MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
February 10, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:06 a.m. on Wednesday, February 10, 2021, Online. 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Rochelle T. Nguyen, Vice Chairwoman
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Lisa Krasner
Assemblywoman Elaine Marzola
Assemblyman C.H. Miller
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Ashlee Kalina, Assistant Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager
Kalin Ingstad, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

James W. Hardesty, Chief Justice, Nevada Supreme Court
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Tom Lawson, Chief, Division of Parole and Probation, Department of Public Safety
Nelda Weygant, Private Citizen, Las Vegas, Nevada
Sarah K. Hawkins, Chief Deputy Public Defender, Clark County Public Defender's Office; and President, Nevada Attorneys for Criminal Justice
Victoria Gonzalez, Executive Director, Department of Sentencing Policy
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Tonja Brown, Private Citizen, Carson City, Nevada
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association

Chairman Yeager:
[Roll was taken. Committee protocol was explained.]

We have two presentations today, as well as our first bill hearing. We are going to do the presentations first and will go in the order they are listed on the agenda.

I will open up our first presentation, which is an overview of the Nevada Judiciary. There is an exhibit on Nevada Electronic Legislative Information System that is a presentation that Justice James Hardesty will be going through [Exhibit C]. I want to welcome to the Committee for the first time this session Chief Justice James Hardesty from the Nevada Supreme Court. Please go ahead with your presentation, and I am sure we will have some questions for you at the end.

James W. Hardesty, Chief Justice, Nevada Supreme Court:
Thank you, Chairman. I will share my screen [Exhibit C].

I will begin by expressing my appreciation to the Chairman and to the members of the Committee for allowing me to present an overview of the Nevada Judiciary and offer additional information regarding criminal procedure. I also want to congratulate each one of you who have been selected to sit on the Judiciary Committee for the Assembly. In my view, it is one of the more challenging committees that exist in the Legislature. You will be confronted with numerous conflicting and significant policy choices. I want to let you know in advance that the court, judges of the state, and the Administrative Office of the Courts stand ready to provide you with data, resources, and information, as you might need, to help evaluate some of the issues that come in front of you.

I want to mention that the Court has hired a new Director of the Administrative Office of the Courts (AOC), Katherine Stocks. She is a court administrator who comes from the largest judicial district in Kansas. She is a very capable and qualified individual. In addition, many of you have met and dealt with John McCormick, who is the Deputy Director of the AOC. He is a very capable and experienced administrator who has had considerable experience and contact with the Legislature. The court has asked for the services of Ben Graham to assist us in communicating with legislators. The Ferraro Group has also offered to assist legislators in their needs for data and information.

Throughout my presentation I am going to mention some reports, so you may wish to make some notes on your slides if you have them. There is some important and valuable information that will assist you with your work as you progress through the legislative session.

I will begin with an overview of Nevada's Judiciary. Nevada comprises 11 judicial districts. As you can see on the map, District No. 1 is in Carson City and Storey County [page 2, Exhibit C]. Judge James Wilson and Judge James Russell sit as the district court judges in that district. It is a very important district because most of the lawsuits that occur in the state involving significant constitutional challenges or administrative department activities will arise or be originated in that district under the *Nevada Constitution*.

District No. 2 is Washoe County. District No. 8, Clark County, is the largest judicial district. District No. 11 may seem unusual. We asked the Legislature to create that district as a means of efficiency and caseload spread. It is served by Judge Jim Shirley. As you can see from the area, he travels the most of any district judge in the state. He has committed to that effort and it has proved to be very successful in providing judicial services to the people who live and work in Pershing, Lander, and Mineral Counties. It has added to the capabilities of the judicial system to provide access to justice in those communities.

This map describes the Nevada court structure [page 3]. It also references the number of judicial officers in each of the various district courts. The *Nevada Constitution,* Article 3, Section 1, describes powers of the government of the state of Nevada to be divided equally

between three departments: Legislative, Executive, and Judicial. The Judicial Branch is a coequal branch with the Legislative Branch and the Executive Branch. The judicial power resides in the *Nevada Constitution,* Article 6, Section 1, and provides the judicial power of this state should be vested in a court system comprising a Supreme Court, a Court of Appeals, district courts, and justices of the peace. There is a separate provision allowing for the creation of municipal courts.

There are seven justices who sit on the Nevada Supreme Court. I have the privilege of serving for my third time as chief justice of the court. The *Nevada Constitution,* Article 6, Section 19, provides that the chief justice is the chief administrative officer of the court system in the state. There are various statutes and provisions that empower the chief justice to undertake various matters relating to the administration of Nevada's court system.

The Nevada Supreme Court handles court cases that are direct appeals of all criminal cases of felony and gross misdemeanor magnitude, as well as all civil cases over a certain dollar amount. The Court has original jurisdiction to entertain various writ proceedings, original writ proceedings, or appeals from a writ proceeding. In this case someone is either being compelled to do something or prohibited from doing something, jurisdiction questions arise, or habeas corpus disputes in criminal cases result in a postconviction review of the particular conviction.

District courts are generally characterized as the general jurisdiction court of our state. They hear all civil, criminal, family, and juvenile cases subject to crime-type jurisdiction. This slide mistakenly reports 82 district judges [page 3]. There are 90 district court judges now since the last session residing in the 11 district courts of the state.

The Nevada Court of Appeals was proposed by the Legislature in the 76th Session and 77th Session. The voters in November 2014 approved, after five tries, the creation of a Court of Appeals. The Nevada Court of Appeals came online in January 2015. It is much different than what most people think about in terms of an intermediate Court of Appeals. We selected a model that is called a "push-down" model, which allows for improved case management and efficiency of the appellate court system.

An error correction court hears cases that are sent down to them after they have been filed with the Supreme Court and have been fully briefed. That court resolves cases of an error-correction type. Infrequently, they may publish an opinion that has legal precedent as it affects other cases in the system. Most cases that the Court of Appeals deals with are error correction cases. They are principally important just to the litigants in that case and do not establish any legal precedent for other case types.

There are three judges on the Court of Appeals. The current chief judge of the Court of Appeals, who was just reappointed, is Michael Gibbons, who served as a district court judge during his career in Douglas County, the ninth judicial district. Also serving with him is Judge Bonnie Bulla, who is a former discovery master in Clark County; and Judge Jerome Tao, who is a former district court judge in that county.

I want to mention my colleagues on the Supreme Court. The Associate Chief Justice is Ron Parraguirre. Justice Lidia Stiglich is on the Executive Committee with Justice Parraguirre and me. Justice Elissa Cadish, Justice Abbi Silver, Justice Kristina Pickering, and newly elected Justice Douglas Herndon, who is a district court judge from Las Vegas, are also on the Court.

Completing the structure of the court system are the justice courts. They are courts of limited jurisdiction. Their jurisdiction is established primarily by statute enacted by the Legislature. They handle criminal, civil, and traffic matters, principally criminal matters that are of a misdemeanor nature, and civil matters that are reduced dollar sums, such as small claims court matters. They handle some re-evictions and various other matters prescribed in the statute. There are 68 justices of the peace who serve in 41 justice courts. In some of our cities, municipal courts have been created. They have limited jurisdiction and handle misdemeanor criminal matters, limited civil matters, and mostly traffic matters. There are 30 municipal court judges who preside in 17 municipal courts around the state.

The Nevada Judiciary is one of three branches [page 4]. The state's ultimate judicial authority under the *Nevada Constitution* is the Supreme Court [page 5]. The Supreme Court is responsible for the administration of the Nevada judicial system, deciding or assigning to the Court of Appeals civil and criminal cases that have been appealed, and engaging in extraordinary writs. The Judicial Branch is exclusively responsible for the licensure and establishment of rules of professional conduct for lawyers and judges. It is the final appellate review for cases involving judicial discipline of judges found to have been guilty of misconduct by the Nevada Commission on Judicial Discipline.

I have already covered the Court of Appeals. This slide restates some of the information I previously mentioned [page 6, Exhibit C].

The district courts [page 7] will hear all felony and gross misdemeanor criminal cases, as well as family, juvenile, and civil cases with a value of over $15,000. All appeals of district court decisions go to the Supreme Court subject to being pushed down to the Court of Appeals.

Justice courts [page 8] have a role in preliminary hearings for gross misdemeanors and felonies. They focus on determining whether a crime has been committed and if there is probable cause that the defendant committed the crime. That process takes place in preliminary hearings in front of the justice courts. That defendant can challenge the information and evidence presented to the justice of the peace to determine whether they should be bound over to the district courts for further proceedings in gross misdemeanor and felony cases. Justice courts also hear traffic cases and civil matters. Regarding small claims, in 2015, the dollar amount limit for small claims was increased to $10,000; civil cases' jurisdiction was increased to a $15,000 limit. There will be a bill this year that is in the Legislature that reconsiders the dollar amount for small claims, reducing it from $10,000 to $7,500. The justice court judges will be appearing in front of you to discuss that bill. The justice courts also issue protection orders and landlord tenant cases involving eviction

proceedings. Justice courts are referred to as the limited jurisdiction courts. The district courts in our state are responsible for appellate jurisdiction over justice court decisions. If someone is aggrieved and wants to appeal a justice court decision, they will appeal to the district courts for that purpose.

I inserted this slide [page 10] for your reference as to which kinds of criminal court cases go into which courts.

In Nevada, there are certain offense classifications [page 11]. Misdemeanors, described in *Nevada Revised Statutes* (NRS) 193.150, are crime types in which the maximum penalty is up to six months in jail and a $1,000 fine, plus administrative assessments that are established from time to time by the Legislature. There is no right to counsel unless jail time is intended upon conviction. Those convictions are appealable to the district court.

Gross misdemeanors, provided in NRS 193.140, are a maximum penalty of up to 364 days in jail and a $2,000 fine. They are ineligible for formal probation. There is a right to counsel at all stages of those proceedings. There are preliminary hearings in justice court to determine probable cause as to whether a crime was committed by the defendant. Convictions are appealable to the Supreme Court and the Court of Appeals.

Felonies are the most serious of crime types. They are broken down into five categories: categories A through E, depending upon severity. This is a system that was established in 1995 when the Legislature created the truth-in-sentencing statutes, but it has been revamped, and many crimes have been realigned as a result of the Judiciary Committee in the last session when Assembly Bill 236 of the 80th Session was passed. This bill is a major criminal justice reform measure that realigns several crimes among categories A through E. That becomes important because it influences the penalties that are assessed for the crimes that are fitting within those various categories. Penalties in this area of crimes can range from 1 year in state prison to death. The right to counsel exists at all stages. Anyone accused of a felony is entitled to a preliminary hearing in justice court for a probable cause determination. Those convictions entered in the district court, by plea or verdict through a jury or bench trial, are appealable to the Supreme Court or pushed down to the Court of Appeals.

Another way in which a defendant may end up in front of the justice system is through a warrantless arrest stemming from an arrest occurring in the officer's presence [page 12]. The arresting officer must file a probable cause declaration with the court. The court must review the declaration within 48 hours to determine whether probable cause exists for the arrest. The court can conduct this review in camera; if the court finds that probable cause detention exists, detention may continue but there are some changes that have occurred with respect to the continued detention and the release of defendants. Sometimes it is referred to as the bail process.

In-custody defendants must be brought before a magistrate within 72 hours of arrest for a warrant or a warrantless arrest for their initial appearance, called an arraignment. Release

conditions and bail are set at the initial appearance, although in some courts, particularly in Clark County, new processes have been developed for the handling of misdemeanor offenses through a first appearance court. Right to counsel attaches at the initial appearance, and the arrest may be made by a warrant issued upon complaint or a summons.

A grand jury [page 13, Exhibit C] is empaneled by the district courts. The grand jury in Nevada is not selected the same way that a regular grand jury is selected. The grand jury is drawn from a pool of individuals reached out by the jury commissioners in the counties in which grand juries are used. It is interesting that grand juries are used in Clark County and Washoe County, and very little in the rural counties in the state. The district courts select the grand jurors to serve and they are responsible for hearing evidence presented by the prosecutor to determine if a person should be indicted or charged with an offense. The prosecutor is obligated to present any exculpatory evidence during that proceeding. If 12 or more grand jurors find probable cause, then a true bill will issue by the grand jury. It is presented to the presiding district court judge supervising the grand jury process at the time, and the defendant will be indicted and subject to arrest. The grand jury process can be used in lieu of a preliminary hearing or in addition to a preliminary hearing if the defendant was not previously bound over. That is subject to some limited exceptions.

An arraignment [page 14] is the first time in a criminal prosecution when a defendant is brought before the court to hear the charges against him or her and to enter a plea. Gross misdemeanor and felony defendants will have a formal arraignment in front of the district court upon bind over or upon following arrest from a grand jury indictment.

At the time of arraignment, the defendant is expected to respond to the plea and make a plea of guilty, not guilty, no contest plea, or other alternative pleas. Oftentimes, there is a point in the proceeding where plea negotiations are reported to the court. The right to counsel applies to all defendants who face loss of liberty. A defendant can voluntarily waive his or her right to counsel [page 15]; however, the district courts are required, under a United State Supreme Court case, *Faretta v. California*, 422 U.S. 806 (1975), to make sure the defendant is knowingly, voluntarily, and intelligently waiving his or her right to counsel.

The preliminary hearing process [page 16] takes place in front of the justice courts when an individual is charged with a gross misdemeanor or felony. We have talked about the probable cause process in the preliminary hearing. The preliminary hearings in death penalty cases must be reported by a court reporter, but all other preliminary hearings can be recorded using electronic means.

A misdemeanor trial [page 17] occurs in justice or municipal courts in front of a judge, if you will, except certain domestic violence cases. In a bench trial there is no jury, and the judge is the finder of fact who makes the verdict determination and later imposes the sentence. There is no right to a jury trial when the penalties are de minimis—less than six months—except in domestic violence cases pursuant to a September 2019 opinion of the Nevada Supreme Court in *Anderson v. Eighth Judicial District Court*, 135 Nev. Adv. Op. 42 (Sept. 12, 2019). That case held that jury trials are available to defendants who request them in misdemeanor

domestic violence cases because of the consequences established by the Legislature concerning that individual's requirement to report and register gun use. The court in *Anderson* concluded that that makes this a serious offense and, as a result, is subject to jury trial on request of the defendant.

Justice courts generally use six-person juries. The statistics from 2017 are not too far off from now. Each legislator should have received the Supreme Court's 2020 Annual Report of the Nevada Judiciary. That booklet contains a breakdown of all the case numbers, filings, and dispositions in the various justice and district courts. It is a valuable resource for you to add context to some of the information we have provided to you.

One thing that catches people's attention is that only 1 percent of non-traffic misdemeanors end up going before a justice of the peace or municipal court judge for a bench trial. Less than 0.2 percent of traffic misdemeanors are disposed of by bench trial. The vast majority of traffic misdemeanor offenses are resolved through the payment of a fine or fee, and the defendants agree to resolve the case in that manner. The vast majority of non-traffic misdemeanors are resolved through plea rather than through a trial in front of a court.

A defendant can waive their right to a jury trial. This slide references fiscal year 2017, but the 2020 reports are similar [page 18]. Approximately 1.3 percent of all felony cases are disposed of through a jury trial. A small percentage of criminal cases end up going to a jury trial. Less than 0.3 percent of gross misdemeanors are disposed of through a jury trial. About 98 percent of the criminal cases in the state are resolved by plea negotiations through a prosecutor and defense counsel or the defendant. The percentages are small but there is a lot of work involved. Many of the jury trials can involve trials that take weeks and are very complex. Even though the percentage looks small, as you can see in the case numbers in the schedules of the annual report, the requirement to conduct those trials and the time it takes to do so is still very substantial. The system is fortunate that most of these cases are resolved by plea negotiations.

In Nevada, a defendant and the prosecution each get preemptory challenges when they are conducting voir dire of jury trials [page 19, Exhibit C]. A significant topic of interest involves the use of peremptory challenges by prosecutors against or having to do with those of racial minority. The Supreme Court of Nevada has established very clear guidelines that district courts are to follow when a peremptory challenge is made in connection with the United States Supreme Court case called *Batson v. Kentucky*, 476 U.S. 79 (1986). It precludes discriminatory conduct in the exercise of peremptory challenges that would strike a minority juror from the case. That also extends to other types of discrimination including gender. That area has been a hot topic for the past several years and I think a lot of the cases that have been decided by the Nevada Supreme Court have established quite a bit of information that deals with how that should be handled in trials that take place in Nevada district courts.

Jurors are generally 12 folks selected from the community. That is an area of considerable interest to know where those jurors came from in the community and how they are identified.

In 2017, the Legislature expanded the sources to be used by jury commissioners when identifying individuals that should be the subject of the venire that make up prospective jurors for jury selection.

If a defendant pleads or is found guilty by trial, there is a sentencing proceeding [page 20] separate from the process that resulted in the individual's conviction. Prior to that hearing, there is a presentence investigation (PSI) report provided by the Division of Parole and Probation. Since A.B. 236 of the 80th Session was enacted last session, PSI reports no longer include a sentencing recommendation. That determination is now entirely within the discretion of the district court after hearing testimony and argument from the prosecution and the defense, and within the sentencing guidelines that are established in the statutes that penalize this particular crime.

Judgments of conviction arise as a result of a negotiated plea or a verdict following a bench or jury trial. The sentence is set, a term of imprisonment and conditions of sentence are established by the district courts, including the imposition of any fines, fees, or restitution. The defendant is entitled to credit for time served if they were incarcerated or detained before the conviction was entered.

I understand you will hear some bills dealing with the death penalty this session [page 21]. The district attorney (DA) must file a notice of intent to seek the death penalty within 30 days of filing of indictment or information. Supreme Court Rule 250 is a rule adopted by the Supreme Court that sets out particularized educational and experience requirements for defense lawyers and judges to participate and hear death penalty cases. The death penalty area is one of the more complex and ever-changing areas of the law. It is influenced by United States Supreme Court decisions on multiple aspects of criminal cases that involve the death penalty. The death penalty can only be imposed following a separate penalty hearing in front of the jury that determined conviction and requires a finding of and then a weighing of aggravating and mitigating circumstances involving the case and the defendant's behavior and mitigation factors. There is an automatic appeal in all death penalty cases directly to the Nevada Supreme Court, and those automatic appeals compel and jurisprudence requires that the Nevada Supreme Court make an independent assessment as to whether the death penalty should be imposed. A few years ago, a study was requested concerning the average cost of the imposition of the death penalty. I believe that report indicated $532,000 more than a murder case.

In Nevada, in addition to the imposition of a sentence provided by statute, certain crimes are subject to enhancements [page 22]. Depending on how the crime was committed, or depending on who the victim was, it might result in further enhancement penalties. For example, a felony committed with the assistance of a child might result in an additional 1 to 20 years beyond the crime itself. The use of a deadly weapon in the commission of a crime may result in an additional 1 to 20 years, depending upon the determination by the district judge. The commission of a crime against an older or vulnerable person and a felony committed to promote the activities of a criminal gang can also result in enhanced penalties beyond the sentence that is imposed by the statutes. There are also offenses for which

penalties increase based upon the number of reoffenses. For example, battery constituting domestic violence has certain levels of offenses. A first offense is a misdemeanor. A second offense within seven years and a third offense within seven years can result in different penalties above the battery constituting domestic violence.

A DUI first offense is a misdemeanor; a second offense within seven years is a misdemeanor; and a third offense within seven years is a category B felony. The DUI area is also unique because the Legislature has created a DUI court, which allows a defendant to avoid the consequences of their first offense by participating in a lengthy and expensive, yet very successful, DUI diversion program. I congratulate the Legislature, who created the program, and the courts, who administer that program. It has been incredibly effective in our state. Another example is unlawful operation of a recording device in a movie theater, which also can have gradations of offenses, from misdemeanor up to a category D felony.

If a defendant pleads to a crime and there is a judgment of conviction and a sentence imposed, or a jury returns a verdict against the defendant and there is a conviction, the defendant has a right of a direct appeal to the Nevada Supreme Court [page 23, Exhibit C]. That case could—depending upon the nature of the case—be pushed down by the Supreme Court to the Court of Appeals. The defendant also has the right for a postconviction review. Usually those are issues presented by the defendant that raise questions concerning the ineffective assistance of his or her trial counsel. That comes up fairly frequently. Once state habeas relief has been exhausted, the defendant may seek federal court post-conviction relief.

Pleas of guilty, guilty but mentally ill, or nolo contendere can be entered by the defendant [page 24]. The district court is required to canvass the defendant, making certain there is a knowing, voluntary, and intelligent waiver of all constitutional rights, and their acknowledgement that they are voluntarily entering into this plea. The court must accept it. There are rare instances where the court rejects the plea agreement, depending on the canvass that takes place and the circumstances of the case.

There are some measures coming before the Legislature that address various aspects of bail [page 25]. I prefer to refer to this topic as pretrial detention. In my opinion, that is a more appropriate descriptor of what we are addressing and the constitutional status of the defendant when they are arrested for a crime. Simply because one has been arrested and probable cause has been found that the crime was committed and the defendant may have committed it, they are still not convicted. Consequently, they still possess certain rights to freedom. This should be assessed and evaluated before they are ultimately convicted through plea or trial. I have listed on this slide, certain information about bails. I want to touch on a few of these to give you terms that you may hear about during various hearings. The defendant must be admitted to bail, under the *Nevada Constitution* and a case called *Valdez-Jimenez v. Eighth Judicial District Court,* 163 Nev. Adv. Op. 20 (April 9, 2020) that was decided last year, unless the charge is one of first-degree murder. Felony parolee/probationer arrest for a different arrest must not be admitted to bail. Mandatory 12-hour holds exist in certain crime types such as DUI, domestic violence, and so forth.

Bail schedules have been a huge part of our system for many years. Various townships and districts set a bail amount for the defendant to pay in order to secure their release pending trial. Years ago, the Committee to Study Evidence-Based Pretrial Release of the Supreme Court studied this subject extensively. It found that the bail schedules in Nevada vary substantially throughout the state by crime type and dollar amount. There were gross inconsistencies between the amount of bail when a defendant was arrested in one county compared to the same crime charged in another county. Consequently, the Committee to Study Evidence-Based Pretrial Release of the Supreme Court has made significant efforts to try to reduce the dependency of the use of bail schedules and instead call for the use of bail hearings. These individualized detention determinations are based upon the defendant's criminal history, ties to the community, and other topics that would assess if the defendant should continue to be detained. As a result, the Supreme Court adopted the use of a pretrial risk assessment instrument that is now used throughout the state. If the defendant's risk assessment shows a flight risk, that is provided to the judge as information to help guide the judge in their detention determinations. The work of the judicial system over the past several years has resulted in many instances where defendants with a first-offense charge are routinely released on the defendant's own recognizance.

In the *Valdez-Jimenez* case [page 26], the subject of bail as a constitutional right for a defendant charged with a crime and an assessment of their detention status was set out. It is the first case in the state's history where significant jurisprudence outlined the conditions to consider with respect to a defendant's detention status pretrial. An interim committee of the Legislature has undertaken extensive work to study this case and this topic. I think there have been many recommendations made for the Legislature to consider embedding some of these provisions into the bail statutes.

Misdemeanor citations [page 27] are issued for minor offenses. Thirty-four percent of the Nevada Supreme Court's budget is funded through administrative assessments imposed on those who get traffic tickets. We are urging all our citizens to commit traffic violations to provide enough money for the Supreme Court to operate. That sounds foolish. I have been on the Supreme Court for 16 years, and I think every year I have urged the Legislature to stop funding the Supreme Court with the use of traffic ticket money. There is no correlation between the two, and it is a foolish thing to do. It also has horrific financial consequences for the Supreme Court to fulfill its constitutional obligations. When you have a pandemic, people are not driving, tickets are not being written, and revenue is cut. We had a loss of 38 percent in administrative assessment revenue because of the pandemic. The consequences are huge for this branch of government when that takes place.

When an individual comes before the criminal justice system, we want to make sure they are constitutionally competent [page 28, Exhibit C] to understand the charges and assist their counsel in their defense. Therefore, there are statutes that prescribe proceedings that allow for the assessment of a person who may be incompetent to participate in the proceeding appropriately. The court appoints two psychiatrists, two psychologists, or one psychiatrist and one psychologist to evaluate the competency of the defendant. These experts provide a report to the court to determine their competency. If the defendant is deemed incompetent,

he or she must be committed to the state mental health facility for a determination of competency or whether they can attain competency, which, in many instances, does not occur. A defendant must remain there until the court releases the individual or the individual is deemed competent through subsequent evaluations and returned to the court to face charges.

The juvenile justice hearing is unique, and the state has undertaken a lot of work in this area to make the process efficient and to deal with children facing juvenile challenges more appropriately [page 29, Exhibit C]. *Nevada Revised Statutes* Title 5 deals with children who are in the juvenile court system. There is a bill in front of the Senate currently that deals with the interplay of protection orders involving juveniles and which court should handle those matters.

I think that covers the overview. I hope it was helpful. I want to reiterate the willingness of the Judicial Branch to offer information, data, and testimony where appropriate to help your members understand and engage in these various issues.

Chairman Yeager:
Members, I recommend you save this presentation to your desktop because I think you will be coming back to it on a regular basis. Anyone who may not be familiar with court, feel free to ask one of the members who is.

Before we take questions, I want to note that Assemblywoman Krasner and Assemblyman Miller are present. I think they arrived right as Justice Hardesty began his presentation.

Assemblyman Orentlicher:
The enhancement of 1 to 20 years seems like a lot of discretion. Are there other parts of the statute that narrow the discretion? If not, have we looked at how this discretion is used? Are other inappropriate factors influencing the application of that enhancement discretion?

Justice Hardesty:
A lot of work has gone into the Nevada Sentencing Commission. The Legislature, in enacting A.B. 236 of the 80th Session, institutionalized the Nevada Sentencing Commission. I would commend its review of four reports that have been sent to the Legislature by the Nevada Sentencing Commission with respect to its work over the last biennium. That Commission is charged with accumulating and evaluating data that we hope will answer questions like the ones you have asked.

The statutes provide that range, and that is generally a discretion exercised by the judge, depending upon the facts of the case. We have urged the Legislature to start making data-driven decisions based on this kind of question. I think over the course of the next two to four years, legislators will be in a much better position by having data evaluations or information from the Department of Corrections (NDOC), the Division of Parole and Probation, and analyzed by the Sentencing Commission, that can make recommendations to you by showing diagrams and describing results and impacts associated with that kind of

enhancement. We have been flying blind in many of these areas, and that was a major motivator for many of the changes in A.B. 236 of the 80th Session. I think it has also had some serious adverse fiscal consequences where you have a high number of people incarcerated for lengthy terms, which are not the same as defendants who have engaged in the same conduct and are subject to the same enhancements. If people have questions, they are more than welcome to email the court and we will do our best to provide information.

Assemblywoman Summers-Armstrong:
Are you collecting quantitative data to see if your efforts are ensuring that juries are more representative of the community?

Justice Hardesty:
No, the AOC has not undertaken that, but that is part of the effort that will be initiated by the Court to determine how that is taking place. I have the privilege of presenting to the Legislature the State of the Judiciary address on March 25, 2021, and part of that address will include an initiative, by me as chief, to evaluate not only this topic, but other various aspects associated with racial equality in the judicial system and implied bias educational needs throughout the criminal justice and justice system. I am hoping that initiative will start us on the path of developing data-driven decisions to examine those questions.

Chairman Yeager:
The Supreme Court has several bill draft requests (BDRs), and when those are put in, it shows it was requested by the Supreme Court. I understand there is a process where other courts of different jurisdictions can submit bill requests. Would you mind telling the Committee about that? And please tell us your position on whether the Nevada Supreme Court officially supports all those bills as a court, or if it is something different.

Justice Hardesty:
The Legislature has extended to the Judicial Branch the opportunity to submit a total of ten BDRs each session. I would argue that is an understatement of the bills necessary to come from the Judicial Branch but that is what we are allocated. Prior to when that was made known, we established a Judicial Council, which includes representation from all the courts throughout the state. There is also a committee within the Judicial Council—the Legislative Committee—which is chaired by the Chief Justice, and that Committee hears suggestions from the Judiciary and court administrators throughout the state for potential bills. As a result of that, we will evaluate and prioritize the suggestions we receive from the various courts to the ten bills we have allocated to us.

The Supreme Court has certain priorities that affect the entire Judiciary. For example, we requested a bill that addresses compensation of judges. The Legislature did not take that topic up last session, but we are hoping it will consider it this session. The reform measure changes the way in which district court judges are paid. Even if it were to pass this reform measure, the district court judges of this state will not have had a pay adjustment for 18 years. We think that is problematic in our ability to attract qualified people to the court. That is an example of a bill that affects the entire system.

There are other bills that will come to you that are proposed for consideration by the limited jurisdiction courts only, because it principally affects them: for example, a bill that addresses the towing of vehicles. Just because these bills are passed on to the Legislature, they do not bear the endorsement of the Supreme Court unless we appear and sponsor those bills directly.

Chairman Yeager:
Thank you, Justice Hardesty. I will remember to clarify that for some of the members when we hear some of those bills. We get bills from all different places, and sometimes there can be the suggestion that because the Nevada Supreme Court's name is on the bill as a requestor that that is supported by the court, but we will remind folks that is not always the case.

Justice Hardesty:
We are happy to distinguish those if that helps you.

Chairman Yeager:
Any other questions for Justice Hardesty this morning? [There were none.]

Justice Hardesty, thank you for spending about an hour with us this morning. I am sure this is not the last time we will be seeing you in Committee. Members, I have found Justice Hardesty to be available and more than willing to help and answer questions. Feel free to reach out to him after this presentation if you have questions.

We will close that agenda item. We will move on to our next set of presentations. Today we have an overview of the Clark County and Washoe County offices of public defenders. We have Mr. John Piro from the Clark County Public Defender's Office, and Ms. Kendra Bertschy from the Washoe County Public Defender's Office. You will see a lot of Mr. Piro and Ms. Bertschy as we process criminal justice-related bills. I want to give them a chance to introduce themselves, give an overview of their respective offices, and then we will have a chance for questions. When you are ready, please proceed with your presentation.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I want to talk to the Committee about public defense in Las Vegas [Exhibit D]. It is our biggest jurisdiction, and we consider it to be the gold standard of public defense in the state. "What happens in Vegas, does not always stay in Vegas." Our Las Vegas Convention and Visitors Authority tends to talk about this slogan. However, a less catchy slogan may be, "Come here on vacation, leave on probation."

The quote [page 2] I have here is by Reinhold Niebuhr, "Love is the motive, but justice is the instrument." This is our guiding premise in the work that we do. We consider ourselves your community lawyers. Eighty-five percent of our community cannot afford a lawyer. We are the first line of defense. We represent your mothers, fathers, sisters, brothers, and cousins when they are accused of a crime. As many of you know, there are a lot of moms in prison. Prior to the passage of A.B. 236 of the 80th Session, Nevada was headed down a very negative trend of incarcerating more women than other states. One-third of those women

have mental illness. After that bill's passage, we took steps and continue to take steps to move in the proper direction.

We consider ourselves to be problem solvers and grace givers. All justice should be tempered with mercy. Dr. Cornel West says that justice is love in public, and that is what we do every day in our jobs.

Before we get too far, Ms. Bertschy and I have picked up some new interns working from home [page 3]. They are more interested in eating bills than reading bills. If I say that the dog ate my homework, I mean it, and they may bark to let you know how they feel.

The case that created our jobs is *Gideon v. Wainwright* 372 U.S. 335 (1963) [page 4]. Mr. Gideon petitioned the Supreme Court by himself for a lawyer. He was convicted in Florida and the case went all the way to the United States Supreme Court. He was appointed a lawyer; he won the case. The case was remanded back down to the Florida court, and the verdict was not guilty on retrial when he had a lawyer. It is important that there are skilled lawyers on both sides of the case.

I want to talk to you about some celebrity public defenders [page 5]. Senator Richard Bryan was the first public defender in Clark County. After the *Gideon* decision, Clark County was on the cutting edge of implementing public defense. We have Assemblywoman Rochelle Nguyen, Senator James Ohrenschall, Chairman Steve Yeager, and Speaker Jason Frierson.

There is a statue of Senator Richard Bryan at the University of Nevada, Reno campus. It has benches all around it so students can sit down with his achievements and public offices that he held. However, one bench is missing, and that is his achievement of being the first Clark County public defender.

We have 121 lawyers [page 6], and that can be plus or minus. We won a lot of elections this year, and many of our lawyers transitioned to the bench. We are broken into teams. We have our own *Miranda* case—not the "right to remain silent" case—but pertaining to Roberto Miranda [*Miranda v. State* 707 P.2d 1121 (1985)]. Clark County was sued for $5 million because new lawyers, with limited skills, were representing people accused of murder and it resulted badly. Now, we have attorneys who specialize in juvenile defense. We have an appellate team, sexual assault team, and murder team. We have track attorneys, of which I am one, and we handle everything else under the sun. Our mental health team participates in our specialty courts, representing people who are in the mental health court system, drug court, and co-occurring court. They handle the civil commitments, which was plus or minus 3,500 commitments in 2019. We have a serious mental health crisis all over the state. In 2020, we had fewer cases filed, but there is a huge backlog. When COVID-19 first hit, the DAs held back about 5,000 cases; then we went on pause again and there was another backlog. We have been getting crushed, and will continue to be crushed, as those backlogs come into the system.

We also try to practice a holistic defense model where we have seven social workers, investigators, and mitigation specialists to help us in our cases. I always tell our social workers they are doing God's work because they help us get our clients into specialty courts and take care of things. We have an immigration advisor on staff, because when you are in the criminal justice system, it can affect your immigration status. One of the most severe penalties that can occur is deportation. There is nothing worse than representing a client who is convicted of a crime, and had he been a citizen of the United States, he would have gone to prison, served his time, and possibly would have come out to be a productive member of society, but instead he may be deported to a country that he has never known or has not been to since birth. That is one of the scariest things we handle in our job.

Another thing that is unique to Las Vegas is tourism. In a good year, we have about 42 million visitors, which adds to our caseloads. We have just started studying data, and it is important that we continue studying data. As Justice Hardesty said, we have been flying blind. Bryan Stevenson, the founder of Equal Justice Initiative, has talked about the death penalty across America and its shocking rate of errors. Nearly one in ten cases are overturned because of an error in the court process or the person was innocent. That is a shocking rate of error. I know I would not get on a flight to Reno; I would drive every time for session if I knew one in ten flights were going to crash.

We carry out the intent of our founders [page 7] because liberty cannot be taken without due process. America's judicial system is considered number one in the world. We are also number one in the developed world for incarceration of our citizens and people on supervision. We have become a plea factory rather than a trial system. The work that we do is very important, and it was part of our founder's legacy. Last session, when we were able to do things together, there was a famous play, *Hamilton*, and now we can only watch that on Disney+. However, Alexander Hamilton and John Adams were both defense attorneys. It is important that you have a defense attorney to step into the gap when fear and emotions are running high because we can only work on being the best when we properly preserve due process. We must make sure the constitutional rights that soldiers fought for, our fellow countrymen fought for, and our founders fought for, are not overrun because we do not like the slow process of justice.

I also want to talk about trauma-informed care, and I thought this picture was relevant [page 8]. We deal with broken people in a broken system. As Maya Angelou once said, "Do the best you can until you know better. Then, when you know better, do better." The question the system asks is, Why did you do what you did? However, trauma-informed care has shown us that the proper question is, What happened to you in your past that brought you here today? The system only sees a crime, but we, as public defenders, see a whole life.

I recently had a trial with a client who was homeless. We obtained a not guilty verdict. When the jury was announcing that verdict, I was elated that my client was not going to be convicted. I turned to him and I wanted to say, You get to go home. He did not have a home to go to. I knew he was going to get released from the jail at 2 a.m. and be back in the same

situation he was in before we took this case to trial. That type of stuff we see all the time. It is the little things that break your heart, and you know the system needs improvement.

I also want to talk about holistic defense [page 9]. The RAND Corporation does in-depth studies on issues all over the nation. They studied holistic defense. They compared the Bronx Defenders in New York, which is the gold standard of public defense, to the Legal Aid Society, which is another public defender agency in the Bronx, New York, that is more traditional like our office. After studying over half a million cases, they discovered that true holistic defense attains better results and less time in jail for clients, which saves taxpayers' money. A day in the Clark County Detention Center costs taxpayers $170 to $190 a day. Every year a client is in the NDOC costs taxpayers up to $25,000 or more. They also show better results in recidivism and better results for the community.

Holistic defense offices have housing lawyers, family lawyers, landlord and tenant lawyers, social workers, and immigration attorneys on staff so they can consider the person's life and try to fix the things they can. We are all trying to work toward a model of holistic defense in Clark County and Washoe County, but we have a long way to go. We work with our partners in the community. It is our hope that these types of committees start all over the state. We have the Criminal Justice Coordinating Committee, where we work together with the sheriff, the jail, DAs, and other community partners to put better solutions in place. In Clark County, we have created an initial arraignment court which allows a person who was arrested to be seen within 12 to 24 hours of arrest to see if they can be released. That helps clear up some of the space in the jail and in the court, as well as create better results for our clients. Our goal as public defenders is to never see another client in county blues again. Once we meet you, we want to work to get you out of the system and to never come back into the system.

We stand with the demonized so that the demonizing will stop [page 10, Exhibit D]. We stand with the disposable so that hopefully the day will come when we stop throwing people away. We stand with those whose dignity has been denied and their burdens too much to bear. We help to shoulder the load. We stand with the poor, the powerless, and the voiceless to do our best to make those voices heard. Pain must be transformed or else it will continue to be transmitted. We work towards redemption.

We have a vertical model of representation. If I start as your lawyer, I am your lawyer from the initial arraignment all the way through the end of your case. I will be there for you step by step.

I want to talk about the *Valdez-Jimenez* decision. The meaning of the word "prompt" is being interpreted differently all over the state. In Las Vegas Justice Court, if you are arrested you will see a judge within 12 to 24 hours to see if you are eligible for release. In Las Vegas Municipal Court, you may not see a judge for three to five days. In Henderson and North Las Vegas, you may not see a judge for three to five days. Henderson and North Las Vegas are not rural counties. The justice you get in Clark County should not be different from the justice you get in Hawthorne, Carson City, or Lyon County. Prompt means prompt. We

must work on this issue, because people should not be getting different types of justice based on where they live in the state.

We are not a "get out of jail free" card [page 11]. If you have committed a crime, there are consequences attached to that. We make sure everyone is looked at individually, on a case-by-case basis. We try to find the right solutions for our clients so they do not enter the system again.

There are challenges facing our offices [page 12]. We have high caseloads; I would say we have overflowing caseloads. We have a lack of community resources in pre- and post-accusation; if you are poor in the state of Nevada, it is easier for you to get services once you are accused of a crime than it is before you are accused. The criminal justice system is an expensive place to solve problems. Oftentimes, I am the first person to recognize that there may be a mental health issue with a client, as well as the first person to send them to a doctor to get a diagnosis. This is very difficult for both our police officers, dealing with mentally ill people on the street, and for us in the system. If we put more resources on the front end, perhaps we would spend less on the back end in the criminal justice system. Our jails and prisons have become the mental health warehouses of our state. One-third of women in prison have mental health issues. Almost one-third or more of people in jail are on some form of psychotropic medication. It is stressing the system. Mental illness is a flaw in chemistry, not a flaw in character. Assembly Bill 236 of the 80th Session helped us take a few steps in the right direction. We are hoping to continue moving forward in that direction.

We cannot incarcerate our way out of our community's challenges. You will most likely hear about sex trafficking during this session. Oftentimes, we are also the first people to recognize a victim of sex trafficking. These crimes are not as cut and dried as solicitation. I want to tell a story about one of my clients. She gave me permission to use her story. Two years ago, we represented a woman who came from a state down South, and she was not wise to the big city. The people who brought her here said there were jobs and money to be made with our economy at that time. When she arrived here with her one-year-old son, they told her they did not want to give her a typical job because that is "slow money." They wanted her to make "fast money." This man broke into cars, stole people's credit cards, and forced my client to go into the store and use these credit cards. This crime was not traditionally on the radar of a victim of sex trafficking. We brought that to the attention of both the police and the district attorney. Instead of dismissing her cases, they made her plea to misdemeanors. Now I am in the process of sealing her misdemeanor record so she can get a better job. It was difficult to get the district attorney down to only misdemeanors. These are some of the difficulties we have in the system. It is a tremendous amount of work to reform a system but if we all keep chipping away, eventually we will get to where we need to be.

Moving forward, we will need more resources for rehabilitation [page 13]. We need drug and mental health treatment before a citizen enters the criminal justice system. Much of the treatment before you are accused of a crime relies on insurance. If you are poor, generally

you do not have insurance. Due to COVID-19, many people have lost their jobs and insurance making the problem even bigger. The goal is to catch people before they are victimized or they victimize others.

We want to work on sealing records. Justice Hardesty talked about the DUI program and its success. We must make sealing records more streamlined, more simplified, and provide more relief for those who did not have it in the past. We must work together. We cannot solve these problems at arm's length using fear and anger to separate ourselves. Mother Teresa's advice is prudent here: the problem is that "we have forgotten that we belong to each other." If kinship is our goal, then we would not be fighting so hard for justice, we would already be celebrating it. I will leave myself open to questions.

Chairman Yeager:
I will have to let my mother know that I have made it officially as a celebrity. She will be happy to know that and she will probably ask me why I do not send money.

Thank you for your presentation. Next, we will go to Ms. Bertschy.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
Good morning. We will be testifying frequently in this Committee. Much of the legislation you will be working on will impact our office, the way we practice law, and, more importantly, the individuals of our community.

I am a felony criminal defense attorney with the Washoe County Public Defender's Office [Exhibit E]. I have been with the office for five years. This is my second session. I am currently on our category A team, dealing with individuals who are accused of murders and sexual assault charges.

One of the biggest cases that involves the public defender's office is *Gideon* from 1963 [page 2]. The Sixth Amendment states that in all criminal prosecutions the accused shall have the right of counsel for his defense. It was not until Clarence Gideon argued that this should ensure that state courts should require a lawyer for not just capital penalties but for other cases as well. This is an interesting case because of the unlikely heroism of Gideon and the large impact this has had on criminal defense cases. As stated by former U.S. Attorney General Robert F. Kennedy, "If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell with a pencil and paper to write a letter to the Supreme Court, and if the Court had not taken the trouble to look for merit in that one crude petition . . . the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write that letter, the Court did look into his case . . . and the whole course of American legal history has been changed."

Since that case, there have been additional cases which ensured that individuals who are accused of crimes have the ability and the right to have an attorney, not just for felony cases but also misdemeanors, as long as there is a possibility of imprisonment.

The Washoe County Public Defender's Office is a creation of state and county legislation. Our mission statement is "to protect and defend the rights of indigent people in Washoe County by providing them access to justice through professional legal representation." Our vision statement [page 4] is "Advocacy, Integrity, and Community." We are the community lawyers. We advocate for the regular members of our society, but we also engage in a lot of community service activities. It is important to our office to be engaged and productive members of our community, not only in terms of being in the workforce, but understanding the needs and assisting to address those.

The Washoe County Public Defender's Office works on juvenile cases, criminal cases, and probation revocation and parole hearings [page 5]. We have an appellate division. We also represent individuals involved in involuntary commitment hearings; when they are suffering a mental health crisis and a hospital, physician, or family is trying to petition to have them remain there, then we represent those individuals to ensure their due process rights are being maintained. The main difference between our office and Clark County's office is that we have a family division; we represent parents who are involved in the foster care system or dependency system.

Here is a slide to see all the places and courts we go to in Reno, Sparks, Incline, Carson City, and Wadsworth [page 6].

As Frederick Douglass said [page 7], "Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob, and degrade them, neither persons nor property will be safe." That is why we practice holistic defense, as Mr. Piro indicated. We try to focus more on getting to know the client, figuring out which services are needed, and implementing life changes to help prevent recidivism. By addressing the core common issues impacting our clients, which are poverty, mental health issues, and addiction, we are hoping to make life lasting changes. It is a philosophy and vision that looks beyond the immediate client and their charges to the protection and validation of their fundamental human dignity and quality of life—for the client, their families, and our community.

I found a good representation of holistic defense from the Quattrone Center for the Fair Administration of Justice at Penn Law [page 8]. They provided me with permission to use this. Everything in the traditional indigent defense model is funneled through the attorney, and it is up to the attorney to find out what resources are available. The holistic defense model has all those resources available for use by the client; we have a one-stop shop to provide information and services to the client. The first indication that they are willing to come forward as a victim or they are willing to start engaging in services is when they are involved in the criminal justice system. According to the RAND study that Mr. Piro mentioned, having holistic defense reduces the likelihood of custodial sentence by 16 percent. It reduces the expected sentence length by 24 percent. An over-10-year study of the holistic representation in the Bronx, New York, resulted in 1.1 million fewer days of incarceration, which saved New York's taxpayers an estimated $160 million on inmate housing costs alone.

Besides being an advocate for someone in court, we are also sponsors [page 9], cheerleaders, role models, counselors, financial advisors, travel agents, housing locators, technical support, dog fosters, Department of Motor Vehicles experts, and it goes on. This shows how much we must be involved to enact change with our clients.

When we first started as an office in 1969 after *Gideon*, we had three attorneys, three support staff members, and one investigator [page 10, Exhibit E]. Now, we have 37 attorneys and we hired 1 new attorney in the interim session [page 11]. We also have an immigration attorney on staff who ensures we are compliant and provides our clients with the most recent information on immigration consequences, since immigration is constantly changing.

We have attorneys and we specialize in groups. I am on the category A felony team. I was a track attorney on the felony team. We have a misdemeanor team, who primarily handle our detention hearings, bail hearings, and 72-hour hearings, and the felony attorneys assist with that too. We have a juvenile team, family law team, and mental health and hospitalization team. We do not have social workers on staff, but we do have a great program with the University of Nevada, Reno where we staff social work interns. Even though COVID-19 caused changes in the program, we were able to keep the social work interns through the semester. We have a mitigation specialist, and that is somewhat unique to public defender's offices. I will not do her justice in saying what she does, but she provides support with additional research. She reaches out to families and organizations to ensure we have what we need to start working on a case, prepare for trial, and prepare for sentencing if necessary. We have a summer legal intern option; due to COVID-19, that has changed. We are hoping to continue to have legal interns since they are invaluable to our cases.

I will go through the criminal justice trends quickly since you have this information provided to you [page 12]. The graphs show the breakdown of cases we have received, in terms of divisions. In 2019 [page 13], the breakdown did not change much from 2018. An individual is now able to have counsel if they are picked up on a material witness warrant, and these cases are included in the appeals, paroles, and miscellaneous division. In 2020 [page 14], we had fewer cases received. It does not really change the amount of hospitalizations or anything like that.

This graph breaks down each month of felony, gross misdemeanor, and misdemeanor cases from July 2019 to May 2020 [page 15]. In March 2020 we had a dramatic decrease in cases received. Here is a breakdown for the different divisions and their cases received from July 2019 to May 2020 [page 16]. In March 2020 there was not a difference for family law cases, juvenile cases, civil commitments, and appeals. For example, if two individuals are accused of a crime in one case, our office can only represent one of the individuals, and we will conflict off the other case that will go to the alternate public defender's office. If they cannot keep it, it will go to our conflict panel. Here is a graph to show how many cases we retain versus cases conflicted [page 17]. I do not have the numbers for 2020, but in 2019, we conducted over 43,000 court appearances on behalf of persons by our office.

In misdemeanor pretrial [page 18], we call it "mandatory pretrial conference for felonies" instead of "mandatory status conference." That is unique to our system. It is not practiced in Clark County. It is a separate hearing where everyone, including district attorneys and defense attorneys, comes to court to resolve cases and figure out what the next steps should be, whether that is a preliminary hearing or trial. It is another option to have, before the requirement of a subpoena, to potentially resolve the case instead of going to trial. Due to COVID-19 we have not had those hearings. It is done by phone call. In Incline Village, they are accommodating the mandatory pretrial conferences by Zoom, where they are sending us into breakout rooms. We are working on different ways to ensure this is available.

Currently, the average felony attorney has approximately 75 to 90 open cases at one time. The average misdemeanor attorney has around 160 open cases at one time. I have the gross misdemeanor and felony cases broken down here [page 19].

The *Valdez-Jimenez* case changed the way we do pretrial detention hearings [page 20]. I provided the *Valdez-Jimenez* case in the materials [Exhibit F]. I also provided an article from *Nevada Lawyer* magazine that was written by John Piro, which explains the *Valdez-Jimenez* case, since it is a complicated and impactful case [Exhibit G]. The goals of the *Valdez-Jimenez* case are to ensure that someone accused of a crime is afforded equal protection under the law, no matter where they are located, and to create a fair and just system.

When someone is arrested and they first go to a detention facility, they meet with staff members to be medically cleared, then they are provided paperwork to have a public defender appointed to them, and then they meet with someone from pretrial services to fill out the Nevada Pretrial Risk Assessment (NPRA). That form is provided to the judge to do an initial review hearing. You will hear more about the NPRA, in terms of the concerns regarding racial bias and potential bills in order to make sure we are tracking the system to ensure that it is working correctly and that the system is evidence based. The judge determines if someone should be released after reviewing the NPRA and the probable cause sheet, which is the initial report that an officer will fill out after someone has been arrested. A judicial review is done without input from public defenders or district attorneys in order to determine the initial bail amount. We do not have a bail schedule, so it is up to the judge to make that decision. That is when they decide whether or not to issue a no-bail hold, where that person would not be able to post bail until the first court appearance.

In Washoe County, there are differences between which court you are in. In Reno Justice Court, you will have your bail hearing the next business day at the first appearance docket. In Sparks Justice Court, your bail hearing will be the third business day after your arrest. It is called a 72-hour hearing where we request for a person's release. The third business day was due to negotiations. There was some original talk that the third business day hearing was going to be at the mandatory pretrial conference, which happens 14 days after the first appearance. The district attorney's office agreed with us and they worked to ensure that we have bail hearings prior to the 14 days after the first appearance.

We do not represent individuals in municipal court. I am aware of cases where college students who have no criminal history are in municipal court for misdemeanor charges and held on a no-bail hold for four days. That is why this is an important issue, especially because there is no standard of when these hearings are taking place. It is hard for us to tell clients exactly when they are going to have their hearing. We are working on making that clearer, as well as figuring out how clients can be informed of what their bail is prior to that hearing. When a judge does a review and sets the bail amount, we do not have an opportunity to speak with our client to tell them the bail amount. Their family members must figure out how to navigate the system to see what is going on and what they can do.

We have a designated team to represent individuals. We changed this after the *Valdez-Jimenez* decision to provide representation to our clients as quickly as possible. We have a misdemeanor and felony attorney every morning in court representing these individuals in Reno Justice Court. We also have an investigator who is reaching out to confirm housing situations and employment. In Washoe County, the district attorneys are unable to email us criminal history sheets, so we have a secretary who picks up the criminal history sheet and uploads it to assure the attorney handling the case has the information. If anyone is interested in watching these bail hearings, please let me know. They are online.

We do have some unique features [page 21, Exhibit E]. Since I went over them before, I will not spend too much time here. We ensure that our clients understand what their collateral consequences are if they are convicted of anything.

I want to go back to the bail hearing and note that if someone is granted an own recognizance release, that does not mean they are released right away; they still have to go to the booking process before being released, and that can take several hours. I do want to note, there are some issues regarding the timing of release—for example, the client's phone is dead, the bus or bus stop is not available, et cetera. We have detectives who go above and beyond to make sure our mental health clients have transportation arranged when they are released so we can provide them direct transportation to facilities.

COVID-19 has impacted our office [page 22]. We have been working with stakeholders to figure out creative ways to continue to hear cases. Zoom hearings have been new. We have learned how to use this technology. More importantly, we have had to teach our clients how to use this technology, which at times can be extremely difficult. I spent almost two weeks helping a client figure out how to use Zoom, and despite not having the appropriate equipment, not having a smart phone, and being housing insecure, we were able to make it work.

We do have a lot of new procedures. We were able to hear three jury trials before we were shut down in November. The court room has been retrofitted to have plexiglass between clients, counsel, and jurors. We have a headset to speak with the court. We also have a separate headset we use to speak with our client, so it makes it difficult to navigate properly in the court room. We have changed to using a shared drive; our stakeholders and our court indicated, due to COVID-19, the concern with passing documents. We had to reinvent how

to introduce evidence and impeach people. We have had to reinvent how to do things to accommodate these unique circumstances.

We just started our criminal settlement conferences. I know that Clark County was utilizing that earlier. I believe we had our first one during COVID-19. That is something we are trying to utilize to resolve cases, but that is only if that is what our client wishes to do. Our office went paperless due to COVID-19. Luckily, we have many forms of communication with our clients. The Washoe County Sheriff's Office implemented JailATM, which is an email system that allows our clients to email us free of charge. This allows us to have effective communication, especially when our clients are placed on quarantine or if there are allegations that someone else in their unit has been exposed to COVID-19. Additionally, we are utilizing Evidence.com. It is a cloud-based digital evidence management system that allows police departments to upload the video evidence captured by their body cameras. A police officer will upload the body camera footage, and the district attorney releases it to our office. We are still experiencing some delays with obtaining the body camera footage, and this can only be done if the officer remembers to turn on the body camera.

We implemented a social justice committee within our office, due to the death of George Floyd, in the wake of the protests and what we have been seeing in our own community. We are working to provide community members with the ability to receive equal justice by ensuring that we are trained properly. We are reaching out to different stakeholders to schedule workshops. For example, we continue to have workshops with national experts on race, implicit bias, and how to utilize these trainings in the justice system when speaking to different partners to help everyone understand the issues that are in our system. That is being done voluntarily, not for continuing legal education (CLE) credits. For CLE credits, we work to provide our attorneys in-house trainings, and we also provide those for members of the defense bar, whether or not they are part of a public defender agency. We also participated in the sheriff's first community resource fair. We are working to ensure we are active and out in the community.

We heard a lot from Justice Hardesty about A.B. 236 of the 80th Session [page 23]. I want to thank this Committee for the hard work on that. It reinvented the penalty phases and incorporated the veteran court and specialty court programs. We have had several individuals who found this extremely successful and I appreciate the work that was done. I have a client who wishes to indicate that because of these programs he was able to reunite with his family. He asked me to express our thanks to this Committee for their hard work.

As I indicated, you can see everything online for our different court proceedings [page 24, Exhibit E]. Feel free to reach out to me if you would like to observe any hearings.

With the Zoom hearings, you will likely hear my dog Molly. I wanted to provide the Committee with some visuals of my lovely sidekick during this session [page 25].

I think this quote expresses what it is like to be a public defender. It is not an easy occupation especially during times of COVID-19. "Public defenders stand alone, armed only

with their wits, training, and dedication. Inspired by their clients' hope, faith, and trust, they are the warriors and Valkyries of those desperately in need of a champion. Public Defenders, by protecting the downtrodden and the poor, shield against infringement of our protections and, in reality, protect us all." [*Hightower v. State*, 592 So.2nd 689 (Fla. 3rd DCA 1991).]

Thank you for listening to this presentation. I look forward to working with the Committee and ensuring that we protect the rights of our fellow Nevadans.

Chairman Yeager:
It is understandable that we may have some pets in the background, but please make sure no cat filters on your Zoom when you log in. If you have not seen that video yet, you should watch it because it will definitely make you laugh.

We have a little time for questions, but we must leave time to hear our bill. I will recognize two members to ask questions, and if there are additional questions, you will have to ask them offline. I assure you that Mr. Piro and Ms. Bertschy are accessible and responsive.

Assemblywoman Summers-Armstrong:
I have been concerned with record sealing. Are the folks who have requested their records to be sealed running into issues with compliance from the district attorney's office?

Have you been able to assemble any data for those who have had their records sealed, yet background checks are still finding their criminal records through the availability of information on the Internet?

John Piro:
Sometimes there is a roadblock with the district attorney's office. If that is the case, we can bring it before the court to sort that out. It is up to the judge's discretion. We have had some difficulties with that. There was a recent Nevada Supreme Court case relating to record sealing.

The second part of your question may be better directed to Nevada Legal Services to see if they have been keeping the data. I apologize but our state, and even our office, has not been doing a good job of keeping data. That is probably something we should be tracking.

Assemblywoman Hansen:
I have been concerned with COVID-19 and the impact this has on the Sixth Amendment right for defendants to have a speedy trial. I was quite alarmed to hear of the backlog. I know it is out of everybody's control and we have never navigated the waters of a pandemic before. I am curious how this is affecting your clients. How long have some of your clients been detained, waiting for their right to a speedy trial?

John Piro:
The backlog is frightening. I have a trial that was waiting from even before last session. I am thankful that she is out of custody, but she has been on high-level electronic monitoring

since December 2018. The backlog is frightening to all of us. I think the district attorneys will have an increased caseload. We will most certainly have an increased caseload. I think we will see people waiting in custody for potentially a year or more before a trial is heard. That is going to lead to bad results for everybody.

If there is a crime committed in a poorer community, sometimes the witnesses are transient and sometimes our clients are transient, their phones are getting shut off, or they are facing eviction. They are harder to get in touch with. Then, a bench warrant is issued, and they are placed into custody. Their trial is reset in the ordinary course, which means instead of a speedy trial—which was already waived since they were out of custody—their trial will be set six or seven months down the line, depending on the court's calendar. This backlog is frightening us, and I think it will cause a serious problem in our system.

Kendra Bertschy:
Our courts have been working with stakeholders to prioritize those individuals who asked for their right to a speedy trial in our flights for resuming jury trials. I had a trial with an individual who was the first one to be continued due to COVID-19 back in March 2020. We set his trial for November 2020, and unfortunately, due to individuals on the case testing positive for COVID-19, that trial is still pending for March 2021. Hopefully, the jury trials resume. That person is still in custody.

Chairman Yeager:
Mr. Piro and Ms. Bertschy, thank you for spending time with us this morning. We look forward to having you in Committee on a regular basis.

We will close the presentations. I will formally open the hearing on Assembly Bill 17, which revises provisions relating to the discharge of certain persons from probation or parole. I want to welcome back to the Committee Chief Lawson, who will present the bill to us. There is a short PowerPoint presentation that is available online. We will take questions at the end of the presentation before moving to testimony in support, in opposition, and then neutral.

Assembly Bill 17: Revises provisions relating to the discharge of certain persons from probation or parole. (BDR 14-334)

Tom Lawson, Chief, Division of Parole and Probation, Department of Public Safety:
I am honored you are hearing our bill first.

Under existing law, the court is responsible for ordering either an honorable or dishonorable discharge for probationers who are completing their term of supervision by the Division of Parole and Probation [page 2, Exhibit H]. For parolees, the Division issues the discharge and reports that finding back to the State Board of Parole Commissioners. Historically, there has been a distinction between honorable and dishonorable discharge. That distinction is related to the restoration of civil rights of the supervised individual upon completion of their term of supervision.

During the 79th and 80th Sessions, legislative action eliminated the distinction between the rights restored following the honorable versus dishonorable discharge. Now, the restoration of rights is the same regardless of the type of discharge received by the supervised individual. Due to the lack of distinction between honorable and dishonorable, considering civil rights are restored identically in either case, the Division seeks to remove the distinction of honorable versus dishonorable discharges from the applicable statutes and issue a general discharge for everyone expiring supervision [page 3]. This would be a beneficial change since the continued classification of dishonorable versus honorable discharges could be misleading to the prosecutors and the courts for future prosecution sentencing decisions. This practice could lead to individuals who are dishonorably discharged due to circumstances beyond their control and categorized inappropriately in future criminal justice actions.

Relatively compliant offenders receive dishonorable discharges currently, and relatively noncompliant offenders receive honorable discharges based on the wording within existing statute that differentiates between honorable and dishonorable. This change would help to alleviate the procedural distinctions that we are realizing cause delays in the offender receiving their discharge paperwork from the court. Sometimes there is a difference between the judge's view of whether it should be an honorable or dishonorable award and what the statute requires us to recommend. At times, the judges choose not to sign the discharge, and then the offender is in a state of limbo. We do not have the legal authority to continue supervising them since they have expired their term; however, they do not have their official discharge document because that process is not followed. By eliminating that distinction, we feel it would speed up the process and allow those cases to proceed more expediently.

Additionally, the distinction could limit former offenders' options and opportunities to gain access to supervision in the future if they were labeled as honorable or dishonorable. In the current environment of justice reform, it is incumbent upon the state to examine all processes. Some processes create obstacles and barriers to continued rehabilitation and access to assistance. The assertion of honorable and dishonorable discharge is one possible obstacle, and the elimination of the requirement allows for an individual to be assessed on the merits of their criminal record in factual compliance during supervision, and not on a potentially erroneous and unnecessary label. These changes do not impact any of the recently added language from Assembly Bill 236 of the 80th Session relative to the early discharge of offenders from parole or probation. The changes made to the statutes last session do not provide a distinction for early discharge. Offenders are eligible for an early discharge, but it does not define whether that discharge should be honorable or dishonorable.

One element we did not think about when we wrote our executive bill draft was in terms of the reporting requirements made in A.B. 236 of the 80th Session relative to our reporting to the Nevada Sentencing Commission [page 4]. Our friends at the Department of Sentencing Policy pointed out that we missed some conforming language in our bill to address the report we provide to the Department of Sentencing Policy and their creation of that report to the Sentencing Commission. We worked with them, and they offered this friendly amendment that we would ask the Committee to consider as it evaluates the bill. It makes a conforming change to the reporting requirements of the Division. Should Assembly Bill 17 be approved,

the incorporation of this removes the distinction of discharge from the report elements we provide to the Sentencing Commission through the Department of Sentencing Policy. In addition, we reached out to the other stakeholders that may be impacted by this bill, specifically the ACLU [American Civil Liberties Union] and the Washoe County and Clark County Public Defender's Offices. We also spoke to the prosecuting attorneys for Clark and Washoe Counties, as well as Chairman DeRicco from the Parole Board. Our conversations with Mr. Piro and Ms. Bertschy have been very positive, and I will let them speak their view on this.

The district attorney's offices expressed some initial reservations about the bill regarding the changes, and we are having ongoing conversations with them to try to alleviate their concerns. The distinction of type of discharge is a consideration for them for future charging decisions. We are working to find a way to provide them the essential information they need for those future charging decisions, either via the presentence investigation (PSI) reports or our discharge reports, to ensure that they have the full picture of the individual's compliance with supervision history rather than just the one-word descriptor.

I appreciate your time today. I am happy to answer any questions the Committee may have regarding the bill.

Chairman Yeager:
Was this amendment offered by the Department of Sentencing Policy? Do you, as the bill sponsor, consider this to be a friendly amendment to the bill?

Tom Lawson:
Yes. We worked closely with the Department of Sentencing Policy. It is certainly a friendly amendment.

Assemblywoman González:
What happens to people who may have these distinctions in their release and they come back into the system? If we are no longer giving these distinctions, are they still showing in their record?

Tom Lawson:
The prior term of supervision will remain in the offender's criminal history. Instead of the previous supervision history showing honorable or dishonorable, it would show that they were discharged from supervision. The description of their compliance with supervision would be contained in the discharge report, which is provided to the court and is available to the prosecutors for future charging decisions so they can view the technical violations or other issues that the person had with supervision. The information is still available, and we are attempting to find a resolution with the prosecuting attorneys to give them the actual supervision information rather than the one-word descriptor.

Assemblywoman González:
Are you going back into their files to change the description? If that person were to come back, would it say they were just discharged?

Tom Lawson:
Thank you for clarifying that. No, this would only apply to future discharges. After the effective date, any discharge issued for parole or probation would be a general discharge. We would not go back and reclassify previous discharges. That is not the intent here. To put that into scale, since the start of our oldest system, we have about 250,000 offender records in that system. That would not be feasible to reclassify all those.

Assemblywoman Krasner:
What would a person have to do initially to receive the moniker of "dishonorable discharge"?

Tom Lawson:
The qualifications for an honorable or dishonorable discharge are covered by the statutes we are looking to amend here. *Nevada Revised Statutes* (NRS) 176A.850 covers the requirements for probation. *Nevada Revised Statutes* 213.154 and NRS 213.155 cover the parole side of it. Some of that is tied to their ability to pay fines and fees. There is a general statement regarding compliance. It is very open-ended. There are some discretionary elements of the court where they would deem them to be compliant.

In section 2, subsection 1, paragraph (c), of the bill, a person may be granted an honorable discharge from probation by order of the court if they have demonstrated fitness for honorable discharge but because of economic hardship, verified by the Division, have been unable to make restitution payments and essentially have fulfilled the conditions of probation for the entire period thereof.

In section 4, subsection 1, of the bill, "The Division shall issue an honorable discharge to a parolee whose term of sentence has expired, if the parolee has fulfilled the conditions of his or her parole for the entire period of his or her parole; or demonstrated his or her fitness for honorable discharge but because of economic hardship, verified by the Division, has been unable to make restitution payments as ordered by the court. The Division shall issue a dishonorable discharge to a parolee whose term of sentence has expired if the whereabouts of the parolee are unknown; the parolee has failed to make full restitution as ordered by the court, without verified showing of economic hardship; or the parolee has otherwise failed to qualify for an honorable discharge pursuant to subsection 1."

Most of the distinctions are tied to fines and fees and their ability to pay. I can think of a specific example of a lady who owed over $200,000 due to an embezzlement case. During her term of supervision, which was approximately 15 months, she was able to repay $40,000 of that amount, which is a substantial accomplishment given the likely earning potential of somebody with a felony on their record. This person has made a significant effort to pay their restitution, but it is arguable if that was enough to earn honorable discharge. We have people on record who have been labeled as a dishonorable discharge, even though they gave

a good effort towards paying their restitution and fees but were incapable of doing so within the supervision term, given the amount owed or their earning potential. My worry is that if somebody has a choice of making a restitution payment or putting food on the table for their children or housing their family, it is a simple decision for most people to make. When they do provide as much as they possibly can while meeting those basic health and safety needs, to label it as a dishonorable discharge is relatively unfair, and that is one of the things we are looking to address here.

Assemblywoman Krasner:
Is it only not paying restitution that constitutes the dishonorable discharge? For example, there is a child molester who is out on parole and probation, and they are hanging around a preschool every day, which violates their terms of parole and probation. Would they not be labeled as a dishonorable discharge?

Tom Lawson:
In that case, that would be a violation and possibly a new crime committed. That would be part of their fulfillment of conditions of their term of supervision. It is not labeled within statute. A judge could possibly label that as honorable. That is within the discretion of the court. All those factors would be considered. That would be part of the compliance with terms of supervision of whether they are awarded an honorable versus dishonorable discharge. The compliance of supervision would be documented within the discharge report and referenced in a future PSI. Regardless of that one-word descriptor, the factual information regarding their compliance with supervision for future prosecution and placement of supervision determinations would be available to both the court and the prosecuting attorneys.

Chairman Yeager:
I have a clarifying question. Nothing in this bill would prevent the Division of Parole and Probation from seeking a revocation of parole and probation and asking a judge to send someone back to prison if they were to do something that egregiously violated their terms of supervision; is that right?

Tom Lawson:
Yes. That is a very good point. This only deals with the out-processing of the supervised individual as they expire their term of supervision. If they are noncompliant to the point of multiple technical violations and intermediate sanctions matrix, where there are repeated offenses that have escalated to seeking revocation; or if the offense was egregious enough to seek revocation immediately; or if they are being charged with new criminal offenses, then that would not be addressed here. That would be independent. Assemblywoman Krasner's example of the convicted sex offender who was at the park or actively soliciting children, that would be addressed independently of the discharge. Those facts would be placed within the discharge records of the current case before initiation of the next case.

Chairman Yeager:
If you get probation from a judge, there is always a suspended sentence that you are given. A judge would sentence you to jail or prison time and hold that sentence over your head to see how you do on probation. If you do not do well on probation, then you go back in front of the court, and the judge can impose that time and send you to prison or to jail to do your actual sentence. We are not talking about that piece today; that is known as revocation. I think what we are talking about today is when you get to the end of the line, and parole and probation looks at how you did and whether to recommend an honorable or dishonorable discharge.

Parole is when you are already in prison, you get released, but some of your sentence is still hanging over your head. You must follow conditions of parole and if you do not do well, then a judge can send you back to serve the remainder of the sentence. I just wanted to be clear that we are not tying Parole and Probation's or a judge's hands to say you cannot send someone back to do the rest of their sentence if they are performing poorly on parole and probation.

Assemblywoman Cohen:
After listening to you, I now understand the point of the bill. We have this one-word descriptor that is not always accurate, and that is harmful to former offenders who are trying to get their life back.

The vast majority of us do not know that the one-word descriptor is inaccurate; "honorable" sounds good and "dishonorable" sounds bad. When a former offender had that certificate of honorable discharge, they had something they could show to anyone in their sphere as they are getting jobs and looking for homes. They would use their certificate to show they were released honorably. It shows they are getting their life back together and complying with the law and the terms of their probation or parole. Is there any alternative now for someone to show their progression and that they are on the road to being a good citizen?

Tom Lawson:
The current law for both parole and probation requires that the offender, upon discharge, receive a document outlying the restoration of their rights. That would not change with this law. The only thing would be the one-word descriptor. Beyond that, there was no detail of their technical violations. In that descriptor was the type of discharge and reinstated rights. I do not know a way that would demonstrate that well publicly. You are talking about someone's criminal history. Is there a desire for the offender to share that publicly? Maybe, if it was positive. To do that, you would have to show both the good and bad on that document, which may slow the process down initially but also would not reflect the overall performance. For someone who is not adjusting well at the initial part of their term but they come back strong through counseling and wraparound services, if you list all the bad things on that discharge, that may be biased in the same way as the word dishonorable later on, when they complete the term successfully at the end. They did not get revoked, and that is a success. They finished their term of supervision and reintegrated into the community.

Assemblywoman Bilbray-Axelrod:
Chief Lawson, your presentation today got me to a level of comfort that I did not have by only reading the bill last night.

What effect, if any, would this have on people's ability to have their records sealed?

Tom Lawson:
The record sealing statutes do not talk about whether you are discharged honorable or dishonorable. The qualifiers for record seal are primarily related to time—following completion of your term of incarceration, or if you were to expire in prison, or following your term of supervision. I cannot think of any impact there. Likewise, the statute requires that all interested parties—the Division, the Parole Board, and the district attorney's office—have the opportunity to comment on a petition for sealing. In that case, the facts that were included in the discharge report or PSI could be the basis for the prosecutor. The prosecutor of the case may not be the one who is solicited for comment upon record seal when we are looking at terms of 10 years and things like that following the offense. The documentation for their compliance with supervision, if it were to be considered for those responses, would still be available given the change.

Assemblywoman Kasama:
You said the dishonorable status could be for lack of payment. Could it be for poor supervision—not enough to have them go back to jail—but they were not following the supervision well, and there was lack of payment? Would that be something that would fall into the category of dishonorable?

Tom Lawson:
Yes. That would be under the compliance of the conditions of parole or probation.

Assemblywoman Kasama:
Help me understand where this certificate is used. The certificate is issued at the end of the process, with either dishonorable or honorable discharge. Where is that used? Is that brought up if the person is arrested again? What is the importance of the certificate and how does it help that person?

Tom Lawson:
It would not be used at the time of arrest. I would not consider it to be used at the time of a prosecution decision or at sentencing. The facts will be used in those determinations by the district attorney's (DA) offices and the court. The offender would use it when they show up to vote. If there was a dispute on whether they were eligible to vote because of their criminal history, then the form is available to them to show their discharge and statement of restoration of rights. That is still provided to that person upon discharge moving forward.

Assemblywoman Kasama:
For clarification, the main purpose of this would be for qualification for voting. If you are honorable, you can be restored the right to vote. If you are dishonorable, you would not have the right to vote. Is that correct?

Tom Lawson:
That was just one example. The discharge document provided to the offender upon completion of their term of supervision for parole or probation must include a statement explaining their restoration of rights. The right to vote is just one of those rights. Another right is the right to appear as a jury member in civil versus criminal cases, and those are defined and have different timelines of when those rights are restored.

Assemblywoman Kasama:
If you were dishonorable, you could not serve as a juror. Is that correct?

Tom Lawson:
The 79th Session and the 80th Session both altered the timelines of restoration of rights. Now, following the 80th Session, the restoration of rights is identical for both honorable and dishonorable discharge. That is one of the driving forces behind this bill; if there is not a difference between the offender moving forward with an honorable or dishonorable discharge, then is that one-word distinction necessary?

Assemblywoman Kasama:
On the friendly amendment, you have written things that need to be included for future reference. I did not see on here if restitution had not been paid. On this amendment, you are talking about supervision issues and recidivism rates. The person and the court are getting this history, but I do not see it being summarized if they fully made restitution or not. Should that be added to that amendment?

Tom Lawson:
I do not believe that restitution amount owed would apply to the friendly amendment. The friendly amendment is merely making conforming changes to the data that the Division is required to provide to the Department of Sentencing Policy for their annual report to the Sentencing Commission on certain statistical elements of parole and probation and the Department of Corrections. Right now, we have to tell the Department of Sentencing Policy how many people were discharged by type of discharge. If there is only one type of discharge, then the necessity to distinguish that in the report goes away. The only change in the friendly amendment relates to if we were to remove the distinction of honorable versus dishonorable for both parolees and probationers, then the Division does not have to distinguish honorable versus dishonorable in the annual report we provide to the Sentencing Commission. The restitution is not altered under the respective statutes for discharge of probationers and parolees that we are seeking to amend [NRS 176A.850 and NRS 213.154]. The obligation of restitution does not go away. We worked closely with the Legislative Counsel Bureau on the drafting of the bill to ensure that it was clear that upon discharge the

obligation to pay restitution continues. It says specifically in the statute how it becomes a civil liability at that point.

Assemblywoman González:
What is the overall weight of this one-word descriptor in the discharge process? You previously stated that for someone who cannot pay restitution, it is unfair for them to have a dishonorable discharge. What is the actual weight that these words have that you see in your everyday cases? What is the real need for this to change?

Tom Lawson:
I cannot speak on behalf of all those who review the discharge in one view or the other. It is asking those who would look at the person's criminal history for future decisions to delve into their actual supervision history and not rely on a single descriptive word to classify their entire behavior. You may have someone who comes out of prison and does not adapt very well to the changes or their economic situation, but as their supervision term continues and they receive some services and establish a job to provide for themselves, then they are more compliant as the term of supervision goes on. They may have had difficulty at the beginning, but they are very successful at the end. To only be judged on that initial period of difficulty and adjusting, and classify it as the overall term of supervision, does not accurately represent the positives that individual attained throughout their term of supervision. We are eliminating that and requiring someone to look at the overall descriptor or facts of their supervision case, and then make a determination of whether they did a good job overall, based on the totality of the circumstances, instead of one word. That is the ask for some of the outside stakeholders.

It streamlines the process for us in terms of focusing on the discharge. We expect that shorter probation terms, early discharges, and some of those other things are going to speed up the supervision process for us administratively and streamline that process in terms of not having to debate the facts of an honorable versus dishonorable discharge. It will help the Division. It is not that we are not providing the factual information for the decision makers to make an accurate assessment of that; it is that we are not providing it in a simple one-word descriptor.

Chairman Yeager:
Do any other members have questions? [There were none.]

Chief Lawson, you are free to stay on the line and make some concluding remarks at the end of the hearing. Thank you for your presentation.

Now we will go to testimony in support. I think I have one or two on video in support. I am going to ask them to try to keep their comments to two minutes.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We are in support of this. We thank Chief Lawson for bringing this bill to us. I want to answer some of the questions that were brought up.

Assemblywoman Krasner, in the situation you brought up, that person would probably go to jail or prison for violating their terms of probation.

The change in the wording removes some of the arbitrariness of the criminal justice system, and that is why we are fully in support of this legislation.

Assemblywoman Kasama, you brought up restitution. That would not be used in a PSI. Under law, restitution can be boiled into a judgment that a victim can then collect on if it was not fully paid during the time of supervision.

We are in support of this bill. It will remove some of the arbitrariness of the criminal justice system between who gets dishonorable and honorable. When their sentence ends, it is just a discharge. For sentencing purposes, going forward, a PSI would tell the court whether a person went back to prison or jail on probation. The court would know if a person picked up a new charge after probation and if that person was successful on probation, based on whether they went back to jail or prison during their term of probation.

Chairman Yeager:
Any questions for Mr. Piro? [There were none.]

Ms. Bertschy, did you want to provide testimony in support as well?

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
Yes, please. We are in full support of this bill as well as the friendly amendment. We thank Chief Lawson for allowing us the opportunity to work with him on this bill to ensure we are doing everything we need to advance what this Committee did last session with A.B. 236 of the 80th Session.

The judgment that Mr. Piro mentioned is called a civil confession of judgment that is done all the time to ensure that victims receive their restitution. That is outside of the criminal case. It is done in the criminal case, but when the case is closed, then there is still that civil case for victims to receive their restitution.

If there were any issues with someone's probation, that information would be outlined in the PSI regardless of the definition or how it is determined. However, if someone receives a dishonorable discharge just because of financial inability to pay, that information is not included in a PSI report. That is why this is extremely important to ensure that the inequities that are currently in our justice system are resolved.

Chairman Yeager:
Any questions for Ms. Bertschy? [There were none.]

We do not have anyone else on video in support, but we may have callers on the phone.

Nelda Weygant, Private Citizen, Las Vegas, Nevada:
I am with Return Strong: Families United for Justice for the Incarcerated. I am here to talk about honorable and dishonorable discharge from parole and probation. In my experience, I have been both honorably and dishonorably discharged. Prior to my dishonorable discharge, I was unable to pay restitution, penalties, and fines due to my financial hardship. I would also like to say that during this time I was depressed due to the financial situation. I had pressure from the Department of Motor Vehicles to complete my probation on time. I was just honorably discharged a few days ago. Before being submitted to the judge, I was required to pay all fees and restitution and was told that even if I got a traffic ticket, I would be denied. Since I was released from jail, I have been diagnosed with multiple health and mental health problems. I was still required to keep to a job and pay everything before being submitted. From being dishonorably discharged to being honorably discharged, I feel a big gain in my self-worth. Being dishonorably discharged from probation made me lack self worth. Being honorably discharged made me feel more self-worthy because I can make the payments now and I could not then. I am in favor of A.B. 17. Thank you for your time.

Chairman Yeager:
Thank you for your testimony.

Sarah K. Hawkins, Chief Deputy Public Defender, Clark County Public Defender's Office; and President, Nevada Attorneys for Criminal Justice:
I am testifying in support of A.B. 17.

Assembly Bill 17 promotes the interest of justice for those who, unfortunately, come back to the system. I am also a public defender, and I do not want my clients coming back into the system. I think A.B. 17 does more than that. It incentivizes not coming back into the system. It contains benefits to all Nevadans including victims of crimes. I will focus my comments there.

Assembly Bill 17 rightly acknowledges that parolees and probationers who comply with substantive, nonmonetary conditions should not be penalized for poverty. Trying but being unable to find a job, making substantial efforts to pay restitution but not paying in full, and inability to earn enough money to pay all fines and fees, but otherwise complying with substantive conditions—these efforts are not dishonorable; they are symptomatic of poverty. Persons who transition from incarceration to parole or probation rarely have financial resources. Even when they do, it is almost never enough to cover human needs like food, housing, and medical care, much less restitution and other fines and fees that are associated with community supervision. We believe a dishonorable discharge exacerbates these challenges.

The reality is that DAs and judges use the word "dishonorable" as shorthand in judging whether a criminal record sealing petition should be granted. Excising honorable and dishonorable distinctions from the law, as A.B. 17 does, will transform this practical reality to serve the interest of justice. No person should be judged on a single word. Having a record sealed opens a world of possibilities in terms of employment—employment that ensures restitution is paid to victims after the expiration of a parole or probationary term. The challenges of those who transition from community supervision will be eased. We may even see recidivism reduced. Nevada Attorneys for Criminal Justice's only request is that this Committee consider amending A.B. 17 to apply the presumption in favor of record sealing retroactively to all probationers who have been dishonorably discharged. This is a small addition to an already excellent piece of legislation and will ensure that its goals are fully actualized to the benefit of all Nevadans.

Chairman Yeager:
Thank you for your testimony in support.

Victoria Gonzalez, Executive Director, Department of Sentencing Policy:
Our department collects data from agencies, including the Division of Parole and Probation. We partner with the Division on a regular basis, including on the development of the amendment that Chief Lawson introduced as a friendly amendment.

The conforming change in the amendment ensures the data that the Division is required to submit to our agency is consistent with the manner in which the Division supervises. Therefore, our department supports A.B. 17. The impact of A.B. 17 assists agencies in effectively implementing A.B. 236 of the 80th Session.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
It is a pleasure to be here testifying for the first time this session. We are in support of A.B. 17. The distinction between honorable and dishonorable discharge at the expiration of the term of parole and probation is rooted in the same discriminatory structures that plague our entire justice system.

The Nevada Legislature, with bills originating from this Committee, passed laws restoring the right to vote, streamlining record sealing processes, and will hopefully continue to work to resolve the inequities in our criminal justice system. Assembly Bill 17 does that, while also making the Division of Parole and Probation's job much easier. It is a win for everyone.

Thank you, Chief Lawson, for putting so much time and effort into this bill. We have been speaking with him for months about this. We are very excited that he approached us about this. Many state agencies can learn from his leadership and collaboration by bringing people to the table. We are in strong support of this bill.

Tonja Brown, Private Citizen, Carson City, Nevada:
We strongly support this friendly amendment. I know that over the years, some of the inmates coming out on parole wish they could have something favorable from their parole officer in writing to present to someone if they are applying to a job. Would that be possible to do? The parole officer is familiar with the parolee, just like the case worker is most familiar with the inmate. The parolee would get a favorable letter written from the parole officer.

Chairman Yeager:
Thank you, Ms. Brown.

Any more callers in support? [There were none.] We will close support testimony.

I will open up for opposition testimony.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
We are here in opposition to A.B. 17.

I want to thank Chief Lawson and Major O'Rourke for meeting with the DAs and discussing this bill with us. As DAs, we truly value the work that the Division of Parole and Probation does to protect our community and assist in the rehabilitation of offenders. We have two major concerns with this bill. Current plea negotiations have been built around the honorable versus dishonorable designation. In Clark County, you will regularly see a negotiation where a defendant may earn reduction in the charge to which they pled. They can withdraw their plea to a felony and plead guilty to a gross misdemeanor or even a misdemeanor. The trigger for this reduction in the guilty plea agreement is whether or not the defendant received an honorable discharge from probation.

Our second concern is the removal of a layer of accountability for defendants who complete community supervision. The designation of honorable or dishonorable serves as an incentive for those currently under community supervision to do their best and also serves as a reference point for the justice system, should the defendant reoffend in the future and request probation again. The courts are the ones who issue the discharge and will keep all cases that follow the recommended discharge from parole and probation. We have become aware that there are some inconsistencies surrounding implementation of these discharges as applied to the various defendants. We are committed to working with parole and probation and others to make the documentation more accurate without creating an administrative burden on an already strapped agency.

We are endeavoring to work with the Division of Parole and Probation on a solution for this as we move through the legislative process. We are opposed to A.B. 17.

Chairman Yeager:
Thank you, Mr. Jones. If you do have your comments, would you mind providing those to the committee manager? That will help with the preparing of the minutes. [Exhibit I will become part of the record.]

Is there anyone else on the phone in opposition? [There was no one.] We will close opposition testimony.

I will open up for testimony in the neutral position. [There was no neutral testimony.] We will close neutral testimony.

Chief Lawson, I want to give you an opportunity to provide concluding remarks on A.B. 17.

Tom Lawson:
Thank you again for your time and for honoring us as the first bill that you have reviewed this legislative session. If there are any questions that come up, my contact information is included in the presentation [page 5, Exhibit H]. I welcome the opportunity to speak offline or to reply to those questions in writing.

Chairman Yeager:
As a reminder, with rare exceptions we will not take action on a bill we hear without a minimum of 24 hours passing for members to be able to digest the bill. There are times at the end of the session where that may become impractical and the rules may be waived. For now, this bill will not be on a work session any time soon. I encourage members to review the bill after the hearing. Reach out to Chief Lawson, supporters of the bill, and opposition to the bill to get your questions answered. If we do have a chance to process this bill, you will get ample notice that the bill is going to be processed in Committee. That will normally happen on Fridays. Normally, we reserve Fridays for work sessions.

I will now formally close the hearing on A.B. 17. We will take up to 30 minutes of public comment. Speakers calling in will have up to two minutes to provide public comment.

Tonja Brown, Private Citizen, Carson City, Nevada:
Due to the COVID-19 situation we are in, things have dramatically changed, such as the way we testify before you. I would like to apologize for yesterday when my dogs decided it was time to play. Due to my recent knee surgery, I was unable to control them, and it will probably happen in the future. I wanted to apologize up front to you.

I would like to give a little history to the new members of who I am and about my advocacy. I became an advocate because my brother was wrongfully convicted of a crime. He spent 21 years incarcerated and, prior to his death in 2009, the honorable Judge Brent Adams ordered former Washoe County District Attorney Dick Gammick to turn over the entire file of his case. When the file was turned over, the handwritten notes of the prosecuting attorney showed that he had defied, in 1988, a court order to turn over all the exculpatory evidence. In the file, there were over 200 documents. Those documents consisted of exculpatory

evidence; a state's witness who had a motive and reason for their testimony which was financial gain. The witness also had problems identifying the defendant's voice from another person. However, the courts continued to refer to the state's witness as credible.

Yesterday, I briefly spoke about the sworn affidavit under penalty of perjury. It was approximately 75 pages. I ask that you read it so that when people come before you thinking they know about this case, I can assure you they do not. They may know some of the facts but not the entire case. There have been times where people have testified before the Committee who have misrepresented the facts of this case to the Legislature. That is one reason for my sworn affidavit. I have never been arrested for filing a false complaint. I have never been sued by anyone named in the affidavit, nor has anyone sued the author of our nonfiction book, *To Prove His Innocence*. I would like you to keep that in mind when you read the affidavit. The evidence does support it, and there is documentation. It is very telling on the way the judicial system works.

Chairman Yeager:
Thank you, Ms. Brown. We are wishing you a speedy recovery from knee surgery.

Is there anyone else on the public comment line? [There was no one.]

We are going to close public comment.

This meeting is adjourned [at 11:27 a.m.].

RESPECTFULLY SUBMITTED:

_____
Kalin Ingstad
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 "Nevada's Judiciary and Criminal Procedure," presented by James W. Hardesty, Chief Justice, Nevada Supreme Court.

Exhibit D is a copy of a PowerPoint presentation titled "Las Vegas Public Defense," presented by John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office.

Exhibit E is a copy of a PowerPoint presentation titled "Washoe County Public Defender's Office: Overview of the Criminal Justice System," presented by Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.

Exhibit F is a copy of a court case titled *Valdez-Jimenez v. Eighth Judicial District Court*, submitted by Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.

Exhibit G is an article published by *Nevada Lawyer* Magazine titled "Nevada Supreme Court Breaks Chains of Cash Bail," dated September 2020, submitted by Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.

Exhibit H is a copy of a PowerPoint presentation titled "Assembly Bill 17," presented by Tom Lawson, Chief, Division of Parole and Probation, Department of Public Safety.

Exhibit I is a letter to Chairman Yeager submitted by John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association, in opposition to Assembly Bill 17.