MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eightieth Session
May 31, 2019

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:44 a.m. on Friday, May 31, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

James W. Hardesty, Justice, Nevada Supreme Court
Aaron D. Ford, Attorney General
William Horne, SafeNest
Ann Silver, CEO, Reno Sparks Chamber of Commerce
Ronald Najarro, The Libre Initiative

Jim Hoffman, Nevada Attorneys for Criminal Justice
Jim Sullivan, Culinary Workers Union Local 226
Tonja Brown, Advocates for the Inmates and the Innocent
Bryan Wachter, Senior Vice President, Retail Association of Nevada
Paul Enos, CEO, Nevada Trucking Association
David Dazlich, Las Vegas Metro Chamber of Commerce
Mike Dyer, Nevada Catholic Conference; Catholic Bishops of Nevada
Holly Welborn, American Civil Liberties Union of Nevada
Marcos Lopez, Americans for Prosperity Nevada
Annette Magnus, Executive Director, Battle Born Progress
Christine Saunders, Progressive Leadership Alliance of Nevada
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender, Washoe County
Wiz Rouzard, Americans for Prosperity Nevada
Marc Newman, Surety Bail Agents of Nevada
Jennifer Noble, Nevada District Attorneys Association
John T. Jones, Office of the District Attorney, Clark County
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Corey Solferino, Washoe County Sheriff's Office
Dylan Shaver, City of Reno
Stephanie O'Rourke, Deputy Chief (North), Division of Parole and Probation, Department of Public Safety
Chuck Callaway, Las Vegas Metropolitan Police Department
Ben Graham, Administrative Office of the Courts, Nevada Supreme Court

CHAIR CANNIZZARO:
We will open the hearing on Assembly Bill (A.B.) 236.

ASSEMBLY BILL 236 (2nd Reprint): Makes various changes related to criminal law and criminal procedure. (BDR 14-564)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):
I was chair of the Advisory Commission on the Administration of Justice during the 2017-2018 Interim. Nevada Supreme Court Justice James W. Hardesty was vice chair. Assembly Bill 236 originated in the Commission.

You have a presentation titled "Justice Reinvestment Initiative Selection of Data Findings and Recommendations" (Exhibit C) and a compendium of documents on the Justice Reinvestment Initiative (Exhibit D), including a data presentation, a chart of the elements of A.B. 236 and letters in support of the bill.

State leaders joined together to combat a crisis in our State: the unsustainable growth of our prison population who struggle with behavioral health needs. We have addressed those needs with an excessive reliance on incarceration, which has come at a financial and social cost. The State spends $347 million annually on a revolving door system churning people in and out instead of reducing the number of reoffenders. Assembly Bill 236 will make our prison system better and communities safer.

JAMES W. HARDESTY (Justice, Nevada Supreme Court):
I have been a member of the Commission since 2008. In 1995, the Legislature entered into truth in sentencing *Nevada Revised Statutes* (NRS), so-called "tough-on-crime" laws. The theory was to establish a commission to monitor the effects of the sentencing NRS. The Commission met during two Interims, producing few recommendations, and then did not meet for the next four Interims. The Legislature was denied the data and an in-depth study of the impact of revisions made in 1995 to Title 15 of NRS.

In 2007, I testified before the Legislature to urge that the Commission be reinstated, modified and reinvigorated. In the 2008-2009 Interim, the Commission was revitalized and began working on the effort encapsulated in Exhibit C. For the last ten years, the Commission has labored under an absence of data to enable data-driven decisions. In 2018, the Commission received an inquiry from Len Engel of the Crime and Justice Institute (CJI) asking whether Nevada would again apply for designation as a Justice Reinvestment state. The program has been initiated in several states, including Utah. If selected, The Pew Charitable Trusts and Bureau of Justice Assistance will provide financial assistant to the CJI to supply staff and extensive labor to study Nevada's entire justice system. The goal is to better understand the drivers of our prison system and impact of the NCA.

Fortunately, Nevada was selected to receive the benefit of more than 10,000 hours of staff time for intensive research into our criminal justice system. For the first time, we have significant information upon which to build data-driven decisions. We have been making policy decisions without such data,

recommending changes based on limited knowledge of the overall impact of our system and on anecdotes.

The data have shed revealing light on who we send to prison, how long their sentences are, how alternatives are being used and how we supervise people released into the community. We can finally carry out the original objectives that the Commission was established to accomplish. Since August, we have pored over an unprecedented amount of data analysis of our system, reviewed research on what works to reduce recidivism and examined what works in other states.

What the Commission learned was shocking. The majority of prisoners are nonviolent offenders convicted of property and drug offenses. Many are being sent to prison for parole or probation violations—overwhelming the result of an underlying substance abuse disorder or co-occurring disorders including mental illness. We learned that, contrary to research about deterrents and the limited effectiveness of long sentences, we keep people in prison longer than we did ten years ago. Sentences have increased for all categories of offenses, and we have inconsistent parole release rates.

Despite sending more people to prison longer, recidivism is not declining. This means what Nevada has been doing for years simply is not working. People who continue to engage in criminal activities are going back to communities because we do not address the underlying causes of their behavior.

The Commission broke up into smaller subgroups to discuss and debate options to address the challenges. Not all members agreed on proposed solutions, and many compromises were made. However, we all agreed on the overarching problem: our criminal justice system focuses on incapacitation rather than rehabilitation and directs more funding to prison beds rather than treatment and supervision. Public safety has not improved because we ignore the factors that keep people from becoming initially entangled in the system. Assembly Bill 236 is the culmination of the recommendations proposed by a majority vote of the Commission.

ASSEMBLYMAN YEAGER:
Data presented to the Commission identified the key drivers of our prison population: nonviolent offenders, those with behavioral health needs and the

failures in community supervision. The policies address those drivers of admissions and target findings associated with longer sentences.

Assembly Bill 236 has four key areas: improving responses to inmates with behavioral health needs, addressing sentencing disparities, aligning community supervision with best practices, targeting reinvestment opportunities and the sustainability of the recommended reforms. If we enact unsustainable reforms, we will have wasted a lot of time.

The bill will expand existing diversion programs for inmates charged with felonies and gross misdemeanors. Provisions dealing with specialty court programs enact best practices by requiring in-person clinical assessments. Many assessments in Nevada are done remotely or by phone. In-person assessments are the best way to determine eligibility for participants in drug, veterans' and mental health courts.

Assembly Bill 236 expands eligibility for presumptive probation for people who have failed a treatment program or are on supervision. Relapse happens and is to be expected; our default should not be sending someone to prison. The bill allows judges to issue a deferred sentence for specialty court participants whereby their cases can be dismissed if they complete all program requirements. Evidence shows having the possibility of a case dismissal improves specialty court success rates.

Nevada is an outlier with extremely broad NRS with wide sentencing ranges. The leading offenses for prison admissions are burglary, theft possession and trafficking, categories that encompass a wide variety of conduct. Assembly Bill 236 creates clear and distinct penalties for tiered levels of conduct. The burglary NRS is one of the broadest in the Nation. The bill will break it down by type of structure and create graduated penalties for burglary of vehicles, commercial buildings or residences. They start at Category E penalty for vehicle theft and go up to Category B for burglary of a residence. Burglarizing a home is a serious crime that merits a serious penalty. Now, NRS treats all those burglaries the same.

The bill also raises the felony theft threshold from $650 to $1,200. Even $1,200 is lower than many other states. Studies show that raising the felony theft threshold does not increase theft crimes. The bill also establishes a tiered penalty system: the more you steal, the higher the penalty.

The bill amends the drug possession NRS by establishing a clear, graduated penalty based on increasing weight amounts. Possession of all controlled substances will be a felony. With the first two minor possession charges, people can choose to go to diversion programs and get the charges dismissed. Drug possession for higher amounts starts at a Category C felony and goes up to Category D, depending on the weight. Judges will have discretion to grant probation.

All of the drug crimes listed in A.B. 236 are possession. The district attorney would not have to prove intent to sell. When judges have discretion to grant probation, that would only be after possession has been proven. Other crimes can be charged for the sale of drugs. The bill changes the number of prior felonies required for a district attorney to seek habitual criminal treatment. Five prior felonies are required to seek the habitual treatment and receive a Category B penalty, and seven prior felonies are required for a Category A penalty. The habitual criminal NRS changes in the bill do not include violent habitual criminals. If someone commits two violent acts and is charged with a third, the district attorney must seek violent habitual status.

Data show Nevada's largest increase of prisoners over the last ten years was due to parole and probation revocations. A significant number of those violations were caused by substance use disorder. The Crime and Justice Institute teams reviewed presentence investigation reports to figure out what the violations really were because it is hard to tell by looking at court records.

Assembly Bill 236 incorporates measures proven effective at changing offenders' behavior into community supervision practices to ensure that people do not return to prison. A risk and needs tool is needed to establish individualized case plans for probation or parole. For people leaving prison, reentry planning must start six months before parole eligibility and requires collaboration between State agencies. The Department of Corrections (DOC) must provide offenders with necessary documentation, clothing, medication and transportation.

The bill codifies the current practice of using graduated sanctions for violations and establishes the definition of a technical violation. The punishment must be tailored to the conduct. To send a psychological message, punishment must be swift, certain and proportional. The State has not always done a good job of that for people on probation and parole. Sometimes we expect perfection; that

does not happen for most offenders. For more minor parole or probation violations, people will not go back and serve an entire prison sentence at taxpayers' expense. They will stay in the community—maybe with some jail time as a sanction—while officers try to figure out their problems with staying on parole or probation.

As part of the Justice Reinvestment Initiative, if A.B. 236 is implemented, the State would receive Phase II funding for successful implementation of the legislation, as shown on page 360 of Exhibit D. The policies ensure that the averted cost would be approximately $550 million in the DOC budget over the next 10 years. The budget increase, which would require building more prisons, is projected at $770 million over 10 years if we do nothing. We would use some of the Phase II money to target funding gaps such as law enforcement resources to deal with behavioral health, transitional housing, substance abuse treatment and victims' services.

To accomplish that, A.B. 236 establishes the Sentencing Commission as the oversight body to review the bill to determine if the reforms are working, figure out the savings and track data from State agencies to inform future Legislators about how to further the reforms. The bill creates the Nevada Local Justice Reinvestment Coordinating Council comprised of a representative from each county. Members will report to the Sentencing Commission about their needs relating to the bill. In Portland, Oregon, I sat in on a meeting of a Local Justice Reinvestment Coordinating Council with about 25 members. They discussed gaps in their community and how to fill them using grant funding. There will be different needs in Elko than in Las Vegas or Winnemucca. However, the Council can figure out what is right for each community and benefit from the grant savings.

Assembly Bill 236 also targets money for a behavioral health grant program administered by the Peace Officers' Standards and Training Commission. The goal is to give officers more resources so the default is not arresting someone having a behavioral health crisis. The bill's pretrial diversion provisions were omitted after discussions in the Assembly.

SENATOR SCHEIBLE:
Section 19, subsection 4, paragraph (b) lists diversion programs available after a plea has been entered. If a person is terminated from a program, the court is required to allow him or her to withdraw that plea. Is that the bill's intent?

ASSEMBLYMAN YEAGER:
Yes. The provision does not include negotiations between the district attorney and court. The defendant would plead guilty and ask for specialty court. This is not preprosecution diversion; that is set up in justice court. To plead to a felony and gross misdemeanor, someone must be in district court.

JUSTICE HARDESTY:
Section 19 pertains to someone who has entered a plea, entered a program and incurred violations. Now the court will terminate his or her participation. The defendant should be allowed to withdraw the plea and go to trial on the original charge.

SENATOR SCHEIBLE:
Normally when someone pleads guilty and goes to a specialty court, he or she waives the right to a jury trial. Now we are establishing a system whereby people may enter a plea without waiving that right, correct?

JUSTICE HARDESTY:
Yes. They waive their right to a jury trial in exchange for entering a specialty court program. If they fail, everyone should go back to square one and the case be retried. That is what we do now. The defendant may make a motion any time before sentencing to withdraw a plea. Note the word "allow" in section 19, subsection 4, paragraph (b).

SENATOR SCHEIBLE:
The judge is not giving someone the discretion to require him or her to proceed with the sentencing based on his or her plea, right?

JUSTICE HARDESTY:
The defendant is given the ability to make the choice to proceed to sentencing on the charge without the benefit of the diversion and take the consequences of probation or prison. The person may instead withdraw the plea, have the district attorney prove the case and possibly suffer the consequences of a guilty verdict.

SENATOR SCHEIBLE:
We are giving defendants one free chance: "You get to plead, go to drug or specialty court, try your hardest, do your best, and if it doesn't work out, no

harm, no foul. Go back and renegotiate your case." They do not have to make any kind of concession by going to specialty court, correct?

JUSTICE HARDESTY:
The advantage is defendants get an opportunity to divert away from felonies. If a defendant is placed in a program for a first or second violation, the court may allow continued participation. However, if the judge terminates participation, the defendant should at least be given the opportunity to go back to square one and have the State prove the case against him or her.

SENATOR SCHEIBLE:
If someone withdraws the plea, would he or she also be able to renegotiate the case?

JUSTICE HARDESTY:
In real life, he or she is probably going to trial. Diversion opportunities will certainly not be available; he or she will go to prison with a felony record.

ASSEMBLYMAN YEAGER:
Perhaps we could further clarify that the plea cannot be a result of negotiations with the district attorney. Someone cannot agree to a felony plea and then say, "Well, now I want this specialty court and to get a chance at diversion." Section 19 provides that the person must plead guilty to every charge under the indictment. In section 19, subsection 1, the court "may" set forth specific terms and conditions without a judgment of guilt. The risk of a guilty plea is the judge may deny diversion and proceed to sentencing, perhaps on multiple felonies. That is the specialty court procedure in NRS but not the way they operate in Clark County.

SENATOR SCHEIBLE:
I see no differentiation between a plea pursuant to negotiation and a simple plea. If I were the defense attorney, I would negotiate a single charge and then say, "Your Honor, under section 19, my client's entered a plea. He wants diversion" and then proceed to diversion on that negotiated charge. I see nothing in A.B. 236 that would prevent that.

ASSEMBLYMAN YEAGER:
Yes. The intent is not to allow someone to negotiate a reduced charge, get diversion and then withdraw the plea if it is not granted. That could be worse

because the defendant could return to court for a more serious charge. People will throw themselves on the mercy of the court, asking for diversion and perhaps not getting it.

SENATOR SCHEIBLE:
How would the new burglary NRS compare to those in other states?

JUSTICE HARDESTY:
Comparisons to other states are included in Exhibit D, as provided by the CJI. Nevada is a big-time outlier in our approach to burglary.

SENATOR SCHEIBLE:
I know that a disproportionate number of people go to prison on drug charges. What data do we have on tailoring charges based on the illegal substance? Federal lawmakers are more particular about having different levels of penalties based on substance, whereas Nevada uses the same penalty schedule for almost everything.

JUSTICE HARDESTY:
The Commission subgroup I chaired dealt with sentencing. My hope is that if the bill passes, the Sentencing Commission will focus more directly on applying penalties to weights of particular drugs. Some weights have no relation to opioids like fentanyl. Four hundred grams of fentanyl, are you kidding me? We should look at an amount the size of a Sweet 'N Low package. We must transition penalties to the relationship between weights and substances and focus more on substances' impacts than weights. For too long, we have given sentences based on weights alone.

SENATOR SCHEIBLE:
Instituting graduated sanctions for parole violations is good practice. Do we have a sense of how long the graduated sanction period would last? We are reducing almost all probation to two years. If someone has a problem or violation and must go to graduated sanctions before becoming eligible for his or her first revocation, how long do the sanctions last?

ASSEMBLYMAN YEAGER:
Graduated sanctions are imposed immediately, which is part of best practice. Most people who fail probation or parole do so within the first three to six months. That is a reason to shorten probation periods so resources can be

focused on the beginning. The Division of Parole and Probation (P&P), Department of Public Safety, already determines the appropriate sanction, but A.B. 236 will put that in NRS.

JUSTICE HARDESTY:
Many believe that keeping someone on probation longer is beneficial; however, many studies show that is incorrect. I held a conference call with about 20 State trial judges who all agree that long probation is a waste of time. Data from the CJI back that up. The bill reflects the average length of time before violations occur.

SENATOR SCHEIBLE:
If someone does not respond to sanctions and must come before the judge, probation is revoked and he or she goes to jail for up to 30 days. Is his or her probationary period told during that time?

ASSEMBLYMAN YEAGER:
Yes. In addition, the jail time does not count toward the underlying sentence. If the probation is ultimately revoked, credit is not granted for jail time as the graduated sanction. We do not want someone serving his or her entire sentence for 30 or 60 days at a time.

SENATOR SCHEIBLE:
When someone is sentenced to two years' probation, he or she must spend that time on probation and out of custody before it expires. Is that correct?

ASSEMBLYMAN YEAGER:
Maybe. Credit can be taken off of probation. The bill will not remove the ability of someone to get good time credit for probation, as long as he or she is compliant.

SENATOR SCHEIBLE:
The temporary parole revocations are for one, two and three months with a potential total of six months. Someone cannot spend 6 of his or her 24 months in jail and call that successful completion of probation.

ASSEMBLYMAN YEAGER:
That is correct.

SENATOR PICKARD:
I am disappointed that we eliminated preprosecution diversions from A.B. 236. Many misdemeanor offenders would do well in preprosecution diversion, particularly if there are underlying mental issues. Those people need treatment, not introduction into the justice system. Was that discussed before the entire preprosecution diversion provision was deleted?

ASSEMBLYMAN YEAGER:
Section 1 of the bill dealing with misdemeanor diversion will stand. That arose out of A.B. No. 470 of the 79th Session. Originally, we sought to include gross misdemeanor and felony diversion in A.B. 236. Only first-time nonviolent misdemeanor offenders get diversion; section 2, subsection 2, paragraph (b) lists the excluders for that. A concern was whether a district attorney could prosecute a case if someone went through diversion over a long period, failed and then had to go back to square one. One or two Clark County judges are running successful misdemeanor programs.

SENATOR PICKARD:
If we want to turn the corner on simple incarceration, we need to move toward a rehabilitation and treatment approach, including diversion. In discussions of providing education six months prior to prison release, was the inclusion of more treatment and rehabilitation programs mentioned? That will address recidivism at its core versus the carrot-and-stick approach to behavior modification.

ASSEMBLYMAN YEAGER:
Director James Dzurenda of DOC is focused on the prisons' ability to offer diversion programs despite his budgetary restraints. It is possible that some of the future savings could be diverted to that end after the Sentencing Commission quantifies the savings. A problem with our overcapacity prisons is they cannot do programs due to lack of space. Inmates are sleeping on classroom floors, on cots and in hallways, particularly at the Florence McClure Women's Correctional Center. The more we can do to keep people safely in the community, the more inmates can access treatment programs.

SENATOR PICKARD:
For most people, incarceration does more damage than good because they do not receive treatment, and the experience hardens them in other ways. You said courts are currently implementing some of the programs and specialty courts

outlined in section 30 of the bill. Can you describe how courts handle the end-of-case protocol addressed in section 30? Subsection 3, paragraph (a), subparagraph (1) states the judge "Shall discharge the defendant and dismiss the proceedings or set aside the judgment of conviction." How will that work?

ASSEMBLYMAN YEAGER:
Section 30 of A.B. 236 dovetails with A.B. 222.

ASSEMBLY BILL 222 (3rd Reprint): Revises provisions relating to specialty courts. (BDR 14-842)

A Nevada Supreme Court decision precluded certain offenders from getting into specialty courts. In Clark County, it is very rare for cases to be dismissed after specialty court. When the courts began, the idea was to give people the chance to earn a case dismissal. Some things in the criminal justice system could have been solved with a handshake and an apology 20 or 30 years ago. The core philosophy was to earn a dismissal, and that has not really changed. The bill will encourage judges to do more dismissals, particularly for first-time offenders who have never done specialty court.

SENATOR HANSEN:
Justice Hardesty told me that in other states with similar laws, there have not been spikes in crime. Can you elaborate upon that? Over 25 years, I have probably employed more than 100 ex-felons. Most of them served time for substance abuse-related crimes. A disproportionate number of them still had substance abuse issues; they were functional drunks.

Lewdness with a minor is an extremely serious crime, yet I do not see it in the bill.

ASSEMBLYMAN YEAGER:
Nothing in A.B. 236 takes away the judge's ability to impose prison time. You would not get probation for lewdness with a minor. Provisions expressly exclude sexual offenses from probation. You will not be eligible for specialty court or diversion because you will never get probation.

The bill is a way to study the data to determine who the dangerous people are in our communities so we can ensure they are imprisoned. For the ones who

can be in our communities, let us make an effort to allow that, so we are a system of correction, not just incarceration.

SENATOR OHRENSCHALL:
Exhibit C talks about the large number of offenders in prison or on supervision with substance abuse issues and unmet mental health needs. How effective do you think the specialty courts in section 16.5 and section 17 of the bill are for offenders seeking treatment? I practice in juvenile court, where the model is to get arrested children into treatment and services and resolve unmet needs. In the adult system, are specialty courts effective in helping reduce recidivism?

JUSTICE HARDESTY:
Yes, by and large. Specialty courts are the most effective programs in the criminal justice system in Nevada and the Nation for amending behavior and assisting in substance recovery. Specialty court statistics are part of the annual report to the Legislature by the Administrative Office of the Courts. Our specialty courts have been extremely successful in their efforts.

The Sentencing Commission recommended that Nevada follow the effort begun by Oregon and add $6 million of the General Fund to specialty court funding. The issue is obtaining enough resources to be impactful. In the Seventy-eighth Session, the Legislature accepted a recommendation by the Commission to add $6 million of the General Fund to the courts. Before then, they had been exclusively funded by grants or administrative assessment money. The General Fund money is utilized, distributed and accounted for by the Specialty Court Funding Committee administered by the Nevada Supreme Court. We have considered expanding some specialty courts, but they need to be viewed in light of best practices.

SENATOR HARRIS:
Would the diversion programs outlined in the bill's section 19 apply to the commission of any offense?

ASSEMBLYMAN YEAGER:
Yes, but you must be on probation to qualify for specialty court. If your crime is not probation-eligible, section 19 would not apply. Even if it were probation eligible, a judge has to decide to grant you probation before you could get specialty court.

SENATOR HARRIS:
Let us say you break into a car for the first time, and that is a Category E felony. You are put on probation or enter a diversion program. Under A.B. 236, what happens when you burgle another vehicle? Is that a second Category E felony? Is there any point at which you will be told, "Listen, this is your third car burglary. We are not going to make you eligible for probation or diversion." Is there a mechanism for stopping habitual car burglars?

ASSEMBLYMAN YEAGER:
There is an escalating penalty for repeat offenders, up to a Category D felony.

SENATOR SCHEIBLE:
I am perplexed by section 55. Our standard now is if you have been convicted of burglary or home invasion, you are ineligible for probation. Section 55, subsection 3 provides that this standard only applies to residential burglaries. If a person is convicted of a residential burglary and has a previous burglary conviction, he or she would not get parole, right? Burglaries of businesses, vehicles and other nonresidential structures are treated separately. Vehicle burglaries would be Category E felonies every time with probation for the first offense and discretionary probation for subsequent break-ins. Is that correct?

ASSEMBLYMAN YEAGER:
Your reading of section 55 is accurate. Perhaps we should have escalating penalties for Category E, D and C vehicle burglaries. Residential burglaries are serious, and if you do more than one, you should go to prison. However, we wanted to give judges more discretion for assigning probation or treatment for other burglaries.

SENATOR HARRIS:
The bill specifically addresses residential burglaries involving unlawful entries. Can you explain the rationale behind that, and what is unlawful versus lawful entry? If I invited you in and then you burgle me, is that lawful entry and no longer a residential burglary?

ASSEMBLYMAN YEAGER:
Unlawful entry would be required. A provision mentions gaining entry through false pretenses. Some time ago in Clark County, people pretending to be salespeople or missionaries were gaining entry into homes and then burglarizing them. That is an example of false pretenses. The situation we are trying to

avoid is if someone invites a person into his or her home, and then a crime happens.

If we removed "unlawful," we might see burglary charged every time in that situation, even though it will be hard to know if the visitor had the intent to steal. We want to capture common-law burglary as most people think about it: forced or unlawful entry into the premises with the intent to commit a crime.

JUSTICE HARDESTY:
A reason why Nevada's NRS is an outlier is it covers so many places. Entry alone is sufficient to establish the basis for the burglary. The unlawful entry distinction establishes intent, which is not currently required.

SENATOR HARRIS:
Who enters a home lawfully with the intent to commit a grand or petit larceny, assault or battery? The intent requirement is in NRS. Intent is the second portion of the crime, right? Are you suggesting that people are being charged with burglary too easily? Or it is too hard to charge them if they entered the home lawfully because we cannot prove they had the intent to commit the felony?

JUSTICE HARDESTY:
It is too easy to charge burglary. The unlawful entry is connected to what transpires in the premises, vehicle or business.

SENATOR HARRIS:
Do courts substitute entry for intent? The laws still require you to prove intent.

JUSTICE HARDESTY:
The unlawful entry provision in A.B. 236 is to underscore the point that the entry was indeed unlawful.

SENATOR HARRIS:
Why is lawful entry with the intent to commit a burglary not a felony? Why are we removing lawful entry with the intent to commit a felony from the burglary NRS? That should still be a crime.

SENATOR SCHEIBLE:
What comes to mind are instances when the crime is not completed. People who enter a home with the intent to commit a crime should be held accountable, even if they entered lawfully.

SENATOR PICKARD:
Most specialty court funding comes from grants. More people are eligible for the courts than there is space. What are the practical limitations on the expansion of the courts as required by A.B. 236? Is there just not enough time and staff funding to apply for grants? Grants expire, so we have to either find new ones or reapply. Will another $6 million accomplish the bill's goal?

JUSTICE HARDESTY:
The limitations are money and a lack of support services and beds. These elements are funded partly by the sources in the bill. The data showed 30 to 40 open beds in Clark County, but there was no money to get people into them. Will $6 million solve the problem? No. Will a more sustainable funding source solve it? Yes, but future Legislators must address that.

Steps have been incremental in applying General Fund money to the effort. It is critical that it is applied in the right way. The issue is multifaceted: beds, providers, court services, getting released inmates into jobs and housing.

SENATOR PICKARD:
What happens when someone is living in a vehicle, including mobile homes? How do we charge burglary of those vehicles? Is there flexibility that allows the court to adjust to that situation?

SENATOR SCHEIBLE:
Section 55, subsection 6, paragraph (b) defines "dwellings," including cars, house trailers and motor homes.

SENATOR PICKARD:
If a homeless person is living in a vehicle, does the court have the flexibility to make determinations?

SENATOR SCHEIBLE:
Section 55, subsection 6, paragraph (b) includes "conveyance." If you can prove that a vehicle is both a conveyance and residence, you can charge that as a burgled dwelling.

SENATOR HARRIS:
Nevada relies in part on federal funding to enforce our drug laws. Was there any discussion of the risk of losing that money if we move too far in the increasing drug possession levels? Have other states that have changed possession laws lost federal funding?

ASSEMBLYMAN YEAGER:
No, we did not discuss that. No other states have had issues with losing federal funding after increasing possession levels. Federal possession levels are substantially higher than what A.B. 236 proposes. Federal law enforcement breaks down substances in a way NRS does not.

CHAIR CANNIZZARO:
Intent upon entry to commit larceny, assault, battery or felony within a structure is addressed in NRS. The definition of "unlawfully enters or unlawfully remains ... without regard to the purpose or intent of the person" in the bill's section 55, subsection 6, paragraph (d) is to ensure there is intent. Coupled with the new definitions of burglary and intent, that seems somewhat circular.

JUSTICE HARDESTY:
Your point is well-taken.

CHAIR CANNIZZARO:
The definition of unlawfully enters complicates that of burglary. I do not take issue with differentiating between serious residential versus business burglaries. The bill also defines absconding in section 35, subsection 5, paragraph (a) as "failing to report or otherwise communicate with [P&P] for a continuous period of 60 days or more." In lieu of prison, defendants are given community supervision with a promise to contact P&P, right? If not, it is systematically impossible to impose supervision.

When I read "or otherwise communicate," I think of a situation in which someone leaves a voicemail but otherwise does not check in with the P&P officer. He or she is not really checking in, is not living in a defined residence,

has not kept monthly P&P appointments and is not returning phone calls. That is in essence absconding, correct?

ASSEMBLYMAN YEAGER:
I agree that the "otherwise communicate" language could be problematic. We can tighten that definition.

CHAIR CANNIZZARO:
Section 35, subsection 3 provides that a hearing must be set for probation violators within 15 days of arrest and detention. That is appropriate because often during first hearings for parole violations, there are numerous requests to continue to find placements in different programs, get more information on the violation or hold evidentiary hearings. If a violation hearing is not held within 15 days, the person "must be released" from detention. In the context of committing a new crime, 15 days would be the most pertinent to attorneys gathering witnesses and other information if the defendant does not admit to the violation. I am concerned that defendants must be released even if a new crime is committed.

ASSEMBLYMAN YEAGER:
We communicated with almost every judicial district, and they were comfortable with the 15 days, with the exception of Elko Township Justice Court. Its support was contingent on getting another district court judge. The bill intends that some kind of hearing is held in front of a judge within 15 days. Sometimes in the past, people were in custody for 40 or 50 days without seeing a judge. The intent is not necessarily a full-fledged hearing but to get the probationer, attorney and prosecutor in court to decide how best to proceed.

CHAIR CANNIZZARO:
It is a good rule of thumb to get people before the judge. My concern is that if there is not an actual probation violation hearing, release is not the most appropriate action. Section 35, subsection 5, paragraph (b) defines technical violation of parole. We often talk about that during probation revocation hearings with different interpretations of what it constitutes, so having a solid definition is good.

If a probationer commits a new crime, the definition excludes felonies or gross misdemeanors, battery, domestic violence and DUI. Other crimes—stalking, harassment, violation of a protective order—fall outside of that definition that I

would not necessarily call technical violations. Perhaps we should include them in the bill. What happens if a probationer commits a crime that we are deeming outside of a technical violation, such as missing a P&P appointment, drinking alcohol or testing positive for marijuana?

ASSEMBLYMAN YEAGER:
We can work on that definition of technical violation. If you commit any misdemeanor while on probation, you will have to deal with the consequences, including up to six months in custody. Violations of stay away orders from victims or locations could be included in the definition.

CHAIR CANNIZZARO:
I am not envisioning stay away orders involving The Strip, rather orders against domestic violence, sexual assault, stalking or things like that. That type of conduct is more egregious. Judges should retain the discretion to determine if probation would be appropriate with additional conditions and the 15-day confinement.

Assembly Bill 222 deals with diversion courts. Some sections of A.B. 236 mirror A.B. 222, and others diverge. Can you talk about the differences in the bills concerning the workings of diversion courts?

ASSEMBLYMAN YEAGER:
The original intent was to exactly mirror A.B. 222. The philosophy is the default should be dismissal but only in certain circumstances, such as no priors or other dismissals. Dismissal would be discretionary, as would granting of probation. Assembly Bill 222 does not allow that, instead providing for a straight diversion out of the justice system. We did not want conflicting versions of specialty court releases.

CHAIR CANNIZZARO:
In discussions of A.B. 222, we dealt with how if someone is in a program for years but discharged without completion, we are back at square one.

SENATOR HAMMOND:
I need more clarity on the definitions of vehicle dwellings, specifically of "conveyance," in section 55, subsection 6.

ASSEMBLYMAN YEAGER:
The definition of dwelling is taken from NRS. If you break into a vehicle not used as housing, that is a Category E felony. However, if proof exists that someone is living in it, that would be a Category D felony and potentially one to ten years in prison. We want to recognize that while not everyone lives in traditional housing, we should treat all living space intrusions seriously.

JUSTICE HARDESTY:
The Nevada Supreme Court has never interpreted the NRS definition of dwelling. I would need to research why conveyance is included in the dwelling definition in NRS and the bill.

SENATOR HARRIS:
In the bill's section 6, subsection 1, paragraph (a), subparagraph (1), sub-subparagraph (I), the Sentencing Commission is directed to collect criminal history information. Will that be a binary choice of yes or no if someone has a criminal history? Will the data be a narrative of the criminal history or a list of prior convictions?

JUSTICE HARDESTY:
To a degree, that data will be limited by information in the Central Repository for Nevada Records of Criminal History. The backlogged Repository system has some severe weaknesses in its structure, technology and reporting methods. The Sentencing Commission must decide what it wants to address, but I envision collecting as much detail about criminal histories as possible. Presentencing reports are quite thorough, with probation officers relying on much more than scope and the Repository and on looking at previous case files.

SENATOR HARRIS:
If a judge wants to run a defendant's regression analysis or make claims about the correlations between criminal history, probation releases or recidivism, he or she will have to have quantifiable data. If someone has had multiple convictions, we can track that when deciding whether he or she should get probation. A narrative criminal history form is useful for research, but courts need quantifiable data to make correlations.

The bill's section 6, subsection 1, paragraph (a), subparagraph (2), sub-subparagraph (III) says the Sentencing Commission looks at recidivism rates, and sub-subparagraph (IV) adds "The total number of persons released

from prison each year who return to prison within 36 months." What is the distinction between recidivism and returning to prison within three years?

Section 6, subsection 1, paragraph (b), subparagraph (1), sub-subparagraph (VI) refers to DOC's internal definition of recidivism. Why are there apparently three definitions of recidivism in A.B. 236?

JUSTICE HARDESTY:
There is no consistent definition of recidivism in NRS.

SENATOR HARRIS:
Section 6, subsection 1, paragraph (c), subparagraphs (1) and (2) provides that annual costs avoided by the bill and annual savings realized will be tracked. What is the difference between those two costs?

JUSTICE HARDESTY:
I would not have characterized them differently. The language gives the Sentencing Commission the opportunity to focus on any differences.

SENATOR HARRIS:
Section 7 directs the Sentencing Commission to develop a formula to calculate cost savings from the bill for each fiscal year. Section 7, subsection 1, paragraph (a) lists a projection of the DOC prison population in annual years. How can a formula calculate savings based on projections in 2018 but not for 2019, 2020 and 2021 if the projections of savings for those years is unavailable because the law has not been enacted?

JUSTICE HARDESTY:
Cost savings projections already go well beyond 2018. We are comparing incarceration projections based on what we have now, which will form the basis of budget planning for the next and subsequent biennia. The projections will take into account capital and operational needs.

SENATOR OHRENSCHALL:
Director Dzurenda has testified about our bulging prison population. The Florence McClure Women's Correctional Center is simply bursting at the seams. Exhibit C states female prison admissions have risen 39 percent, of whom half have mental health needs. If that trend continues, is there a danger of increased

litigation over prison overcrowding and lack of mental health or substance abuse treatment for nonviolent offenders?

ASSEMBLYMAN YEAGER:
For me, the most eye-opening findings in Exhibit C were the data on women prisoners: the incredible population growth, the percentage of nonviolent offenders and the number of prisoners who have mental health needs. If the projections play out and we do nothing, the State will have to build other women's and men's prisons within ten years. What happens in the Interim if there is not enough money for the problem? The State is indeed exposed to potential litigation.

We need to figure out which women can be safely paroled into the community and supervise them there, instead of taking up beds that should be reserved for women who are violent and pose a public safety risk. If we do it right, we will not have to build another women's prison and may reduce the litigation risk.

AARON D. FORD (Attorney General):
I have brought three-fifths of my leadership team with me today so they could hear the testimony and questions about the critical issues in A.B. 236. The Office of the Attorney General has been intimately involved in the iterations of the bill. On May 22, 2018, I signed on with then-Governor Brian Sandoval, Assemblyman Jason Frierson and then-Chief Justice Michael L. Douglas to a letter seeking a data-driven analysis of our criminal justice system, Exhibit D.

Our State spends millions on an ineffective and inefficient system. Our prisons are at such extreme overcapacity that we sent more than 200 inmates to a private prison in Arizona. As correctional costs grow and outcomes remain poor, we are not properly funding the system. The aforementioned letter in Exhibit D helped obtain consideration from the CJI and the study culminating in discussions leading to A.B. 236.

As we learn more about the science of mental health and substance abuse, it becomes increasingly clear that we cannot incarcerate ourselves out of the opioid crisis. Assembly Bill 236 provides important structure to support diversion and treatment over incarceration. It better aligns our resources by focusing on incarcerating violent offenders who pose a risk to public safety while helping nonviolent offenders who need treatment.

The job of my Office is justice. Criminal justice reform does not mean that we do nothing about criminal justice. It means ensuring quality for everyone in the system and creating a system that supports the overarching goal of public safety. By focusing our finite resources on crime prevention and mental health treatment, we can better serve the State that we were elected to protect.

Everyone in this room, including law enforcers, believes in some level of criminal justice reform. I am proud to join other representatives of our tri-part government: Supreme Court Justice Hardesty, representing the Judiciary Branch; Legislators presenting and considering the bill on behalf of the Legislative Branch; and me, a representative of the Executive Branch. The State is aligned on the issue of criminal justice reform.

WILLIAM HORNE (SafeNest):
SafeNest serves batters' children affected by domestic violence. SafeNest supports A.B. 236, particularly its establishment of a reinvestment fund. Nonprofit SafeNest provides 40 percent to 80 percent of all diversion program clients with scholarships totaling $150,000 to $250,000 annually. The *Nevada Administrative Code* only requires providers to fund 5 percent of scholarships.

ANN SILVER (CEO, Reno Sparks Chamber of Commerce):
You have my testimony letter of support (Exhibit E) for A.B. 236. The Reno Sparks Chamber of Commerce has identified criminal justice reform as a legislative priority for this Session. The bill bridges the gap between public safety concerns and reforms needed to modernize aspects of our criminal justice system.

In 2017, two-thirds of those sent to prison were nonviolent offenders, of whom 40 percent of had no prior felony convictions and more than 40 percent had not competed high school. Research proves that sending nonviolent offenders to prison increases the recidivism rate. Incarceration has become the default response to those struggling with behavioral health issues, failing to address the factors that lead people to commit crimes.

Assembly Bill 236 will limit excessive spending on incarceration; refocus funding on rehabilitation programs, workforce development and training; and save prison beds for the most serious offenders. It is time to create a more sensible roadmap to reduce recidivism, require nonviolent offenders to become productive workers, reunify broken families with parentless children and

demonstrate Abraham Lincoln's plea that Americans find "the better angels of our nature."

RONALD NAJARRO (The Libre Initiative):
Our criminal justice system poses a barrier to many nonviolent offenders after they leave it. Assembly Bill 236 will reduce recidivism by focusing on rehabilitation of nonviolent offenders so they are ready to resume life outside of prison. Preparing offenders for release will ensure they are empowered for a life without crime. Residents are safer, workers are contributing to Nevada's economy and taxpayers are less burdened by justice system costs.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
Nevada Attorneys for Criminal Justice supports A.B. 236.

JIM SULLIVAN (Culinary Workers Union Local 226):
With thousands of Nevadans being released from prison, it is economically irresponsible to not remove barriers to obtaining employment. People with felony records have a particularly hard time finding jobs. Without jobs, people revert to criminal behavior and end up back in prison. Nonviolent offenders are the majority of our swelling inmate population. We spend too much on locking up low-level, nonviolent offenders. The more we spend on prisons, the less we spend on our citizens at large. Culinary Union Local 226 is dedicated to ensuring that all community members are capable of being productive citizens and workers.

TONJA BROWN (Advocates for the Inmates and the Innocent):
Advocates for the Inmates and the Innocent strongly supports A.B. 236 as long overdue.

BRYAN WACHTER (Senior Vice President, Retail Association of Nevada):
With the removal of the pretrial diversion component, the Retail Association of Nevada supports A.B. 236. Rehabilitating prisoners and removing the ex-con designation that may hurt them in future employment is a better solution than increasing the prison population.

PAUL ENOS (CEO, Nevada Trucking Association):
I echo the comments of Mr. Wachter. The Nevada Trucking Association believes in redemption. We have many larger, self-insured trucking companies that have hired felons.

DAVID DAZLICH (Las Vegas Metro Chamber of Commerce):
Assembly Bill 236's focus on rehabilitation and reintegration will serve nonviolent offenders as they rebuild their lives. It will be a good investment as taxpayer dollars go to more vital areas than mass incarceration.

MIKE DYER (Nevada Catholic Conference; Catholic Bishops of Nevada):
The Nevada Catholic Conference and Catholic Bishops of Nevada consider A.B. 236 an incredibly important bill that we should not wait to implement.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
During the 2017-2018 Interim, I served as the inmate advocate on the Sentencing Commission and participated in the first CJI presentation. My experiences made it clear that Nevada is moving in the opposite direction of most of the Country. Our prison population is growing while other states put fewer people behind bars. Exhibit C and Exhibit D illustrate that our path is fiscally unsustainable and does not improve public safety. Longer sentences may actually increase recidivism.

Assembly Bill 236 is the first step in a path toward effective crime prevention and just and humane treatment of people with behavioral health challenges who have suffered trauma and victimization. That said, even if we pass every component of A.B. 236 as written, prison population growth will not be eliminated, and the bill will reduce the capacity of the prison system. More people will enter prisons, requiring the State to funnel more tax dollars into the system. This means less money for treatment, support services, law enforcement and victim support.

We cannot fix 30 years of problematic policy decisions with one bill or Session. Failure to pass A.B. 236 is an endorsement of the status quo and a blueprint to build more prisons to avoid ongoing litigation at the risk of community safety.

MARCOS LOPEZ (Americans for Prosperity Nevada):
You have my testimony in support (Exhibit F) of A.B. 236. Americans for Prosperity Nevada does not believe that criminal justice reform is a bipartisan issue. We can have safe streets while allowing people second chances. Red and blue states are implementing the CJI recommendations with great success and reducing crime levels and prison populations. The State must be hard on crime and soft on taxpayers. More than 95 percent of prisoners rejoin their communities; we need to ask who we want those returnees to be.

ANNETTE MAGNUS (Executive Director, Battle Born Progress):
Battle Born Progress strongly supports A.B. 236 as a desperately needed step forward for our criminal justice system. We send too many people with addiction and mental health issues to prison. We inadequately fund our mental health system, instead using jails and prison as places to deal with these complex issues. To curtail problematic behavior influenced by behavioral health challenges, we need to address its cause: underlying mental health or substance abuse issues. Instead, we unconscionably criminalize mental health and addiction. Rather than funding treatment and services, we fund more prisons, thus creating a revolving door.

You have heard about our overcrowded women's prisons. The inmates are often victims of abuse or trauma. The vast majority are mothers imprisoned for nonviolent offenses like drug or property crimes. Prison exacerbates women's experiences of trauma and abuse.

Instead of building more prisons, we need to invest in education and programs that keep people out of them. We have better things to spend our limited tax money on. We need to properly fund our mental health system and replace mass incarceration with rehabilitation.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
Progressive Leadership Alliance of Nevada believes Nevada needs to be smarter on crime. Assembly Bill 236 will help further that goal.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
The Office of the Public Defender, Clark County, strongly supports A.B. 236. I grew up in the 1990s, when the Nation adopted the tough on crime policy. Now we are turning from doing the wrong things to doing the right.

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):
The Office of the Public Defender, Washoe County, strongly supports A.B. 236 because it ensures that our criminal justice system is just, equitable and fair. By changing nothing, nothing changes. The bill provides for safer communities for generations to come.

WIZ ROUZARD (Americans for Prosperity Nevada):
Criminal justice reform is not a Democratic or Republican issue; it is an American issue. More than 70 percent of Nevadans see criminal justice reform as the No. 1 issue when it comes to voting and engaging with Legislators. We cannot afford to stifle reforms due to small things that can be corrected in the long run. The issues impair families and communities from advancing lives with equality and justice. John F. Kennedy said, "An error does not become a mistake until you refuse to correct it." Over 30 to 40 years, we have identified errors in our criminal justice system that show what we must correct. Assembly Bill 236 is the way to do so.

MARC NEWMAN (Surety Bail Agents of Nevada):
I concur with Senator Pickard's questions about how A.B. 236 will secure sustained funding for diversion programs. It would behoove us to make sure existing program are working efficiently before mandating their use Statewide. An employee of DOC recently told me the prison system is short by about 300 mental health treatment beds. The cost of that was not clearly defined, and he had been told not to discuss it. We need data-driven, accountable information to make the best possible decisions.

JENNIFER NOBLE (Nevada District Attorneys Association):
The 17 members of the Nevada District Attorneys Association (NDAA) have worked hard with other stakeholders on A.B. 236. After it was passed by the Assembly, we were surprised that many negotiated elements were now missing. For that reason, the NDAA does not support A.B. 236.

According to surveys, many State prisoners were convicted of property crimes. However, the number of people convicted of residential burglaries is not included. While that may be in the property theft NRS, the effect on victims of residential burglaries should not be dismissed as that of mere property crimes like a shoplifted candy bar.

The Office of the District Attorney, Clark County, has a proposed amendment (Exhibit G). Section 19 describes postplea diversions, including specialty courts for offenders who have committed violent crimes or crimes against children. Nonprobational offenses are of course excluded, but crimes you might not think of are nonprobational. I argued a case before the Nevada Supreme Court in which the defendant tried to lure two 11-year-old girls into his vehicle for sexual purposes—a probational offense, which, under A.B. 236, would be eligible for

diversion and mandatory record sealing. The community should not tolerate that.

The bill does not include an effective mechanism to stop people from attending diversion programs multiple times. Once a record is sealed, it cannot be accessed. Someone could commit an offense in Carson City, and Washoe County courts would be unaware of it when he or she committed a second offense there.

Section 113 deals with drug trafficking. In the midst of an opioid epidemic acknowledged by many State elected officials and a national effort to combat sexual assault, the bill dramatically increases trafficking amount for heroin, cocaine, methamphetamines and gamma hydroxybutyrate (GHB), the "date rape" drug, used almost exclusively to facilitate sexual assaults.

One hundred grams of heroin equals 1,000 doses; 100 grams of cocaine, 200 doses; 100 grams of methamphetamine, 400 doses; and 100 grams of GHB, 200 doses. These trafficking amounts are too high; they are not personal use amounts.

Section 86 deals with habitual criminals. The offer by the NDAA to increase the habitual enhancement prison time from five to seven years was contingent upon the inclusion of other crimes in the mandatory violent habitual NRS, such as battery with a deadly weapon. That is not included in this bill; these examples from my Office illustrate why that is a mistake. In 2015, Simon Rios was convicted of battery with a deadly weapon causing substantial bodily harm. He sold fake Wolf Pack game tickets to his victim. When the victim asked for a refund, Mr. Rios refused and stabbed him three times. Mr. Rios had six prior felonies from 1996, 1997, 2002, 2008, 2011 and 2012. Under A.B. 236, he would not be eligible for the 10 to 25 years he is now serving. After Donald Turley, Junior, stabbed a motel manager in the neck with a box cutter, he was convicted of battery with a deadly weapon. He had five prior felonies: 1986, 1990 and 2005, with 2 in the same year. Even with just part of the NDAA's proposed amendment, Exhibit G, Mr. Turley would not be eligible for the 8 to 20 years that he is now serving.

There has been a lot of discussion about money saved by reducing incarceration rates. While the NDAA supports commonsense criminal justice reform, this bill as drafted is not the solution. There has been too little discussion of the social

costs, which are incredibly hard to quantify. As the Committee thinks about what is right for Nevada, the NDAA urges it to include the unintended consequence of saving money at the cost of public safety.

JOHN T. JONES (Office of the District Attorney, Clark County):
The Office of the District Attorney, Clark County, opposes A.B. 236 for the reasons outlined by Ms. Noble. Section 18 deals with probation-graduated sanctions, which prosecutors support. When I am in court with a report from a probation officer who clearly articulates what he or she has done in terms of graduated sanctions, that helps me to argue what the appropriate disposition is for the defendant. Assembly Bill 236 omits extremely important things from the definition of technical violation. Technical violators are mandated in NRS to go through probation-graduated sanction policies. If a technical violation occurs, a probation officer will have zero ability to place the violation in front of the judge who ordered the probation.

A probationer can commit a new misdemeanor such as obstructing an officer, assault, battery, evading, stalking, harassment—all extremely serious offenses. The person could potentially face a new case; however, the judge who ordered the original probation deserves to weigh in on the fate of the defendant.

Exhibit G will redefine technical violations to include all crimes. That begs the question, what happens with low-level crimes like trespassing? The amendment would also authorize P&P to include low-level misdemeanors in the graduated-sanctions policy when appropriate. That is true for low-level felonies committed on probation. Let us say you are on probation for organized retail theft and get a new charge for petty larceny at Target. The judge who put you on probation for the organized retail theft should know about the larceny. Assembly Bill 236 prohibits an officer from bringing the new charge before the judge.

The bill's definition of technical violation excludes violation of a stay away order. The defendant could pick up new misdemeanor charges for stalking and harassment, yet the probation officer could not put that case in front of the judge who granted the probation. That is an example of the many inequities in A.B. 236. Its definitions are too broad, encompassing too much negative conduct that judges deserve to know about.

Let us say a probationer goes through the graduated sanctions process or violates parole and ends up in court. Sections 35 and 101 of A.B. 236 deal with what happens he or she goes in front of the State Board of Parole Commissioners. Guess what—the probation still cannot be revoked for anything he or she did. The bill spells out that the first technical violation penalty is 30 days; second, 60 days; and third, 90. Only after the fourth time can the judge send the probationer to prison, even if the first offense is egregious or so connected to the underlying conduct for which he or she is on probation that it merits prison.

A judge can order a defendant to stay away from his or her victim. If the defendant violates that order, the bill disallows probation officers from seeking revocation. When that happens anyway, the judge cannot revoke the person.

Section 34 describes new, reduced terms of probation. Good time credits should not apply to the probation term. If a person is ordered to up to 24 months of probation, that must be served. Sex offenders and those convicted of a crime against a person should continue to serve five years; they do not deserve less. The bill shortens probation for violent and sexual offenders.

The early probation termination provisions in section 17 say anyone, regardless of the offense, must have P&P submit an early discharge request after 1 year. Victims of violent crime will be told, "Under this bill, your attacker will get up to three years on probation. But, after a year, P&P must submit for early termination—doesn't have a choice."

Judges do and should take chances on individuals when granting probation. However, if we remove supervision time from P&P, judges will be less likely to take chances, especially if it will be virtually impossible to send people to prison for technical violations or the commission of new crimes.

Exhibit G would streamline the probation inquiry process whereby defendants must meet with probation officers before officers can file a revocation report. We ask that that be removed from NRS.

I cringed every time I hear the term "nonviolent offenses" today. Speakers do not know that the Justice Reinvestment Initiative includes residential burglary in its nonviolent offenses. There is nothing nonviolent about residential burglaries, yet they constitute a large chunk of the nonviolent crimes we refer to. Judges

send people to prison for residential burglaries. If you cannot feel safe in your home, where do you feel safe?

The Nevada District Attorneys Association strongly opposes the provision in section 55 that says unlawful entry is required for residential burglary. If you give a key to your neighbor who then burglarizes your home, that is not unlawful entry. Exhibit G removes unlawful entry from section 55.

Section 19 provides that if a program participant is removed, he or she can start over, going back to pleading guilty and joining the program. We support that with the proposed changes in Exhibit G.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):
The Nevada Sheriffs' and Chiefs' Association opposes A.B. 236. We are a member of the Commission and support many of the tenets that came out of its recommendations—but not those that put the public at risk. The bill is incomplete and does not address the opioid crisis.

Sections 119 and 121 change the trafficking levels for schedule I and II controlled substances. Law enforcement does not want to arrest and incarcerate addicts. Raising the trafficking levels from 14 grams to 100 grams for drugs such as heroin is flat-out absurd and nonsensical. Jumping from 28 grams of a schedule II substance such as Vicodin, codeine, morphine or fentanyl, to 400 grams is crazy. Justice Hardesty put it best: "Four hundred grams—are you kidding me?" Eighty percent of heroin users began by becoming addicted to prescription medications.

While the Nevada Sheriffs' and Chiefs' Association does not want to fill jails with addicts, we want to decrease the flow of opioids coming into the State by traffickers. The bill increases some trafficking amounts by sevenfold or more. We scream about the opioid epidemic and heroin public health crisis, yet the bill proposes to raise trafficking amounts to unjustified, unwarranted and even arbitrary levels.

COREY SOLFERINO (Washoe County Sheriff's Office):
The Washoe County Sheriff's Office does not support A.B. 236. The definition of insanity is doing the same thing over and over again and expecting different results. For several decades we have been heavy on the incarceration side of criminal justice. The two biggest issues facing law enforcement are substance

abuse and mental illness. We simply do not have the infrastructure, facilities or money to dedicate to the rehabilitation services we desperately need. The Justice Reinvestment Initiative recommendations proposed to introduce into communities are huge.

The trafficking levels in sections 119 and 121 are simply too high. As a K-9 and interdiction task force officer, I have observed this Body trying to get help and services to users this Session. The level of people infiltrating our communities and schools with high levels of drugs is appalling. Under sections 119 and 121, traffickers will have increased opportunities to leave prison without strict penalties. Adoption of Exhibit G could move us to a position of support.

DYLAN SHAVER (City of Reno):
The City of Reno is neutral on A.B 236 because it contains ideological issues we are not comfortable weighing in on. Section 1 of the bill requires police departments to establish policies and procedures in interacting with people with behavioral and mental issues as defined in NRS 174.015. That definition is extremely broad, including memory and social disorders and hoarding disorder. We want Reno officers to get this training and be prepared for what they see in the field. However, we need to not overburden them because their primary job is to serve and protect. That is not always a pretty job that includes time for consideration before you make certain decisions, such as arresting a hoarder.

The bill needs additional language to ensure municipalities that by providing that training, we are not expecting officers to diagnose the aforementioned conditions in the field.

STEPHANIE O'ROURKE (Deputy Chief [North], Division of Parole and Probation, Department of Public Safety):
The Division of Parole and Probation, Department of Public Safety, is neutral on A.B. 236. In section 133.5, P&P will get a General Fund appropriation strictly for personnel costs associated with upgrading the Nevada Offender Tracking Information System.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
The Las Vegas Metropolitan Police Department (LVMPD) supports commonsense criminal justice reform. I am a long-term member of the Commission. In the spirit of compromise and negotiation, LVMPD is neutral on

A.B. 236. We want to make a positive contribution to criminal justice reform while at the same time ensuring public safety.

SENATOR OHRENSCHALL:
Mr. Callaway, you did not address section 113 about trafficking amounts. The changes to NRS deal solely with possession. If those changes are implemented, if there is evidence that an arrestee had sold or intended to sell a controlled substance, can those charges be brought? The arrest would not be simple possession.

MR. CALLAWAY:
Yes. Our concern from a law enforcement perspective is that traffickers are distributors, not the salespeople. The driver of the Budweiser beer truck is not selling Budweiser; he is taking it to 7-Eleven where it will be sold. Traffickers bring drugs into communities and give them to people on the street who sell to addicts, who often resort to criminal conduct to ensure their supply. Traffickers are right below the kingpins or El Chapos. I have philosophical concerns with raising trafficking levels.

SENATOR HANSEN:
So much of the bill and our discussions have revolved around drugs. Since the legalization of all uses of marijuana, has LVMPD seen a substantial drop in drug use? We are no longer going after the guys smoking pot.

MR. CALLAWAY:
There has been no decrease in the black market; we are seeing product brought in from other states, sometimes legal pot. California had an overabundance of marijuana. We have seen an increase in pot pop-up parties arranged on social media. Legalization was the will of the voters, so LVMPD enforces the laws. There is now an umbrella under which the legal exists with the illegal. It is easy for someone engaging in illegal black market activity to say, "Well, I thought this was legal. Isn't marijuana legal in the State?"

SENATOR HANSEN:
What about the libertarian approach of decriminalizing all illicit drugs for adult use?

MR. CALLAWAY:
I had a family member who became addicted to methamphetamines. The only thing that saved his life was getting arrested on a felony and being forced into treatment. Today, he has a good job and a baby, is no longer addicted and is a productive society member. If not for that arrest, he would be dead. If we legalize all drugs, we will see an increase in overdoses, deaths and addiction. It would remove the stick to force people into the carrot of treatment.

SENATOR HANSEN:
One of the arguments for State Question No. 2 on the November 2016 ballot was that legalization of recreational marijuana would substantially reduce black market activity.

MR. CALLAWAY:
That has not been the case in Clark County.

BEN GRAHAM (Administrative Office of the Courts, Nevada Supreme Court):
In 1995, I was part of a group of Senators, prosecutors, police and defense attorneys instructed to reform the criminal code under Title 15 of the NRS, with the full anticipation that what we are trying to accomplish with A.B. 236 would start in 1997.

JUSTICE HARDESTY:
Statistics from CJI indicate that 63 percent of burglars sent to prison committed nonresidential thefts. That is why the data issue is so important. Federal funding would not be affected by changing controlled substance weights, according to CJI. The reason that the recidivism definitions are placed in certain sections of A.B. 236 is because State criminal justice agencies use different definitions in their risk assessment instruments.

The accounting projections language is consistent with identical formulas used in other states to calculate the baseline and then the ongoing cost. If you adjust the baseline, all you are doing is tracking costs and savings with changes you have made.

The absconding definition came from P&P. The bill uses criminal justice agency documentation connected to either its risk assessment instruments or existing regulations. We wanted to ensure that we did not create fiscal problems by

changing those definitions or fundamental instruments. The technical violations language was drafted by CJI.

ASSEMBLYMAN YEAGER:
I am discouraged by the opposition from the NDAA. Almost every change from the original bill was at the request of the NDAA; now they are asking to make substantial revisions, Exhibit G. No state that has done criminal justice reform of this magnitude has had district attorney support.

No state that has enacted CJI recommendations has had disastrous consequences. Exhibit D includes a letter from a Utah legislator recounting how great the process has worked there, not just because of the savings but also the results. Constituents want government that is efficient and gets results. Nevada's criminal justice system is not doing that. Corrections does not start within the prison walls; it needs to start in the community with those leaving prison. Assembly Bill 236 represents a philosophical change.

CHAIR CANNIZZARO:
We will close the hearing on A.B. 236 and open the work session on A.B. 356.

ASSEMBLY BILL 356 (1st Reprint): Revises provisions governing criminal procedure. (BDR 3-863)

MR. GUINAN:
Bill sponsor Assemblyman William McCurdy, in conjunction with the Innocence Project, has a proposed amendment (Exhibit H).

SENATOR PICKARD:
Distinctions were made in discussions about A.B. 356 and A.B. 267 about the difference between factual and other types of innocence. Have they been reconciled by the proposed amendment?

ASSEMBLY BILL 267 (2nd Reprint): Provides compensation to certain persons who were wrongfully convicted. (BDR 3-657)

CHAIR CANNIZZARO:
We discussed whether the definition of factual innocence in A.B. 267 could be applicable to A.B. 356. The definition in A.B. 356 creates a new avenue to overturn a conviction based on new non-DNA evidence that meets the clear and

convincing evidence standard. A person who is factually innocent could have a conviction overturned and apply for compensation under A.B. 267. If we put the definition of factual innocence into A.B. 267, it would create a different avenue when it comes to habeas corpus.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 356.

SENATOR PICKARD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR CANNIZZARO:
We will close the work session on A.B. 356 and open the work session on A.B. 267.

MR. GUINAN:
Proposed Amendment 6088 to A.B. 267 is in the work session document (Exhibit I).

CHAIR CANNIZZARO:
This amendment is intended to clarify that a petition for compensation can only be made only when the petitioner is out of custody, including off of parole or probation. It also clarifies what happens when a conviction is reversed. Definitions of "innocence" and "immunity provisions" were added.

SENATOR OHRENSCHALL MOVED TO AMEND AND DO PASS AS AMENDED A.B. 267.

SENATOR HANSEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR CANNIZZARO:
We will close the work session on A.B. 267. Seeing no more business before the Senate Committee on Judiciary, we are adjourned at 12:33 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	9		Attendance Roster
A.B. 236	C	52	Assemblyman Steve Yeager	"Justice Reinvestment Initiative Selection of Data Findings and Recommendations"
A.B. 236	D	365	Assemblyman Steve Yeager	Justice Reinvestment Initiative presentation
A.B. 236	E	1	Ann Silver / Reno Sparks Chamber of Commerce	Testimony in Support
A.B. 236	F	2	Marcos Lopez / Americans for Prosperity Nevada	Testimony in Support
A.B 236	G	8	Jennifer Noble / Office of the District Attorney, Clark County	Proposed Amendment
A.B. 356	H	2	Patrick Guinan	Work Session Document
A.B. 267	I	9	Patrick Guinan	Work Session Document