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

## Eightieth Session
## February 22, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:07 a.m. on Friday, February 22, 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.leg.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, Justice, Nevada Supreme Court
Tonja Brown, Private Citizen, Carson City, Nevada
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Jennifer P. Noble, Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Scott L. Coffee, Deputy Public Defender, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice

**Chairman Yeager:**
[Roll was called, and Committee protocol was explained.] I want to welcome everyone here in Carson City. I do not think we have anyone joining us in Las Vegas quite yet as there is an issue there with when the building will be open. We do have the videoconference up and running, but I think we can go ahead with our agenda because we did not expect anyone from Las Vegas on our first bill. The agenda today is a presentation followed by two bills. We are going to take the items in order on the agenda, so I will invite Justice James Hardesty to the table to give us an overview of the Nevada Sentencing Commission. After Justice Hardesty is done with the presentation, we will take questions about the Sentencing Commission and then we will go into the first bill that relates to the work of the Sentencing Commission.

**James W. Hardesty, Justice, Nevada Supreme Court:**
I appreciate the opportunity to once again join all of you and share with you the work of the Nevada Sentencing Commission. The Chairman had asked that I give you an overview of the Sentencing Commission's responsibilities and description of their work this last interim. One of the things that you probably have already learned from your review of the material for today is that the Sentencing Commission by statute was afforded a bill draft request, and it utilized that bill draft request to submit to you Assembly Bill 80 this session, which I will get into following the Sentencing Commission overview (Exhibit C).

I think it is also worthwhile to talk about the Sentencing Commission and the difference between that commission and the Advisory Commission on the Administration of Justice (ACAJ) that the Chairman and I had a chance to speak with you about on Monday. There are differences, and they are fairly significant in their responsibilities and their charge. Some of what the Chairman and I spoke with you about on Monday is sharpening up those differences even more from the legislation that was proposed by the ACAJ and reducing overlap in these two criminal justice commissions.

I was privileged to be elected chairperson of the Sentencing Commission. That commission was composed of 25 members under *Nevada Revised Statutes* (NRS) 176.0133. Like a lot of committees or commissions, that is a pretty large group of folks. I am sure any of you who have had the chance to serve on large committees or commissions realize that it can be a challenge to get people to coalesce behind issues. In any event, I would dare say that virtually all of the representatives of the criminal justice system are involved in this commission. Two of the members of this Committee, Assemblyman Fumo and Assemblywoman Tolles, sat on this commission and made major contributions to the commission's work throughout its interim studies.

You have a list here on pages 2 and 3 (Exhibit C) of the members of the Sentencing Commission who served. I will not list all of their names in the interest of time, not out of disrespect but because we need to move it along. What I would like to do is share with you the history of the Sentencing Commission and give you a little background as to why that came about. The criminal justice system has long been recognized as a means to promote a safe and orderly society. The Advisory Commission on Sentencing was created in 1995, as you will recall from our comments last Monday.

There was a substantial period of time when that statutorily created commission did not even meet and made very little contribution to what was expected in the truth in sentencing legislation in 1995 [Assembly Bill 317 of the 68th Session]. In 2007, I asked the Legislature to revitalize it. It did, and the ACAJ has studied a number of issues over the ensuing decade. Unfortunately, those who have served on the commission and have quite a bit of history on the ACAJ—a good example would be Mr. Callaway, as I think he has been on it all that time—are aware that there is an absence of data that would assist in making important decisions that affect the criminal justice system.

In 2017, the Advisory Commission presented Senate Bill 451 of the 79th Session, and that bill would create for the first time a sentencing commission in Nevada. Where does that come from? A sentencing commission is in existence in about 26 states. It is actually a growing number of states. Conceptually, what a sentencing commission does is study the data related to incarcerated folks and determine appropriate sentence guidelines to try to even out the sentencing ranges so that a defendant who commits a similar crime with similar criminal histories can be assured that there will be a similar sentence imposed. The effort is to try to address issues of racial inequality and other areas where like-kind defendants are treated differently in the criminal justice system. Now in some states, the guidelines

are mandatory. In other states they are advisory and give guidance to the judge about what a range would generally look like.

State guideline systems are dramatically different from the federal guideline system that exists in federal court. Some of you may have read recent news accounts about how federal guidelines are used for sentencing practices in the federal system. The state guideline approaches are much different. In essence, you take a particular crime and a matrix is developed through a study of the background of the criminal defendants who have been convicted on those crimes and either given probation or placed in prison. You develop from that matrix the ranges that provide a chart to assist the trial judge in determining—all other things being equal—where this defendant would fall within that chart for sentencing purposes. Then counsel for the state and counsel for the defense are able to argue aggravating and mitigating circumstances that would move the judge to make findings placing the defendant somewhere else within the chart. In all instances, the guidelines require the judge to make findings as to why the judge moved around on the chart for sentencing purposes.

Interestingly, those sentencing determinations are reviewable by an appellate court in some states. In other states, they are not. This is all part of the process that the ACAJ had heard during its work in the interim prior to 2017 and gave rise to S. B. 451 of the 79th Session which created the Nevada Sentencing Commission. There was a key component enacted by the Legislature also. For many years, sentencing ranges decided by the Legislature were not debated by the committees. You all would decide to criminalize some behavior, and people would debate that and decide, okay, we are going to criminalize this behavior. What was not debated was the sentencing range—the penalty. Frequently, the default position was to place that crime into one of five categories under NRS 193.130. Very frequently, that default position was to place the crime into category B, as opposed to category C or D. In our state, that has significant consequences to a defendant who is incarcerated under a B, C, or D category.

The thing that the ACAJ has been pressing the Legislature to do prior to 2017, and was reiterated in this bill, is to understand that when you decide to criminalize behavior, you must also debate what is the appropriate, proportional sentence associated with that behavior. Be mindful that not every person who commits a crime goes to jail, and those who do do not spend the rest of their life in jail. The vast majority of defendants who commit criminal offenses and go to prison are going to get out. As a consequence, it is critical to understand what length of service that defendant should serve.

We urged the Legislature in 2017 to adopt policies around which sentencing should be debated. These policies are listed on page 4 (Exhibit C), and they did not just come out of thin air. The policies were developed by The Council of State Governments. This was developed by that group over a long period of work leading up to this time. The Legislature has now adopted as part of the law in S. B. 451 of the 79th Session these seven policies that you should take into consideration when you are making determinations about sentencing lengths. For example, sentencing/corrections should embody fairness, consistency,

proportionality, and opportunity; the laws should convey a clear and purposeful rationale for sentencing in corrections; a continuum of sentencing in correction options should be available with imprisonment reserved for the most serious of offenders; sentencing and corrections policies should be resource-sensitive, both in cost and benefit; criminal justice should be based on data-driven sentencing and corrections policies; and strategies to reduce crime and victimization should involve prevention, treatment, health, and labor. Those policies are now embodied in the statutes governing your work.

From this, the Legislature passed S.B. 451 of the 79th Session and created the Nevada Sentencing Commission. In doing so, it established a series of responsibilities for that commission. One of them is to advise the Legislature on proposed legislation and make recommendations with respect to all matters relating to the elements of this state's system of criminal justice which affect the sentences imposed for felonies and gross misdemeanors [page 5].

As you can see, this responsibility is much more targeted than the more general responsibility for all criminal justice issues that the ACAJ studies. I will not read all of these; you folks can and you have the PowerPoint. I just wanted to list the various statutory duties that exist. The point I want to make, and I think I raised this with the ACAJ, is this: If you read this list, any reasonable person would say, Wow that is a tremendous agenda for any interim committee. The pragmatic problem is that you do not budget for this. You depend on Legislative Counsel Bureau staff to support these commissions, yet they are charged with an enormous responsibility and a lot of work to do. In past sessions, the ACAJ was limited to four meetings in the interim. This Sentencing Commission was limited to three. In three meetings, 25 people are supposed to tell you all you need to know about the sentencing practices in the state of Nevada. That borders on the absurd, and it certainly is not doing the service that you, I would think, would want to have done going forward.

We take this in little bitty steps. I think we accomplished a significant amount within our limited number of meetings. From November 2017 through August 2018, the Sentencing Commission held three substantive meetings, a joint meeting with the ACAJ, and a work session. The meetings addressed each of the statutory duties and included assisting and securing the Justice Reinvestment Initiative through the Crime and Justice Institute.

You will see on the final report (Exhibit D) a lengthy list of presentations that the Commission received about sentencing commissions all over the country. We received an overview from the Robina Institute of Criminal Law and Criminal Justice. We reviewed Nevada's felony sentencing structure. We had presentations from the Nevada Department of Corrections and from a number of states, including North Carolina, Oregon, Connecticut, and Utah, on the sentencing commissions in their jurisdictions and how they work. Significantly, we also had a presentation on criminal procedure in Nevada to attempt to educate members of the Sentencing Commission about how the criminal process operates. We had a presentation from the Central Repository for Nevada Records of Criminal History. I want to mention that presentation in particular. It is very important that this Committee understands the weakness that exists in our criminal history repository system.

Almost all of the participants and stakeholders in the criminal justice system depend on information from a competent criminal history system. The beat cop who pulls someone over and wants to do a wants and warrants check needs to have valid information provided to him about the criminal history of an individual or any outstanding warrants. His safety depends on it, not to mention how he interacts with the person he has pulled over.

The Division of Parole and Probation of the Department of Public Safety, when making presentence investigation reports, must conduct an in-depth study of the criminal history of the individual who is involved. Oftentimes there are errors in those reports that can directly impact whether the defendant gets probation or goes to prison. The reliability and accuracy of the Central Repository is critical to this process.

I urge all of you to look at the portion of the Sentencing Commission's slides presented by Mindy McKay from the Central Repository about the weakness in Nevada's system. It is problematic. They were behind somewhere in the neighborhood of 1.2 million cases by the time we had received our presentations. Those are arrests that have not been entered into the system for a variety of reasons. That is very troubling. Equally troubling is the fact that their system is operating on a dated and now potentially unsupported information technology system. This has to be a priority if our criminal justice system is going to be adequately understood, studied, and reviewed. Otherwise, the data that people rely upon can raise some serious questions about your evaluation and your recommendations. I emphasize this because it relates to one of the key recommendations that the Sentencing Commission made.

We also held a work session on August 29, 2018. The Sentencing Commission considered seven total recommendations. Among those recommendations was one dealing specifically with sentencing guideline work. Quite frankly, the Sentencing Commission would conclude that would be premature and I would agree. We decided to continue to build on the structure to better understand what we are doing in Nevada. The primary recommendation was the drafting of Assembly Bill 80, which I will talk about in a moment. It also approved three recommendations for draft letters to the Governor and the Legislature to support increased criminal justice funding.

In Assembly Bill 80, we proposed and did draft legislation to statutorily create an independent Office of the Nevada Sentencing Commission. The legislation would revise the duties of the Sentencing Commission to statutorily require it to function as an independent and stand-alone analytic and oversight body for sentencing and related criminal justice data. Once in place, the Sentencing Commission will have the necessary data to perform its statutory duties, including the evaluation of statewide sentencing practices. The legislation would serve to further the legislative findings and declarations in NRS Chapter 176 [Judgment and Execution]. It would also enable a coordinated and systematic approach by the Sentencing Commission to make data-driven sentencing. Additionally, the legislation would provide that the Sentencing Commission's staff function as an independent agency located in the Executive Branch of state government. The Sentencing Commission membership would have the same statutory membership and duties and would be staffed by newly established, full-time, independent staff members.

I want to point out how grateful I am personally, and the Sentencing Commission is as well, for the service of Nick Anthony and other members of the staff of the Legislative Counsel Bureau in assisting both the ACAJ and the Sentencing Commission. In fairness to them, they have a lot of responsibilities in the interim, and frankly, if we are going to do this correctly, we need to follow the steps that are taken by sentencing commissions throughout the United States. Almost every one of those commissions has an independent, dedicated staff of somewhere between four and six people who do what we are proposing be done here. That staff is a nonpartisan group supporting the work of the commission and spends its time on earth working on data studies to evaluate existing trends and develop the most appropriate and fair sentencing combinations. They also provide those recommendations to the Sentencing Commission and to the Legislature on an ongoing basis.

Imagine this: Would it not be nice in a perfect world, as is the case in many states that have sentencing commissions, if you decide to criminalize certain behavior, the Sentencing Commission staff comes to testify before you and says, We have studied this in the 50 states, and we have looked at this in Nevada, and the appropriate sentencing range for this behavior would be 1 to 4 years, 1 to 10 years, 1 to 6 years, and here is why. I think it would be very helpful to even out and provide fairness in our system.

The other recommendation that we made is specifically focused on the Central Repository. We drafted a letter, and it has been delivered to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and Legislature to provide budgetary funding for staffing and technology for the Central Repository. It is just critical, and I know there is a lot of competition for the State General Fund dollars, but we would like to heighten people's awareness of this particular concern.

We also recommended to the Governor and the Assembly Committee on Ways and Means and the Senate Committee on Finance increased funding for criminal justice agencies, including the Division of Parole and Probation, the Department of Corrections, and the State Board of Parole Commissioners of the Department of Public Safety. I am sure you have heard or will hear a lot of testimony throughout the session about the pressures, demands, and needs of those agencies.

Finally, we also heard information about the specialty courts. By way of history, the Legislature, beginning in 2015, made a major investment from the State General Fund for the first time in specialty courts. Before that, it had been solely funded by county staff and county budgets and administrative assessment fees of up to $7. The State General Fund was now going to receive $3 million per year. This was taken from our review of the work in Oregon. Oregon has made a major investment in its specialty courts in its state, and that has proved to be very valuable in being proactive in dealing with a variety of issues that influence those who enter the criminal justice system. Our Sentencing Commission heard testimony showing that there is currently a need of $15 million. We would like to have this state follow the same approach that has been taken by Oregon and increase its investment from $3 million to $6 million per year.

I have asked staff to provide you with a copy of the final report (Exhibit D) that was prepared by the Sentencing Commission.

**Assemblywoman Cohen:**
Can you address the involvement of the rural communities in the Sentencing Commission?

**Justice Hardesty:**
The membership of the Sentencing Commission was outlined by statute. As an example, the Nevada Sheriffs' and Chiefs' Association appointed a sheriff from a rural county. We had a number of individuals on the Sentencing Commission who have rural county connections. All of the hearings were public, and we did have testimony from rural county individuals. I do not think that the membership specifically designates someone from the rural county. It is more of a category of criminal justice involvement.

**Assemblywoman Hansen:**
You mentioned the Central Repository as being a real weakness. That is a state repository, not a federal or general repository, correct? Can you give us a short list of where we can start to strengthen that? What is not being done that could possibly be done to strengthen it?

**Justice Hardesty:**
I would not want to speak for the Central Repository and their priorities, so what I would be reflecting is what they told both the ACAJ and the Sentencing Commission. I do not know if I am the best person to identify what they consider to be the best steps. From their testimony, what is abundantly clear is an $11 million appropriation is needed to fix their information technology systems so that they can capture that information and that data. As well, one of the concerns by everybody who heard this is the so-called "backlog." It is essentially unrecorded information in the system. We heard a story that after the 2017 Session, they found boxes of files in closets in the office containing dispositions of criminal cases that had not been recorded in the system. That seemed unimaginable. In any event, apparently it occurred, and there was some description or explanation about that issue.

The statute requires a multitude of criminal justice agencies to report to the Central Repository so that they have this information. One of the groups required to report is the district attorneys around the state. It was discovered that the district attorneys had not been reporting. That is important because when the district attorney files charges, many times those charges are modified before you end up going to district court, for example, on felonies and gross misdemeanors. The only agency that really knows what the disposition was with respect to those arrests is the district attorney who had them initially. The district attorneys addressed this and, to their credit, began working with the Central Repository. What is unclear is how many of these—and it is a floating number somewhere between 800 and 1.2 million—entries need to be made and brought current. This Legislature has heard about this in the past. You have had requests for supplemental staff to assist the Central Repository going back to 2011 or 2013 to try to catch up on this stuff. Unfortunately, they have not been able to do it entirely, and some of it is that they do not know exactly who has the best information to answer those questions. I think it is really important to address and establish

priorities. I would recommend that the Chairman consider supplementing this presentation and the ACAJ work by having a presentation to this Committee from Mindy McKay or whoever is currently in charge of the Central Repository. It is an eye-opening experience. I think there is an issue of money and trying to restore the support for their program and then establishing a priority to identify how to get all of those entries in and accounted for in the system.

**Chairman Yeager:**
Do we have any other questions for Justice Hardesty from the Committee members? [There were none.] Thank you for your presentation. Members, I know we have a lot to read, but if you have some time, I would recommend looking at the final report of the Nevada Sentencing Commission (Exhibit D). I want to commend you, Justice Hardesty. I cannot imagine how difficult it must be to find the time when 25 people can get together to have meetings. It is to your credit that you were able to do that, and thank you for the work you have done on the Sentencing Commission. I am sure that work will continue to go forward. I also want to thank you for the suggestion about the Central Repository. I think we will have a presentation from the Central Repository probably in the context of one of our bill hearings that brings them into the legislation. That is a fantastic idea.

At this time, I will formally open the hearing on Assembly Bill 80, which makes various changes relating to the Nevada Sentencing Commission. We have gotten a little bit of a preview of A.B. 80, but I wanted to give Justice Hardesty a chance to talk about what the bill does in a little bit more detail, then we will open it up for questions from Committee members.

**Assembly Bill 80: Makes various changes relating to the Nevada Sentencing Commission. (BDR 14-469)**

**James W. Hardesty, Justice, Nevada Supreme Court:**
I mentioned 25 members and how difficult it is to get agreement. Assembly Bill 80 was requested by a unanimous vote of the 25 members of the Nevada Sentencing Commission, so all members voted in favor of A.B. 80, pursuant to the Sentencing Commission's statutory authority to submit a bill draft to this Legislature. The overarching concept behind the bill is to give Nevada a full-time, independent, stand-alone central staff to assist the Sentencing Commission in fulfilling its statutory duties. During the interim it became apparent that most states have a full-time, nonpartisan, dedicated staff which is necessary to compile the necessary exchange of data between criminal justice agencies and policymakers.

In fact, that was made clear in presentations we received from Virginia, North Carolina, Connecticut, Utah, and Oregon. From our research, we learned that at least 11 states have sentencing commissions located in the Executive Branch, 6 others are located in the Judicial Branch, and 3 are located in the Legislative Branch. The bill would leave the existing Sentencing Commission to function as an advisory body of the Legislature; however, it would dedicate the necessary resources to allow the Sentencing Commission to make informed, data-driven policy recommendations.

I tried to make mention on Monday of the importance of the contribution to the state by being selected as a justice reinvestment state. The effort was made to develop data around which the Advisory Commission on the Administration of Justice (ACAJ) could make recommendations to you this session. As I mentioned, that effort exceeded 9,000 hours of work. It is still ongoing, by the way. That shows what can be accomplished by getting data and building recommendations from the data and not a bunch of anecdotal stories from members of the criminal justice system. I think you will see that when you get into the report from the Crime and Justice Institute, which was approved by a majority of the ACAJ, and a lot of recommendations are the product of data that they developed in the course of their study.

This group that we are proposing in A.B. 80 is directly related to that effort, the continuation of that effort. If the Legislature considers adopting some or all of the recommendations that are made by the ACAJ, we want to monitor those through data to see how they are working. That function would be developed by this full-time staff and the Sentencing Commission going forward. That is the overview of what we are planning and what we are proposing to the Legislature.

Sections 2 through 4 of the bill provide definitions. Section 5 provides the crux of the bill, creating the Office of the Nevada Sentencing Commission within the Office of the Governor, and it provides for the appointment of an executive director of the office. The executive director is required to be appointed by the Governor from a list of three persons recommended by the Sentencing Commission. The executive director must be an attorney licensed to practice law in Nevada. Section 6 prescribes the duties of the executive director, which include among other duties: overseeing the functions of the office; serving as executive secretary of the Sentencing Commission; developing the budget for the office; facilitating data collection; assisting the Sentencing Commission with developing its allotted bill draft for each session; and assisting with preparing the biennial report for the Sentencing Commission. Section 7 requires the executive director to select at least one research analyst and two secretaries for the office, and provides for the duties of those positions. The research analyst may but is not required to be an attorney, and the secretarial staff is required to transcribe minutes and post agendas. Section 9 removes the Attorney General from the membership of the Sentencing Commission and instead allows the Attorney General to appoint a representative. Quite frankly, the demands on that constitutional officer's time are substantial and perhaps the office is better served in the discretion of the Attorney General by naming a representative from the office rather than the Attorney General himself. Section 9 also requires the Sentencing Commission to hold its first meeting on or before September 1 of each odd-numbered year. Lastly, section 9 designates the executive director as the executive secretary of the Sentencing Commission and transfers the staffing responsibilities from the Legislative Counsel Bureau to the newly established office.

The key with respect to that last recommendation is to allow more meetings, more substantive meetings, to take place so that the Sentencing Commission can actually accomplish its statutory objectives. Section 10 revises the duties of the Sentencing Commission to include oversight of the director and provide certain recommendations and

advice concerning the office. Section 11 is conforming changes. Section 12 provides that the bill becomes effective for administrative tasks upon passage and approval and for all other purposes on July 1, 2019.

I realize this is a policy committee, but I did want to note that the Governor's Office has indicated that the cost in the first year would be $370,000 and in the second year it would be $457,000. The fiscal note provided by the Governor's Office has been covered and included in the Governor's *Executive Budget* submitted to the Legislature.

**Assemblywoman Peters:**
I am a data person, so the first thing that popped up for me was that I see in here a description of the data collection process, but not really a description of who is responsible for the analysis of that. It seems like it would be the Sentencing Commission, but sometimes that data crunching can look a little different than just a discussion around what it looks like in actuality. Could you go into the process around what you are expecting the analysis process to look like?

**Justice Hardesty:**
The vision is similar to the way the staff in the sentencing commissions in other states work. The executive director has an expertise in sentencing activities and the data associated with, for example, building guidelines. The research analyst has that background and conducts that research. They draw the data from existing agencies similar to what the Crime and Justice Institute did in preparing this upcoming report that you all will receive soon. Then the analysis of that data is done by the research analyst, the executive director, but ultimately by the Sentencing Commission.

The challenge in Nevada is that our information technology systems in the Department of Corrections and the Division of Parole and Probation of the Department of Public Safety are not always able to answer some of the data questions. It requires staff to do a hands-on look at the files. That is just what the Crime and Justice Institute staff did. Imagine spending your life in Nevada in an office last August, September, and October looking at somewhere in the neighborhood of 1,000-plus files of those incarcerated in the Department of Corrections so an assessment could be made about how that individual got there, what the background was, and so forth. That is what the Crime and Justice Institute did. That work has been started. Refinements have been made to the data processing collection so we have made improvements there. The vision for this staff group is to continue that work and build on it.

**Assemblywoman Peters:**
I continue to try and process through how our state has continued to let our data management systems antiquate, and how can we, at this point, pool resources together in an economically and fiscally responsible way to develop processes to help assist in these data analysis techniques which we have across the Executive Branch. I would love to hear any request that you have for specifics that are helpful and how that data could come together or be in a place that is more useful than it is right now, so we can start to build a picture of what data management systems should look like in the state of Nevada as we progress technologically.

**Justice Hardesty:**
In fairness to prior legislatures, they have had an enormous challenge in dealing with the economics with which our state has been confronted. It is like so many things you are forced to put off to the next session, hoping you have adequate resources to deal with that. The longer you put it off, as you know probably better than anybody, the systems you have been operating under become obsolete or become very expensive to maintain. That is what I think Nevada is finding, and I think it is going to be an enormous challenge for all of you folks this session to deal with. It is not going to be resolved overnight, but you certainly ought to have a plan. We see this across the board in the criminal justice agencies. We see it in all of the different criminal justice agencies that we interviewed as part of the Sentencing Commission work. I think the Legislature needs to be proactive and see what the numbers are. They are probably unimaginably big, but you have to start somewhere. They need to be made a priority. You cannot put this off forever.

**Chairman Yeager:**
Do we have any other questions from members for Justice Hardesty? [There were none.] Members, I did want to let you know, Justice Hardesty mentioned it, but there is a fiscal note attached to the bill, which you will find in the Nevada Electronic Legislative Information System. As Justice Hardesty said, we are a policy committee so what will happen on this bill is, if we pass this out of Committee, it will likely make a stopover in the Assembly Committee on Ways and Means for that fiscal note to be resolved in one way or another. Obviously, the fact that it is included in the Governor's *Executive Budget* helps tremendously. If members were wondering, that is what happens with the fiscal notes. We do not get to resolve those here in the policy committee, but they will be vetted right next door or upstairs depending on where the Committee is meeting.

I will open it up for support of A.B. 80.

**Tonja Brown, Private Citizen, Carson City, Nevada:**
I am an advocate for the innocent, advocate for the inmates, and we strongly support this bill. Thank you.

**John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:**
We support this bill. As the Committee will note, we did propose an amendment (Exhibit E). Even without the amendment, we would still support the bill. I did discuss with Justice Hardesty modifying the amendment. I just wanted to run that by the Committee. In section 9, subparagraph (h), "the State Public Defender," we would replace that with one member who is a representative from the Washoe County Public Defender's Office appointed by the head of that office. Then changing the language in section 9, subsection 1 paragraph (i), "One member who is a representative of the office of a county public defender's office," and deleting the language "appointed by the governing body of the State Bar of Nevada" and changing that to "appointed by the head of that office." Justice Hardesty indicated to me that he had no objection to that proposed amendment.

**Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:**
I would like to thank Justice Hardesty for all of his work on the Sentencing Commission. As he indicated, this is an extremely important issue so we appreciate all of his support. We do support this bill and, as Mr. Piro indicated, we do have an amendment. I would add that our purpose in having it changed from the State Bar of Nevada appointing an individual from our respective offices is because if you look at the other provisions in this bill and in the statute, the individual representing that office is appointed by that office head. That is why we are requesting that change.

**John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts:**
I am the Administrative Office of the Courts representative on the Sentencing Commission, and just wanted to lodge my support for the measure.

**Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:**
We are in support of A.B. 80. I just want to make one quick point regarding the makeup of the Sentencing Commission. Looking back at the last legislative session, it started off as a very different bill. I believe when I had added up the numbers, the representation of law enforcement voices and victim voices and district attorneys, we were outnumbered by, I believe, three or four representatives on the Sentencing Commission. It was really this house and this body that made sure that the balance of that was reflected in the way that the bill came out, which is why the Sentencing Commission is quite large. I think it is important that it is that large and that those voices are heard. I think it is even more important now with this legislation because in section 5, subsection 2, we will have the opportunity to weigh in on who is appointed to this commission. There are many people across the country, some in this state, who have valuable expertise in the area of sentencing, and I think it is critical that we place the right people in those positions. We strongly support this legislation. Thank you.

**Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**
As a member of the Sentencing Commission, I support the bill as written.

**Jennifer R. Noble, Deputy District Attorney, Washoe County District Attorney's Office; and representing the Nevada District Attorneys Association:**
We certainly support this bill. I also wanted to comment that Assemblywoman Peters asked an excellent question about how we got here, how we got so far behind with our systems. What is going on with this information? I served on the Advisory Commission on the Administration of Justice's Subcommittee on Criminal Justice Information Sharing during the interim, and we were discussing better ways to update this information with their existing resources including more information from the district attorneys. My office, which is the Washoe County District Attorney's Office, ran very limited statistics on how many times in one month a charge changes during the pendency of a criminal case. It became very clear

that using their existing resources, the Central Repository simply does not have the staff or the ability to input that information, so I think there is a real problem there.

**Chairman Yeager:**
Were there any questions from Committee members? [There were none.] Is there any additional testimony in support of A.B. 80? [There was none.] Is there any testimony in opposition to A.B. 80? [There was none.] Is there any testimony in the neutral position to A.B. 80? [There was none.] [Concluding remarks by Justice Hardesty were waived.]

The hearing on A.B. 80 is closed. Members, we are going to take a recess until 10:10 a.m., which is about an hour from now. The reason we are doing that is we have some people who are interested in testifying on the next bill and they are in Las Vegas. The building is not opening until 10 a.m. They are there, but due to the Governor's order, the building is not going to be opened until 10 a.m. We are in recess [at 9:03 a.m.]. We will come back at 10:10 a.m. to take up our second bill.

[The meeting reconvened at 10:12 a.m.] Thank you, everyone, for your patience as we work through some weather issues in Las Vegas. We will open the hearing on Assembly Bill 148, which revises the provisions governing plea agreements. This measure is sponsored by Assemblyman Fumo, and it also looks like we have Mr. Coffee in Las Vegas as well as Mr. Piro and Ms. Bertschy at the table here in Carson City.

**Assembly Bill 148: Revises provisions governing plea agreements. (BDR 14-121)**

**Scott L. Coffee, Deputy Public Defender, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice:**
Assembly Bill 148 corrects a problem I have seen in guilty plea agreements and in the way negotiations are handled in the district courts. It corrects a problem that has existed for the last 15 or 20 years. When we enter guilty plea agreements, we do so with an understanding of what is going to happen and how a case is going to be argued. For example, we may say the parties retain the right to argue, in which case both sides get to argue about what the sentence should be within the legal bounds. We might say the state is not going to make a recommendation. Or we might say that both parties are going to recommend a particular sentence. We all understand the meaning of the words, so far so good, not an issue.

We also use the term "stipulate" in guilty plea agreements. When we use the term "stipulate" in guilty plea agreements, I will tell you that there is a confusion in the courts, there is a confusion with defendants, and there is a confusion with the litigants. In normal terms, stipulate means "we agree to," and I think everybody takes it that way. Defendants take it that way. They think they are going to get something, and lo and behold, come time for sentencing, they occasionally get something that they did not expect. Now, it does not happen very often—5 percent of the time, maybe 10 percent of the time. But the way the law is currently written, we have judges who will say, You stipulated, I did not. It is a recommendation, and I can do what I want. What we have done is to put our most vulnerable people, defendants who are at the mercy of the court, in a situation that they

cannot get out of. Sometimes they go to prison thinking they are going to get probation. Sometimes they get longer prison sentences. Sometimes this happens to victims also. The victim thinks something is going to happen, and the judge will deviate below what the stipulation is.

Guilty plea agreements, by and large in our criminal justice system, are put together with a lot of thought by the parties—the prosecutors and the defense. What A.B. 148 does is put everybody on the same page. It basically makes us deliver on our promises and makes us stand up to our word. It does not take away judicial discretion. Under the revised bill, judges would have the opportunity at sentencing, if they decided not to follow a stipulated plea agreement, to not follow the stipulated plea agreement. At that point, the defendant would have the opportunity to withdraw from the plea agreement. That makes good sense. The federal government, in *Federal Rules of Criminal Procedure* 11(c)(4), adopted this procedure in 1974, saying that a procedure like this was necessary so that defendants make informed pleas.

Think about this: You have been accused of something, you are told that the prosecutor has agreed to grant you probation and they are going to stipulate to probation, and your attorney has told you that there is a stipulation to probation. You walk into court and the judge wakes up on the wrong side of the bed and decides you need to go to prison. Nobody is expecting it; it happens occasionally. It happens in part because some other language involved in the guilty plea agreement says, "I understand the matter of sentencing is strictly up to the judge." Some judges read that to mean "stipulate" does not mean stipulate.

All A.B. 148 does as far as stipulations is put everybody on the same page. If we stipulate, it is conditional; if the judge decides not to follow it, then the parties can withdraw the plea. That makes good sense. It is the same thing we would do in the civil arena. I looked this morning, while I had a little bit more time, at a civil sales situation. Under the Uniform Commercial Code (UCC), if it is a contingency that nobody anticipates and if it has made performance impossible or impractical, the judge will not follow the negotiation. The contract is essentially void. This makes good sense. It is basic contract law. If a contract is impossible, the contract becomes void. It puts us in line with the federal government; it puts us in line with the UCC; it provides surety for the defendants; and it avoids debates in the district court over what we mean when we say "stipulate." For all those reasons, it is good policy.

There is another provision to A.B. 148, and that has to do with the terms of the guilty plea agreement. It removes the words "substantially" from the terms of the guilty plea agreement. Years ago, this Legislature set forth what should be in a guilty plea agreement and that they should be substantially in this form. Over the past decade or so, there has been language inserted into guilty plea agreements midway through what they would call "boilerplate language"—language hidden in a contract where nobody might see it. This boilerplate language had to do with what happens if a defendant fails to appear, for example. By adjusting the terms of the language that we have for guilty plea agreements and saying that it has to be in the form, you prevent either party from sneaking things into guilty plea

agreements. Everything we agree to would be above the line. It would make sure again that we have informed pleas. Overall, this bill makes everybody look better in the system, for lack of a better description. People come in feeling like they have been baited and switched when they are promised something that does not come through—and attorneys are not always great at telling their clients that things might not come through. It would be unacceptable if we were buying a car. We would be offended by this kind of language if somebody snuck something in. For clarity, both points of the bill are well taken. On behalf of the Nevada Attorneys for Criminal Justice and the Clark County Public Defender's Office, we thank Assemblyman Fumo for introducing the bill, and we think it will improve the system.

**Assemblywoman Miller:**
You triggered a thought when you mentioned civil cases. Does this happen in civil cases? If it does, how often does it happen that the judge would actually deny the agreed-upon resolution?

**Scott Coffee:**
I do not practice in the civil arena so I cannot give you exact numbers, but it would be very unusual for a judge to reject a civil agreement. Under the provisions that Assemblyman Fumo has put forth here, the judge could still reject the agreement at sentencing. The judge would not have to accept the agreement. What I do know is if we are in the civil arena and if there was an agreement for me to pay you $5,000 and you came in and said, "You know, I have decided it is going to be $7,000." I would be pretty upset. It would not be what we had in the contract, it would not be what everybody had agreed to, and the UCC would find it inexcusable. Or if, for example, you agreed to tailor a suit for my mother and my mother passed away in between, we would all agree that it is impossible and the contract would be null and void. That is the way civil contracts work. With criminal defendants, we are often dealing with people who have marginal educational backgrounds. Sometimes not, but sometimes we are. Sometimes we are dealing with attorneys who are too quick to move cases through the system, and it has always been unconscionable to me that those are the people who are put at risk by this sloppy language. We cannot agree on what the term "stipulate" means. I do not know if that directly answered your question, but if you could provide more direction, I can go further.

**Assemblywoman Miller:**
No, actually it does because I was just trying to get at the point that if the judge is respecting the pre-work and the agreements in a civil case, then why would there be discrepancy when it comes to the criminal cases? You did answer my question.

**Scott Coffee:**
We have had a backlog of homicide cases in Clark County, and we went to a specific tracking system with four judges. Those four judges have agreed to follow negotiations or recommendations of the parties; they have done that specifically because it helps facilitate negotiations. If I am being an honest attorney and if I tell my client he has a stipulation but it may not mean much, that makes a client nervous about entering a guilty plea agreement. If it

is good for these larger cases, for homicide cases, I do not know why it would not trickle down to every other situation where we require a plea in writing.

**Assemblyman Roberts:**
As far as Marsy's Law and the passage of that this last election, this kind of makes more of a binding contract. How does Marsy's Law impact that as far as restitution and the victim's ability to speak?

**John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:**
The victim will still have a part in that. The victim is always going to have the right to speak at sentencing. Because of Marsy's Law, the district attorney's office now should be consulting with the victim before any deal is struck, even in the first place. Victims' rights will still be honored through Marsy's Law, and the victims will actually get some certainty as well. What A.B. 148 is trying to strike at is having certainty for the parties, and if the judge decides not to follow it, then we just go back to having a trial. That is all. Nothing is lost, per se.

If I may, and I think my colleague Mr. Coffee from our office was trying to explain it, I would like to break it down a little. He was talking about the UCC, which confused me in law school. I want to take it to something a little simpler that I think we have all had experiences with and have not liked, and that is going to buy a car. You go to buy a car. You are sitting with the salesman and they tell you a price. You have argued with that salesman for hours about the price. Okay, now you go to the finance guy and he gives you a different deal, and you do not want that deal. How mad would you be if you were now stuck in that deal with the finance guy's changes? This bill is just trying to take you back to the salesman so you can say, It is either the original deal or it is no deal at all, and I can leave. In this case, nobody is leaving, nobody is getting out of jail scot-free. You are just saying we are going to have a trial. Sometimes clients only take a deal because this is the deal that is acceptable to all parties, so I am going to take this deal and forego going to trial. A lot of clients say that to me. If I go to sentencing and the judge says, "I am not going to follow that deal, Mr. Piro and Mr. Jones, that you have struck. I am actually going to send your client to prison." Then I have done a really crummy job of representing my client, because the only reason he took that deal was for the stipulated agreement that we had. It would just put everybody back at square one at the trial—and not even all the way back to square one because no preliminary hearing is going to happen again and there is no initial testing of the evidence. We are just going to go to trial.

**Assemblyman Ozzie Fumo, Assembly District No. 21:**
Mr. Coffee and Mr. Piro both mentioned withdrawing the plea does not necessarily mean that you are going to withdraw the plea if the judge rejects the negotiation. It might just be it is going to be renegotiated. The sentencing would not go forward, and the parties would have an opportunity to renegotiate their positions. A lot of times these cases go on for years, sometimes months, but sometimes you are negotiating with the other side for years and

years. The judge will have the case for a short time beforehand and then say, I do not like it for whatever reason. Withdrawing the plea just may mean renegotiation.

To answer your question about Marsy's Law, I think the victims would be more involved with the process. I know from my practice in Clark County, every district attorney I have dealt with usually tells me, "I'm dealing with the victims as well," so I think they were already doing it before. This gives them more voice in the negotiations so they are both getting the benefit of their bargain, both the defendants and the victims in this case. To answer Assemblywoman Miller's question, the majority of my practice is criminal defense. I have done civil litigation and civil jury trials, and in my years of practice I have never had a judge in a civil case reject a plea. If I have negotiated a case with the other side, I have never had a judge tell me that they are not accepting this negotiation or that the judge does not like what the offer was. I have never experienced it in the civil realm, but it does happen in the criminal realm quite often.

**Assemblywoman Backus:**
I have a follow-up question for Mr. Coffee. I may have just misunderstood it, so I want to make sure I understand it correctly. You indicated that there is still discretion left to the judge, and I wanted to understand: if the judge decides not to enter the agreed upon stipulation—which, as a civil attorney, would be frustrating—but the discretion is the judge can still deviate but then the defendant has the right to withdraw his plea or her plea at that time?

**Scott Coffee:**
That is exactly correct. The vast majority of our cases, by the way, are not stipulated situations. A lot of times we are going to have the right to argue; a lot of times we will have a recommendation for a sentence. Those would not be binding on the court and the court would be free to do anything inside the legal parameters at sentencing in those situations. However, when the parties have come to a fair sentence, a stipulated sentence, a fixed amount, that is exactly what would happen; if the court decided they did not want to go with that fixed amount, then they could withdraw the plea. I think both sides could withdraw the plea, actually, the way the bill is written. Going back to the Marsy's Law situation, it actually improves the situation there also because there is certainty involved in it.

**Assemblywoman Backus:**
I was intrigued by the explicit language in the plea deal in certain crimes. One thing I noticed was language added in there to eliminate other items from being included in that plea deal. I was curious what kind of items were being put in there that would no longer be included.

**Scott Coffee:**
I pulled the most recent plea agreement that we had last week. About ten years ago, the district attorney's office had unilaterally included language that said if a defendant fails to appear at the Division of Parole and Probation or fails to appear for sentencing, all deals are off the table and the state would regain the right to argue. You could have a deal for

probation, miss a court appearance, and the district attorney's office would come in and argue that you should go to prison and not get the benefit of the original negotiation. That is appropriate in some cases, and I believe you can agree to that in some cases.

What I never thought was appropriate is that that was included in this consequences of the plea section, and it was different from what the Legislature had set forth in the statutory body for the consequences of the plea. If the parties want to agree to that, you put it above the section and the terms of guilty plea agreement, that makes sense; there is a meeting of the minds. However, sneaking in these clauses in the middle of a contract is not acceptable. I will tell you that the more recent ones I have seen from the district attorney's office, at least in the cases that I do, have moved the language above the line and not into the boilerplate section. Those things were being put in unilaterally and the defendant had no power to argue about it. When a defendant waived preliminary hearing when we talked about negotiations, that was not put on the record, so sometimes defendants were surprised by it and were told when they went to district court to enter a plea, either take or leave it; we are just inserting that and nobody is going to have a problem with it. I have always had a problem with it. I wish our office had taken a stand on it years ago. We did not. Again, it is just one of those things of making an informed plea. You could agree to any of the provisions that were being inserted. It would just be above the consequences of the plea and above the statutory language. What had happened is the district attorneys essentially were adding conditions into the statutory language, and I always felt that was problematic.

**Assemblywoman Tolles:**
I want to clarify a few things. If I am a defendant and I agree to a plea deal and then I get to the hearing and I change my mind or the judge throws out that plea deal, what process currently exists in law to appeal that? Could you clarify that? My next question is about making sure I understand this language correctly of what is changing. Thank you for your patience with the lay people in the room.

**Scott Coffee:**
I think you caught on one of the biggest issues that we have: making the law understandable to lay people. Lay people use the word "stipulate" to mean we are agreeing to it and that is what is going to happen. Then they get into court and we end up playing with technicalities. Right now what happens, even if there is a stipulation, is if the judge goes beyond that stipulation, the client is still locked into the plea agreement and the client takes the brunt of it. There could be an agreement of probation, and the judge at sentencing says, "I know you have stipulated, but I did not" and the judge sends the defendant to prison. I am personally aware of a case in which there was a huge underlying sentence of 12 to 40 years. There was an agreement to probation and the judge rejected a stipulation and sent the person to prison for 12 to 40 years. Their attorney had not gotten assurances on the front end when they made the plea for doing this, and that is life-changing in anybody's stretch of the imagination. Right now there is not much of a mechanism if a judge does not follow a stipulation. There is no way to undo things. You can go through the appellate process: You would stay in custody, and that can take years even in an expedited situation. There is not much remedy for a judge not following a stipulation and because of this additional language, the sentencing

is only up to the judge because it conflicts with the stipulation language. It is not really clear what the courts would do if that was litigated. This provides clarity there. The process would be to appeal if you had grounds, but to be honest right now, I do not know that those grounds would be successful.

As far as trying to put it into lay language, it is very difficult because we have done it for so long and we think these things are straightforward. If there is a specific question, I would be glad to answer that.

**John Piro:**
I will tack onto Mr. Coffee's answers to address your questions, Assemblywoman Tolles. There is a normal process if a defendant gets to sentencing and they want to withdraw their plea because they are not happy with their plea. They have to notify the court that they want to withdraw their plea, and the court will appoint an alternate attorney to review the plea agreement process and what happened. If the court deems appropriate after filing motions and arguments that both that new attorney will file and the state will defend against, they may have a hearing on that to determine whether that plea agreement was knowingly, voluntarily, and willingly given, if there were any promises made that should not have been made, or if the plea was canvassed by the judge, did the judge follow the specific script to stay within the constitutional bounds? When the person was at the plea canvass, which is before sentencing, was all of that in line? There would be a lengthy process for that.

Now, I think part of what this bill tries to correct is removing some extraneous language in certain things. Right now the only way a person could appeal what happens there is by way of a writ of habeas corpus, which is this super difficult thing that you may or may not get a free attorney to do. You could not directly appeal it to our Nevada Court of Appeals or to the Supreme Court of Nevada. You basically have to do a writ of habeas corpus by yourself, try to get an attorney appointed, and then hopefully try to withdraw the plea there under basically the same grounds—my attorney was ineffective or my attorney did not advise me correctly—and that is why I want to withdraw my plea because I did not enter into that plea agreement knowingly, voluntarily, and willingly. So, this would remove some of that. Your only remedy is a writ of habeas corpus, but it also would not affect that situation where a defendant says, "I just want to withdraw my plea because I do not want to plea at all." This is more like saying, "I agree to this plea agreement and I want this plea agreement, and the judge has told me he is not going to follow this plea agreement so can I just go back to having a trial instead," rather than, "I did want this plea agreement, but now all of a sudden I do not and I want to withdraw it." Does that make sense?

**Assemblywoman Tolles:**
I think so. It is adding an extra step in the process so that it can be addressed right then and there during that trial, as I understand it. By adding it as an automatic step to every process, whether or not the defendant wants to change their plea, does that add any additional time to all court proceedings? Most of the examples that have been given are this is the exception rather than rule. I am always conscious of when we add a new step to the rule across the

board, does that add any additional time? As we know, there is such a backlog in the courtroom proceedings. I am conscious of that.

**John Piro:**
The only time I could see this provision adding more time is if you get to sentencing and the judge is not going to follow the plea agreement; then you just go back to that pretrial and would be looking at another 60 days to 4 months depending on whether a person is in custody or out of custody. Under our current law, a defendant in custody has a right to a speedy trial and that is a trial within 60 days after that. So you could go back to, "Okay, in 60 days we will be ready for trial now," or in 4 months because you are out of custody, we could be ready for trial now. That could happen, but only if the judge decided to not follow the deal.

**Scott Coffee:**
This would not change the procedure in cases that are not stipulations. It would not change the sentencing procedures. It would not add an additional step. The only situation in which it might create additional time is if a judge did not follow a stipulation. In that instance, the deal would be undone. It could be renegotiated, and in my experience, most of those cases are going to be renegotiated and not go to trial. The only place this might add additional time is a place where a defendant is being treated very unfairly to be quite honest. Being told one thing and given something else, being baited and switched, and in that situation I think the system probably should slow down and take a look at what we are doing rather than forcing people through. I do not anticipate that it would add much, if any, delay.

**Assemblywoman Hansen:**
It appears that this is a bit of a safety net for the defendant, understandably. Do we have any idea what percentage this could mean as an added procedure? It sounds like the majority of the time the judge does not go against it. Can you give us a percentage that might fall into this category?

**Scott Coffee:**
It is a shockingly small percentage. Right now, I would say stipulated negotiations are between 10 and 20 percent of cases, and judges follow those 90 percent of the time. If you do the math backwards, we are talking about it affecting maybe 1 or 2 percent of cases. It would be very, very small if that. The other thing that might happen is we might have district attorneys who do not want conditional pleas and do not want to enter into a stipulation. The number of stipulated pleas may actually go down as a result of this. That is okay because there is more clarity. That is not a bother, I do not believe, but I would think it would be a vanishingly small percentage of cases for which this would create additional procedures.

**Chairman Yeager:**
Any additional questions from Committee members? [There were none.] Before I open it up for additional testimony, I did want to make one point. One of the difficulties here, at least in Clark County, is there is often the situation in which a defendant signs a guilty plea agreement, enters the plea, and then there is some period of time before the sentencing,

which is usually at least two months but sometimes four or five months. A number of things can happen in that time period: First, the judge might change. There might be judicial reassignments so all of a sudden the defendant believed he or she would be sentenced in front of one judge but they are going to be sentenced in front of a different judge. Second, the prosecutor assigned to the case might change; or third, sometimes the defense attorney might change as well. I think that happens less frequently, but people leave the office and reassignments are made. I just wanted to let Committee members know that. In contrast to the federal system in which you have a little bit more certainty about having one judge take your plea and sentence you, that is not necessarily the case, at least in Clark County. That is a wrinkle there that I just wanted to point out as Committee members think about how to process this bill.

I will open it up for those who would like to testify in support of A.B. 148.

**Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:**
We want to thank Assemblyman Fumo for bringing this important issue forward. I want to remind this Committee that, as discussed previously, the majority of our cases do result in plea negotiations. That is part of the reason why this is an important issue to be discussing. From what we have heard, it is approximately 99 percent; and approximately 1 percent goes to trial. What I would add based on what Chairman Yeager discussed, in Washoe County the time between the arraignment and sentencing is a minimum of 45 days if someone is in custody. That time period is because the Division of Parole and Probation has to write the presentence investigation report, so they require a minimum of 45 days; if a client is out of custody, it ranges anywhere between 60 and 90 days. Thank you.

**Chairman Yeager:**
Is there any additional testimony in support of A.B. 148? [There was none.] I will now open it up for opposition testimony to A.B. 148.

**Jennifer P. Noble, Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:**
As I think the presenters anticipated, we do have some issues with this bill. We have talked to Assemblyman Fumo and were just not able to reach an agreement. One important thing to note, and I think the presenters acknowledged, is that judges must not and generally do not regularly depart substantially from stipulated plea negotiations of the parties. I think Mr. Coffee said it was 5 to 10 percent of cases in his estimation. That might be the case; that is definitely a small amount at least in our county. It is also important to understand that under existing case law, the defendant has a remedy. If he suspects the judge is going to sentence him, is going to deviate from the negotiation substantially, they can request a *Cripps* hearing [*Cripps v. State* 122 Nev. 764,137 P.3d 1187 (2006)]. In fact, Assembly Bill 453 of the 79th Session added subsection 4 to the current law which allows when we have a stipulated sentence for the parties to request a hearing wherein the judge will indicate whether or not he is going to follow the negotiations. That is one important thing to understand, there is a procedural process in place where that is a concern.

Additionally, there are remedies where the judge departs so substantially from the negotiations or imparts a sentence that is an abuse of discretion. Firstly, that is a direct appeal from the judgment of conviction. That goes to the Nevada Court of Appeals or the Supreme Court of Nevada. Secondly, as Mr. Piro mentioned, if it is a situation where we have ineffective assistance of counsel—in other words, the attorney did not explain to their client what could happen—that does go into a petition for writ of habeas corpus. Those both do take some time.

The first issue is the requirement in section 1, subsection 2 that requires the guilty plea agreement or guilty plea memorandum to be in exactly the same form rather than substantially the same form. This is an issue that we have a lot of heartburn with, and there are some practical reasons why. Mr. Coffee referenced a couple of times the idea that the district attorneys have been sneaking provisions into the agreements indicating that if you fail to appear, if you violate the terms of your presentence release, we have the ability to pull out of the negotiations. I do take some issue with that; we have not been sneaking anything in. This has been going on for years, and any competent defense attorney is well aware of that language and they are able to explain it to their client. If they do not, that is ineffective counsel. It is important that we are allowed to do that because during the time between plea and sentencing, the defendant is often out of custody. For example, if we have a domestic battery causing substantial bodily harm, one of the terms of their release prior to sentencing might be no contact with that victim. If they understand that we can pull out of the negotiations if they make contact with that victim or they commit another crime or get into another DUI accident, and we are no longer bound by those negotiations, it disincentives them to break the law. Now, it is not perfect. It does not completely protect the community. But it does protect our victims to some degree. This bill would not allow us to have that provision in there any longer because now we have to be in exactly the same form rather than substantially the same form.

The second issue is changing the statutory plea content to eliminate from the plea agreement the defendant's acknowledgment that he has not been promised a particular sentence. That is on page 4, lines 43 to 45. That is a problem, because we have a situation in which defendants need to understand that judges have the discretion to fashion an appropriate sentence. There is an incorrect assumption that the victims dictate the terms of the plea negotiations. Under Marsy's Law and prior to this, we always consult with our victims. We talk to them about what they think would be a fair resolution, but in the end it is at the discretion of the deputy district attorney to resolve the case for what they believe it is worth. The victim might have a different point of view and they should be allowed to express that. We cannot just have our victims tell us what the terms of our plea negotiations are, and I think if you ask Mr. Piro or Ms. Bertschy, they are not going to want that to happen. Often a victim might want a negotiation that is unreasonable. Certainly they are entitled to their feelings and certainly we consider them, but we are not bound by Marsy's Law to offer exactly what the victim dictates. The victim does have a constitutional right to be heard before sentence is imposed.

This bill usurps the role of the judge and invites judicial interference into plea negotiations, because when you ask a judge whether he or she is going to accept these negotiations, it puts

the judge in a position of either having to say yea or nay. If the judge says nay, it begs the question, "Well, what would you accept?" As Chairman Yeager brought up, a lot of the time, especially in Clark County, the judge who takes the plea is different from the judge who imposes sentencing. Now we are having a judge who takes the plea and says, Okay I will go along with this joint recommendation, before he has heard from the victim as is the victim's constitutional and statutory right. Then we get to sentencing, and the sentencing judge has two choices: either stick with that sentence or start the process over again. I cannot emphasize how difficult starting the process over again is for victims. It will inject months if not years in these cases.

This is going to cause even more delays in our already busy courts, as I just mentioned. We have delays between plea and sentencing already. If we are going back to square one, as Mr. Piro or Mr. Coffee testified that that would not necessitate a preliminary hearing again, I do not think the language of this bill supports that statement. There is no provision in there that if you waive up to district court with an understanding of a stipulated plea negotiation and that negotiation is no longer the case, that you have waived your right to a preliminary hearing. I do not think that is at all clear in this bill.

I mentioned a couple of times the victim's constitutional rights which are now guaranteed by Article 1, Section 8A of the *Nevada Constitution*. It is important to note that the victim has the right to talk to the judge, to be the last person to speak in that courtroom before sentencing is imposed. We are asking a judge to decide whether or not a plea negotiation is okay before they have heard from the victim. That is a problem.

It also limits our ability to insert appropriate language into plea agreements. For example, if you have an embezzlement case, the restitution amount is critical to the negotiations of that case. They may disagree: One party thinks it is $125,000 while another may think it is $500,000. That is something that goes to the voluntary, intelligent nature of the defendant's plea. With this restriction, we cannot insert that amount into the plea agreement. Now it is going to make it easier for defendants to say, "I did not understand the amount that I was supposed to pay back that victim and my plea was not knowing, voluntary, and intelligent. It was not included in the guilty plea memorandum."

There is already a process in place to do this if you have concerns about a particular judge. You can request a *Cripps* hearing. This is not necessary. It invites violations of the constitutional rights of victims and judicial interference, and for those reasons, the Nevada District Attorneys Association opposes the bill.

**Chairman Yeager:**
You had mentioned a *Cripps* hearing. I am aware of that, but I do not think I have ever seen one of those actually happen in Clark County. In your experience in Washoe County, is that something that judges routinely grant and actually do hearings on? Or is it theoretical that it could be asked for but never actually happens in Clark County?

**Jennifer Noble:**
I think I have seen that occur one or two times in Washoe County. The vast majority of the time our judges stick with the sentence recommendations of the parties. I do not think it is theoretical; in fact, the current law allows for them to ask for this hearing. If defense attorneys are not using this tool, we should not punish victims and slow down the system because they are not using it.

**Chairman Yeager:**
I may have some additional questions, but I want to allow some other members to ask questions first.

**Assemblywoman Miller:**
You mentioned something about if the accused offends between the plea and the sentencing. Would that not be a new separate crime, or can we just pile that on to the list of other offenses when it comes to sentencing?

**Jennifer Noble:**
It depends on what the violation is. If it is simply that they are supposed to go to work every day, that is not a crime if they do not go to work every day. However, if we have a no contact order that is violated, that is a separate violation of the law. This ability adds extra incentive for the defendant not to offend between plea and sentencing, to behave themselves. What if a sentencing judge wants to add treatment to a plea negotiation? They cannot do it. However, for example, if it is that you need to refrain from using alcohol, using alcohol is not against the law.

**Assemblywoman Miller:**
I understand that, but when you first mentioned it, we were talking about actual crimes. Yes, there are incentives, and of course, I would be incentivized to do whatever the judge says I should in order to get a lesser sentence. If somebody does commit an actual crime, if they do kill someone or do another robbery, whatever it is, there is an actual crime. The way you presented it the first time, it makes it sound like the judge can then add that fact into the sentencing. Is that not, in fact, a new separate crime that should be tried separately? Or can we just compile all of the things you have done from this date until now?

**Jennifer Noble:**
The judge can take into account behavior between the plea and sentencing, criminal or noncriminal. They can also take into account hearsay under some circumstances, information that is extraneous or circumstantial in the defendant's life. Yes, they can consider that in imposing sentencing on that case because it goes to dangerousness to the community, which they are statutorily required to consider when imposing sentencing.

**Assemblywoman Miller:**
Since judges can take all of those different factors into consideration, are the judges at all involved in the negotiations between the state and the defense when it comes to making the plea?

**Jennifer Noble:**
No, they are not. The *Cripps v. State* case specifically prohibits, unless there are very limited circumstances, judicial involvement in the plea negotiation process.

**Assemblywoman Miller:**
Is that the specific reason why they would not accept the plea, then, in the cases of the judges who do not? I guess what I am trying to get to is, Why would they not accept the plea?

**Jennifer Noble:**
They might not accept the plea because they think that the plea negotiations are inappropriate; they disagree with the prosecutor's assessment of the defendant's danger to the community, of his risk to reoffend; or, they may hear the victim's impact statement and consider the impact on the victim, which is another thing they are to consider under the *Nevada Constitution* and *Nevada Revised Statutes*. That may change their assessment. In other words, reasonable minds can differ on what is appropriate, and the judges are the voice of the community, not the prosecutor.

**Assemblywoman Torres:**
Why would we not want to follow through with the stipulation or that agreement that we have already made when the defendant already thinks that is the agreement? I do not understand that.

**Jennifer Noble:**
It is not a question of not wanting to follow along with negotiations and a stipulated sentence. If you are a district attorney and stipulate to a sentence and then you are for something other than that stipulation, that is unethical and a violation of the rules of professional conduct, unless the defendant has done something in between plea and sentencing—for example, picked up new charges, or violated terms of their presentence release.

**Assemblywoman Torres:**
I guess I see that, but you also stated earlier that about 6 percent of cases do not follow through with that stipulation. It is obviously a problem if we are not following through, and I do not understand why we would not want to find a way or a solution or come to a compromise with Assemblyman Fumo to find a way to follow through with those stipulations.

**Jennifer Noble:**
We are certainly willing to work with Assemblyman Fumo, but it is not a question of not wanting to follow through. The 5 to 10 percent is Mr. Coffee's figure. I do not have a figure for you right now, and I do not think it would be that high in Washoe County. If they are concerned about it, they can start requesting these hearings that are provided for in the statutes. Everyone knows in courts which judges are most likely to do something weird when there is a stipulated sentence. You just know which judges those are. I think that the attorneys would agree with that. It is not the majority of judges; they have a remedy and they could request those hearings with those departments.

**Assemblywoman Backus:**
With regard to the statutory language in *Nevada Revised Statutes* (NRS) 174.063, it clearly has a space where the terms of the agreement are to be detailed, so it seems to me that it would be more transparent to all involved that if the district attorney wishes to add terms, such as appearing at all sentencing hearings, that that would be the appropriate place for that to go. Does that not seem acceptable as opposed to it being hidden in another area?

**Jennifer Noble:**
Again, I disagree that it is hidden. I wish I had a copy of our typical guilty plea memorandum for you. This is not some contract for buying a car where it is written in 9-point type. This is a paragraph, a provision, usually in paragraph 7, which we all know if you regularly practice in Washoe County, those provisions are in paragraph 7. That is where we include it. Based on the testimony in support that we would not be able to add in that section, for example, if you violate or commit another offense, that we can withdraw from the agreement. Based on Mr. Coffee's testimony, I do not think that is his intent here.

**Assemblywoman Nguyen:**
This does not take away from the district attorney's ability to negotiate. If you chose not to, you do not have to use a stipulation in your negotiations. Is that the way it works now?

**Jennifer Noble:**
Yes, that is the way it works now. I think that this will chill our willingness to stipulate to sentences. The other question I have about this is, What if I have a case where we agree to cap our recommendation—for example, free to argue but the defense can argue for probation, and we are going to argue for no more than 12 to 36 months? Then the court comes in and says, No, I want to sentence this person to 24 to 48 months. To me, the intent behind this bill is to make sure that the defendant gets the sentence that is contemplated in the universe of possibilities. So now that judge has departed from anything that the district attorney or the defense attorney is recommending. If the whole principle behind this bill is to make sure the defendant gets something that is in the realm of their expectation, I think it would apply to those cases too.

**Assemblywoman Nguyen:**
We keep talking about it in terms of the defendant's deal and the defendant knowing what they are getting, but the same applies in a stipulation to the state. That is your deal as well, is that correct?

**Jennifer Noble:**
Yes, that is correct.

**Assemblywoman Nguyen:**
So you want them followed as well.

**Jennifer Noble:**
Absolutely.

**Assemblywoman Peters:**
This has gone into a really big conversation, but I am trying to think about how this would impact me if I were in a situation where this came up. I have to admit that I would like to have the transparency of knowing where I am looking for the exact terms of what I am getting into, which I think using this specific outline would do. You have said a couple of times that you know there are some weird judges or you know that there are some things that happen. I do not know that as the person who is being touched personally by these things. I do not know that. Without that transparency, it creates more anxiety in the system, not just for those who are going through these plea processes, but for those who watch from the outside. I guess my question for you is, Why is there this hesitancy toward transparency to the general public? Maybe that is not the intention of what you are stating, but I do think that addressing transparency especially in our criminal justice system is something worth talking about to lay people. Can you just help me out with that a little bit?

**Jennifer Noble:**
First, if you were accused of a crime, you would have an attorney, and if your attorney knows that they are tracking to this department, this judge is weird.

**Assemblywoman Peters:**
What if you do not know?

**Jennifer Noble:**
Then I would say that you have basis for an ineffective assistance of counsel claim later on.

**Assemblywoman Peters:**
What if I do not know that they do not know? What if I do not know that they do not know that they are getting us into a situation where they should know or other people would know that this is how it is going to go? Do you see what I am saying? This seems like an argument that the process functions if you know the process, but a lot of people who are pleaing are depending on people who know the process, but not everybody does. Again, that is where I struggle with a lot of what has been said.

**Jennifer Noble:**
I appreciate what you are saying, Assemblywoman Peters, but there might be a lot of things your attorney does not know. For example, your attorney might not know that this is a good deal if they are ineffective. Stipulating to a sentence still does not mean that they are effective for you. There is a lot of uncertainty in the criminal justice system, and I think we are confusing the concept of uncertainty with transparency. For example, if a defendant is orally canvassed and they are told at their entry of plea, "If you violate the terms of your presentence release, the state is free to argue and these are possible penalties." That is not a transparency issue. That is an uncertainty issue or an issue where the defendant is going to have to accept consequences that he might not know what they are going to be. It is not an issue of transparency. No one is hiding the ball here. Defendants are canvassed about those types of clauses.

**Assemblywoman Peters:**
Because of that lack of clarity in the system in general, having something like this that helps with transparency—at least in the agreement process for somebody who is a layperson and does not have a background in law—seems like a reasonable idea to me.

**Assemblyman Watts:**
You said that a *Cripps* hearing can be requested, but it is not guaranteed that it will be granted. Is that correct?

**Jennifer Noble:**
I do not see any basis in the statute for the court to reject it if the parties agree to a *Cripps* hearing. Section 1, subsection 4 of the bill talks about the parties' ability to request it. I have never seen one rejected.

**Assemblyman Watts:**
Your recommendation is that instead of this measure, out of an abundance of caution, the defense should always request a *Cripps* hearing to get the judge's opinion on the deal beforehand. Is that correct?

**Jennifer Noble:**
No, that is incorrect. My testimony and what I am trying to convey is the vast majority of judges follow these recommendations. There could be an instance where a judge does something that no one expects, but I think if you ask Mr. Piro or Ms. Bertschy if they have certain judges that they think are more problematic, they would be able to answer you in the affirmative. My recommendation is not that they ask for a *Cripps* hearing in every case. Of course they can do whatever they want to do, but that is not necessary.

**Assemblyman Watts:**
It seems like your recommendation is to create a further strain on the system and backlog through these hearing requests and hearings as opposed to this measure, which would just ensure that everybody is on the same page and would not result in any additional lengthening of the process unless that disconnect occurs.

**Jennifer Noble:**
I understand your observation; however, what this would do is essentially make a *Cripps* hearing automatic in every case and that would certainly create far more of a backlog than qualified defense attorneys like Ms. Bertschy and Mr. Piro requesting a *Cripps* hearing when they think it is a good idea.

**Assemblywoman Krasner:**
First of all, I would like to say that whoever made the comment about sneaking, I find that inappropriate. In section 2, subsection 3, it says, "A written plea agreement for a plea of guilty or guilty but mentally ill must not contain any information other than the information required by this section." Could you explain what information you feel might be put into that plea of guilty or guilty but mentally ill that is important to be in there and why? Thank you.

**Jennifer Noble:**
One example that I can think of is the factual basis for the plea. One of the things that it is really important for defendants to understand, especially when we are talking about transparency and their understanding exactly what is going on, is for them to understand the accusation against them. That is in the charging document. In the document that they are reviewing before they make this important decision as to whether or not to plead guilty, not allowing us to insert the factual basis for the plea—in other words, what we are saying they did—is the problem. That would be one example of the type of information I think is appropriate to include in a plea agreement that would be prohibited by this bill.

**Assemblywoman Cohen:**
You mentioned the ineffective assistance of counsel claims. The standard is extremely high, so are they not extremely hard to win?

**Jennifer Noble:**
First, the ineffective assistance of counsel standard is 1) you have to prove objectively deficient performance by the attorney—in other words, the attorney failed to advise their client, and 2) actual prejudice to the defendant. What happens during those hearings is we have the attorney testify about what he or she may have advised their client, and we have the client testify about what their expectations were and why they were that way. You are right: In the vast majority of cases, they do not win those claims.

**Assemblywoman Cohen:**
In fact, although this was not a Nevada case, I think we all learned in law school, those of us who are lawyers, about the case where there was—I believe it was a murder case, perhaps a death penalty case—an attorney who was asleep during the trial, literally, and they still lost the ineffective assistance of counsel case, correct?

**Jennifer Noble:**
I do not remember that precise case, Assemblywoman Cohen, but I believe you. I do not think it is a Nevada case. I will accept that representation.

**Assemblywoman Cohen:**
I am not saying it was a Nevada case, but that was an ineffective assistance of counsel case. I believe it went to the United States Supreme Court and was upheld. I have a lot of concerns with saying just do an ineffective assistance of counsel claim later.

**Jennifer Noble:**
I appreciate that concern. The other thing to remember is that we do have a direct appeal remedy as well where they can say this sentence was out of line, it offends the traditional notions of justice, and the judge made an error. That is a direct appeal remedy that we have as well. I would also like to say that if we are trying to remedy the concern of having ineffective assistance of counsel through this bill, this is not the way to do it. If we want to lower the standard in Nevada, requiring this type of process in every case is just not the most efficient means of doing it. The vast majority of defense attorneys practicing in this state do

an excellent job of advising their clients. We cannot protect defendants against every possibility of ineffective counsel.

**Assemblywoman Cohen:**
I do not mean to speak for the presenters, and maybe they can address this when they come up, but I do not think anyone was looking at this as a way to deal with ineffective assistance of counsel, but that was brought up as an option to possibly, if we do not do this, here is how you solve the problem. You have an ineffective assistance of counsel claim. This is just making sure that people get the benefit of their bargain is the way I read it and the way I understand it.

**Assemblywoman Nguyen:**
It may be different in Washoe County, but I know that my experience in Clark County is that defendants' cases are randomly assigned, and you had suggested that a competent attorney would know where that case is tracking up to and therefore a competent attorney would know if that is a judge who is known to follow a deal or not. I know in Clark County they are randomly assigned. We have a general idea of a set of judges they may go to, but it seems like that is putting a lot on an attorney to be competent to be able to predict where it is going to track into and be able to track on whether or not that is one of the judges that we would want to request a *Cripps* hearing. It just seems like a rabbit hole of *Cripps* requests would take place. Is it a different experience in Washoe County? Are they not randomly assigned?

**Jennifer Noble:**
They are randomly assigned to a department after the preliminary hearing is waived. Then it goes to a department. At that point you still have not pleaded, so if you are really concerned that this particular judge may not accept these negotiations, because of their characteristics, you can expect, in general, the sentencing judge to be the same as the judge who accepts the plea. I know that is not the case in Clark County. The problem is still that we are asking a judge to say that he or she will accept a negotiation before hearing from the victim. A judge has to hear from the victim before he or she makes that decision under the *Nevada Constitution*.

**Assemblywoman Nguyen:**
Does this bill not just allow if the judge hears from the victim and decides after viewing the presentence investigation report—maybe there were other things that came to light—that he or she does not want to follow this negotiation; or the judge hears from the victim pursuant to Marsy's Law or just court rules, the judge does not have to follow that negotiation? The judge is not losing the discretion because the judge can just say, "I am not following this," and then it goes to trial.

**Jennifer Noble:**
I think that is true, but we have to think of the time that we are losing. The case is getting old, witnesses are moving out of town, and the state is substantially prejudiced at that point. Victims have a constitutional right to expeditious resolution of their case. That is also in

Marsy's Law. We are slowing down the system even further. If we went from plea to sentencing and the judge rejects the deal, then we have to go back to square one and we go to trial. That could take years.

**Chairman Yeager:**
We are going to end the questioning there. We are up against time a little bit with floor session coming up. I want to thank you for your opposition. Is there anybody else in opposition to A.B. 148? [There was no one.] Is there anyone neutral on A.B. 148? [There was no one.] I will then invite our presenters back up to give concluding remarks.

**Scott Coffee:**
This is real simple. If you are going to stipulate to a sentence, you need to mean it. It needs to be followed through on. The judges retain the discretion. There was a great point made by Assemblywoman Backus. This does not in any way preclude the state from putting in a condition that says, "If you failed up here, we are going to retain the right to argue. If you get drunk, we are going to get back the right to argue—if you get high, if you violate a restraining order." If you look at the bill at the top of page 4, line 6, it says "State the terms of the agreement," and that is currently in there. All we are saying is that those special conditions that the state has added in are part of the terms of the agreement and they should go above the line instead of embedded in this other boilerplate language that was never approved by the Assembly.

As far as *Cripps* hearings, there is something important to remember. I heard my colleague continue to talk about *Cripps* hearings, but the fact of the matter is, if you wait until after a plea is entered to bring up *Cripps*, you are lost. Your defendant has no recourse at that point. What *Cripps* says is that at the entry of plea, judges can indicate whether they are inclined to follow a negotiation. If they change their mind, then the defendant has the right to withdraw at sentencing. This codifies *Cripps*. What this essentially does is it codifies *Cripps*. It makes it automatic in cases of stipulation and it streamlines rather than slows down the process.

I think I may have used the word "sneak" at some point, and I apologize to Assemblywoman Krasner. I understand the concern with the word "sneak," but I will tell you that what happened is we were looking above the line for this "terms of an agreement" language and suddenly there were terms inserted that nobody had anticipated, or agreed to in the lower courts. That is problematic. You need to read every one of these. I agree that attorneys should be diligent and ask judges for *Cripps* guarantees. In Clark County I am the only attorney I have ever seen do that, and I have done this for 20 years. *Cripps* came out about 10 years ago, and I do it every time there is a stipulation. I tell the judges, essentially, I will not follow or enter a plea without some indication on the record that you are going to follow through pursuant to *Cripps*. It slows down the process when I do that. Not only does it slow down the process, the judges look at me like I walked in from a different planet. They cannot figure out why I am trying to tie their hands, but to be honest, I am just trying to make things clear for the defendant and provide some clarity for the whole process.

I do not know that there is much more to be said. I think the comments from the Committee members were extremely well taken. We need to be forthright, we need to be transparent, and I think this bill helps with that. I cannot see any good reason not to do it. In terms of relief, there was a comment that if you had a disproportionate sentence, you might be able to get relief. That is less likely than an ineffective assistance of counsel claim. If you are going in saying I was sentenced within the legal boundaries and I think it was draconian and too far afield, the Supreme Court of Nevada has said, Go pound sand. If the Legislature has said that is within the bounds of sentencing, you are stuck with it and you are not going to get relief on appeal. That is a pipe dream, like an ineffective assistance of counsel claim. People come to the criminal justice system, and maybe they have a tax attorney or a real estate attorney who does not know much about criminal work, he does not even know about *Cripps* because he is not familiar. They bring that attorney in and all of a sudden he has pushed through a stipulation and gets surprised by these things. It happens. I am not saying we should solve ineffective assistance of counsel. It is not this body's duty to try to do that, but we should provide clarity when we can, particularly when it is as simple as this bill.

**Assemblyman Fumo:**
Just to wrap up: Mr. Coffee hit every point that I wanted to touch on. The only thing I would like to add is this does not necessarily mean the case is going to go back to trial and start over. It could mean a renegotiation, and that would save thousands of hours and thousands of dollars not having the appellate hearing going on, the *Cripps* hearing going on—it would just be streamlining the process. It would save the state millions of dollars over time. Thank you.

**Chairman Yeager:**
Not to be lost here, one of the complications of this is a guilty plea agreement is essentially a written contract, but that contract is between the defendant, the defense attorney, and the prosecutor. The judge is not a party to the contract, so that is a wrinkle here. The judge is the one who is making the decision, but the judge, of course, does not sign the guilty plea agreement. I just mention that in terms of how it is helpful to think about how to process this bill. I am not going to put words in your mouth, but I think the intent is that when there is a contract, the parties would like for that contract to be followed, but the judge is not a party to the contract. This bill tries to address that in some fashion. Again, I would ask you to continue to try to work together if you can work something out. I know that is not always possible, but I do appreciate the effort and appreciate the presentation this morning. Thank you all again for your patience.

I will formally close the hearing on A.B. 148. Now is the time for public comment. Would anyone like to give public comment either in Las Vegas or Carson City? [There was no one.] Is there anything from Committee members before we talk about next week? [There was nothing.]

In terms of scheduling for next week, we will be starting Monday at 9 a.m. We have one bill with a lively discussion, and we may have a presentation as well. We will see if the time allows for that. The rest of the week we will be starting at 8 a.m. We have a number of bills and some presentations throughout next week. I want to wish everyone a great weekend, and be safe out there driving.

The meeting is adjourned [at 11:25 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 copy of a PowerPoint presentation titled "The Nevada Sentencing Commission 2017-2018," presented by James W. Hardesty, Justice, Nevada Supreme Court.

Exhibit D is a final report presented by James W. Hardesty, Justice, Nevada Supreme Court, written by the Nevada Sentencing Commission, dated January 2019.

Exhibit E is a proposed amendment to Assembly Bill 80, presented by John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office; and Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.