton:

I can provide a very brief answer. As I said, counties administer our district and justice courts and county jails. There are many different ways that this may impact counties and what we do administratively. We will provide additional information on that to the Committee and sponsor.

Christopher P. DeRicco, Chairman, State Board of Parole Commissioners:

We did submit a revision to section 93 ([Exhibit P](#)) for clarification purposes. We do stand neutral with regard to [Assembly Bill 236](#), but I did want to clarify that the exhibit was posted as coming from the Division of Parole and Probation and not the State Board of Parole Commissioners. Please make that correction. We look forward to working with everyone here regarding this bill.

Vice Chairwoman Cohen:

Do we have anyone else in neutral? Director Dzurenda, would you mind coming up—I think I have a question. I know you have been to other locations where they have done justice reinvestment. Could you give us some brief information about how you saw that work?

James E. Dzurenda, Director, Department of Corrections:

I am very familiar because I have been involved in it with processes in New York City and Connecticut. They both took advantage of the justice reinvestment. How it is written is really going to be the determination of the effects that happen. Where does the justice reinvestment money actually go, not just to the general fund, but how is it reinvested back into the city specifically?

One place I can mention is New York State and New York City. What happened in 1985 when they started doing the justice reinvestment in that state was any money that was saved with the closing of prisons or money that was coming back into the criminal justice system had to be refocused—78 percent of it—and sent back into the city's schools, specifically for special education, birth to three years old, and nursery school programs. This was important because it shows how it will protect in the future, not just hitting the effects of crime today.

When you go back to 1985 and look at New York City, it alone had a little over 2,500 homicides with a little more than 8 million residents. If you look at New York State, it had 58,000 offenders in the prison system. If you go back today, there are 48,000 offenders. They closed eight major facilities and, as I said, they had to refocus and send 78 percent of the money that was saved in closing prisons back into special education.

When you go back to New York City today and the effects that happened this many years later, the homicides just in New York City alone—which has closer to 9 million residents today—was about 230 homicides in 2018. Compare that to Las Vegas, which has less than three-quarters of a million residents, where they had a little over 120 homicides in 2018. You are comparing 9 million residents with less than 1 million, and their homicide rates are almost the same. You cannot hide the fact that homicides happen. It is not just data where they said, We had fewer arrests, or they arrested fewer people based on crime. It is homicide.

Look at that factor and look at what happened in Connecticut. Connecticut's incarceration population went from over 21,000 in their prison and jail systems to about the same that we have here today, a little over 14,000. If you look at New York City, the jail population from back in 1985 until now went from 22,000 inmates in the jail system to a little over 8,000 just in the jail. If you look at it like that, it has to be the language and the way it is all written. This is of huge importance to this state. If we could really make this justice reinvestment work, and work right for our future, it has to be focused on if we do all these things and how we do it. I am not an expert in the court system so I cannot comment on that part, but when you talk about what we can do with this bill and the effects it is going to have on the state and the future, it is amazing.

It has to be a serious bill that we know is going to be huge for our state in the future, and we cannot keep waiting on this.

Vice Chairwoman Cohen:

Thank you very much.

Assemblyman Roberts:

I really support what you are talking about: reinvestment. I just want to correct you for some statistical purposes. Metro's jurisdiction has 1.4 million people, 400 million tourists a year, and 120 homicides, not just 750,000 people. To give them some credit, they did lower the homicide rate last year. Every other point is good.

Vice Chairwoman Cohen:

Assemblyman Roberts, we certainly appreciate Metro, Henderson, North Las Vegas, Boulder City, and everyone in the Sheriff's and Chief's and all the work they do to keep us safe. Thank you both very much.

James Hardesty:

First of all, there are a couple of things I would like to address. I have suggested to Assemblyman Yeager that given the number of issues suggested or raised by the opposition, it would be a good idea to also get their testimony and address a point-by-point response with respect to those issues.

The first point I want to make has to do with the statements by Mr. Lalli concerning the fact that amounts under 28 grams are misdemeanors. That ignores the fact that there is still possession of a controlled substance. What has been disregarded is that there are no changes to the statute that deals with the crime of possession for purposes of sale or transport sale or exchange. That statute makes clear that weights between minute and 1 gram and weights up to 27 grams would be a felony. The difference between that and the trafficking is what the prosecutor must prove: it is necessary to show that there is an intent to sell. There are numerous factors available to law enforcement and prosecutors to demonstrate that. I take issue with the recitation by Mr. Lalli that all of this are now misdemeanors.

The other issue I want to mention is the statute that was mentioned by Assemblywoman Nguyen regarding habitual criminals. The problem with dealing with this subject now is that the statute is structured where it recites a whole series of criminal offenses—virtually 40, I believe—and lists out the various crimes that would encompass the habitual criminal status. That addresses Assemblywoman Krasner's question.

I think this is important and I agree with comments made by the prosecutors. Yes, indeed, there needs to be balance, and I would submit that the criminal justice system in Nevada is out of balance. I think it is time for the Legislature to take a look at ways where the balance can be restored, to provide public safety, but also recognize the importance of rehabilitation and restoration of rights for people who are interested in doing that.

One final point: Some of the examples cited by the opposition are troubling because they reflect a distrust or lack of confidence in the discretion that would be exercised either by the Parole Board or by judges. I would submit that it is highly unlikely that a judge is going to divert someone with the kind of charges you heard about and ignore the opportunity for victims to participate in those crimes. The point of these statutes was to afford discretion to judges, and I would add that was an area, even in the trafficking area, where law enforcement agreed that discretion was warranted.

I look forward to gathering some additional information that would be important for the Committee's consideration and submitting it.

Vice Chairwoman Cohen:

Thank you, and we appreciate your spending the time with us today.

Assemblyman Yeager:

I remain very proud of the work that we do in this Judiciary Committee, and today is no exception. I appreciate everyone who came and testified today. I heard some really good suggestions on how to make this bill better, and I look forward to the hard work ahead. If it was not clear, I will make it clear now: I am extending an olive branch to anyone who wants to come to the table with solutions. It is really easy to come to the table and say no and walk away; it is hard to come with solutions. I have heard the opposition. I think some of the points they are making are more than valid, and I look forward to working with them. Let us continue that work.

The last time we had any major reorganization of crime and criminal penalties in this state was the 1995 Session. The intent at that time was for this Legislature to review and study criminal penalties on a regular basis, perhaps every session. Here we are, finally having this discussion in 2019, 22 years later. That is legislative time at its finest, but better late than never. It falls to us as a Committee to do this hard work. Simply put, the cost of doing nothing is unacceptable. It is well past time for Nevada to be smart on crime with nearly 10,000 hours of support invested in this effort; that is 24 hours a day for 417 calendar days. With that behind us, I will not spend a minute debating the data that we have in front of us or the source of that data. The data is solid, and it is time for us to make decisions.

Every great hearing ends with a great quote, and this one will not be an exception. To close us out today, on September 12, 1962, President John F. Kennedy delivered a speech to 40,000 people at the Rice University football stadium. On that day, he talked about space exploration, but his words are just as fitting to our efforts of meaningful criminal justice reform that can be found in Assembly Bill 236.

Here is what he said:

We set sail on this new sea because there is new knowledge to be gained, and new rights to be won, and they must be won and used for the progress of all people. . . . We choose to go to the Moon in this decade and do the other things, not because they are easy, but because they are hard; because that goal will serve to organize and measure the best of our energies and skills, because that challenge is one that we are willing to accept, one we are unwilling to postpone, and one we intend to win, and the others, too.

I urge your support of Assembly Bill 236.

[([Exhibit Q](#)) and ([Exhibit R](#)) were not mentioned but will become part of the record.]

Vice Chairwoman Cohen:

With that, we will close the hearing on Assembly Bill 236 and move on to public comment. If there is anyone in Las Vegas or Carson City, please come up. [There was no one.] Before we adjourn, we will be starting at 9 a.m. on Monday.

Meeting adjourned [at 11:54 a.m.].

RESPECTFULLY SUBMITTED:

Cheryl Williams
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to [Assembly Bill 236](#) presented by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit D](#) is a report titled "Nevada Advisory Commission on the Administration of Justice—Justice Reinvestment Initiative, Final Report," dated January 2019, submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit E](#) is a copy of a PowerPoint presentation titled "Justice Reinvestment Initiative Selection of Data Findings and Recommendations," dated March 8, 2019, presented by Assemblyman Steve Yeager, Assembly District No. 9; and James W. Hardesty, Vice Chairman, Advisory Commission on the Administration of Justice.

[Exhibit F](#) is a copy of a PowerPoint presentation titled "Advisory Commission on the Administration of Justice: Justice Reinvestment Presentation #1," dated September 12, 2018, submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit G](#) is a copy of a PowerPoint presentation titled "Advisory Commission on the Administration of Justice: Justice Reinvestment Presentation #2," dated October 10, 2018, submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit H](#) is a copy of a PowerPoint presentation titled "Advisory Commission on the Administration of Justice: Justice Reinvestment Presentation #3," dated November 8, 2018, submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit I](#) is written testimony in support of [Assembly Bill 236](#), submitted and presented by Paola M. Armeni, Private Citizen, Las Vegas, Nevada.

[Exhibit J](#) is a letter dated March 6, 2019, to members of the Assembly Committee on Judiciary, in support of [Assembly Bill 236](#), authored by Jim Hoffman, Legislative Committee, Nevada Attorneys for Criminal Justice.

[Exhibit K](#) is written testimony dated March 8, 2019, in support of [Assembly Bill 236](#), submitted and presented by Marcos Lopez, Field Director, Americans for Prosperity Nevada.

[Exhibit L](#) is written testimony in opposition to [Assembly Bill 236](#), submitted and presented by Christopher J. Hicks, District Attorney, Washoe County District Attorney's Office.

[Exhibit M](#) is written testimony in opposition to [Assembly Bill 236](#), submitted and presented by Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada.

[Exhibit N](#) is written testimony in opposition to [Assembly Bill 236](#), submitted and presented by Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office.

[Exhibit O](#) is a letter dated March 7, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, authored and presented by Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety, regarding [Assembly Bill 236](#).

[Exhibit P](#) is a letter dated March 7, 2019, to members of the Assembly Committee on Judiciary, authored and presented by Christopher DeRicco, Chairman, State Board of Parole Commissioners; and David M. Smith, Hearings Examiner II, State Board of Parole Commissioners.

[Exhibit Q](#) is a letter dated March 7, 2019, to Chairman Yeager, authored by Stephen B. Rye, District Attorney, Lyon County District Attorney's Office, in opposition to [Assembly Bill 236](#).

[Exhibit R](#) is a statement in opposition to [Assembly Bill 236](#), submitted by Ryan Black, Legislative Liaison, City of Las Vegas.