MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-Second Session
February 15, 2023

The Committee on Judiciary was called to order by Chair Brittney Miller at 8 a.m. on Wednesday, February 15, 2023, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Elaine Marzola, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Venicia Considine
Assemblywoman Danielle Gallant
Assemblyman Ken Gray
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Selena La Rue Hatch
Assemblywoman Erica Mosca
Assemblywoman Sabra Newby
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst

Bradley A. Wilkinson, Committee Counsel
Devon Kajatt, Committee Manager
Connor Schmitz, Committee Secretary
Ashley Torres, Committee Assistant

OTHERS PRESENT:

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office
Victoria Gonzalez, Executive Director, Department of Sentencing Policy
Aaron Evans, Major, Deputy Chief, Northern Command, Division of Parole and Probation, Department of Public Safety
Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
James Palombo, representing Nevada Prison Education Project
Beth Schmidt, Director-Police Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Jason Walker, Sergeant, Patrol, Washoe County Sheriff's Office
Christopher P. DeRicco, Chairman, Board of Parole Commissioners, Department of Public Safety
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association

Chair Miller:
[Roll was called, and committee protocol was explained.] Our meeting today consists of one presentation and two bill hearings. We will start with the presentation from the Clark County and Washoe County Public Defender's Offices.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I have been with the Clark County Public Defender's Office for 11 years this coming May. I want to talk to you about public defense in Las Vegas [Exhibit C]. You know our slogan, "What happens in Vegas, stays in Vegas." While we have gone away from that messaging, I want to illustrate the difference between what happens in Clark County and what happens in Washoe County. I think the next slide will paint a better picture.

[Mr. Piro showed a video, Exhibit D.]

Now, what I just saw was a bunch of people having fun in our economic driver, our city. What a deputy district attorney might have seen was a little bit of disorderly conduct running down the hall; possible battery bumping into citizens; grand larceny for stealing that vase,

because casinos do not buy cheap objects; conspiracy to commit grand larceny from the whole group of people that were acting together in concert, and when you are on the hook for conspiracy, you are on the hook for everything else; and possibly possession of stolen property for that soccer trophy.

Moving on, this quote drives our practice [page 2, Exhibit C], "Love is the motive, but justice is the instrument." We consider ourselves your community lawyer. Eighty-five percent of the people accused of a crime cannot afford a lawyer; so we are the lawyers for your mothers, sisters, fathers, brothers, and cousins, whenever they are accused of a crime. Before the passage of Assembly Bill 236 of the 80th Session in 2019, Nevada was trending in the wrong direction when it came to criminal justice. We were incarcerating people at a higher rate than 15 percent of the states surrounding us. We were also failing our women. Women in Nevada were being incarcerated at a much higher rate than almost all of the states around us, and A.B. 236 of the 80th Session took corrective actions to move us in a different direction. We consider ourselves problem solvers and grace givers. All justice should be tempered with a little bit of mercy. Dr. Cornel West says that justice is love in public, and that is what we do every day in our job. We are in the courts fighting for justice, fighting for people to be seen as human beings.

Gideon v. Wainwright [*Gideon v. Wainwright* 372 U.S. 335 (1963)] is the United States Supreme Court case that gave us, the people, the right to be appointed counsel [page 3, Exhibit C]. Clarence Earl Gideon was accused of a crime in Florida. Mr. Gideon went to trial by himself and was convicted. He wrote, on his own, an appeal to the United States Supreme Court. When we originally entered Boyd [William S. Boyd School of Law], they used to give us a book *Gideon's Trumpet*, which talked about that case. He was appointed a lawyer, Abe Fortas, who eventually went on to become a United States Supreme Court justice; but before that time, Abe Fortas defended this case in front of the United States Supreme Court. That granted everybody the right to have a lawyer when they are accused of a crime. It is a bedrock principle embedded in the Sixth Amendment of the *United States Constitution*, that a person accused of a crime should be afforded a lawyer, or else you cannot assure a fair trial. Why is that the case? In our adversary system of justice, you need a lawyer to stand up for you.

Abe Fortas went back to Florida with Mr. Gideon, defended the case, and Mr. Gideon was acquitted. That is the difference a lawyer can make. Nevada was actually on the forefront of that, as Executive Director Marcie Ryba from the Department of Indigent Defense Services told you; we were one of the first states that really moved in with institutional defense. I will say that that institutional defense is really only in Clark County, Washoe County, and there is a smaller office in Elko; the rest of the state suffers greatly under contract public defense.

I want to talk to you about some celebrity public defenders [page 4]. Former Senator Richard H. Bryan was the very first public defender in Clark County. I want to thank my northern legislators and the University of Nevada, Reno (UNR). When I first went up to UNR in 2017, there is a statue to Senator Bryan, and he is surrounded by several benches honoring his accomplishments; but there was one bench missing—the very first

Clark County Public Defender. There is that bench there, now. I have sat on that bench and thought about how far we have come.

Here are the numbers from our office [page 5, Exhibit C]. We have 115 lawyers, down from 121; this is for a good reason. In addition to our elected officials that have come from the public defender's office, since 2020, ten public defenders have been elected to judge. Some of the numerous firsts for Clark County: the first Black woman judge appointed to the family court bench came from our office; the first Black judge ever in North Las Vegas came from our office; the first Black judges ever elected outright—Clark County had a history of appointing judges and then they won retainment, but no Black judge had ever won an election outright until 2020. Those lawyers from our office accomplished those firsts in the state of Nevada. We are in the midst of hiring eight lawyers right now to catch back up. I would say that our caseloads are pretty huge, so we are always in need of more lawyers who are here for the cause.

We are broken up into different teams and there is a good reason why. Our office has our own *Miranda* case, which is the “right to remain silent” case from the United States Supreme Court. Well, we have our own *Miranda* case, but it has a bad history. We got sued for about $5 million by Gerry Spence when he came to town because we would have brand-new lawyers handling murder cases and cases they were not equipped to do, and an innocent man was accused. We happened to fix it, but it cost the county quite a bit of money. Since that time, we have come a long way. We are broken up into different teams. We have a six-week training program when you start with the office. We also have a team that specializes solely in juvenile defense, a team that specializes solely in appellate law, a team that deals with category A sexual offenses, a team that deals with category A homicide offenses, and track attorneys that represent everything from misdemeanors to robbery with a deadly weapon and kidnapping.

We have a mental health team, which has been growing with time, and I want to talk about some of the issues with that. We took on the civil commitment process and we handle about 3,500 of those civil commitments a year. As all of you know, we have a severe mental health crisis in the state of Nevada. Some of the case numbers are there on the slide, but I do want to hammer on how big the mental health problem is. I want to talk about one issue here, with a client, and I think it is going to come before this Committee in this session.

There has been a severe issue with people waiting to go to "competency court." Once they were found incompetent, meaning that they could not understand the proceedings, we could not move forward on the court case until they were sent to a mental health hospital to see if they could be restored to competency. However, the wait has been so long that people have been waiting in jail at a cost of $200 a day to the taxpayers, while waiting to go to the hospital and be restored to competency. One of those waits resulted in the death of my client. He was in a cell with another mentally ill person, and that person murdered him while he was waiting to be treated. His case was not that serious and I have a lot of regret that we waited so long; if we had pushed harder on the court to move this person out, he would still be alive. He was not in there for a violent case. He was there waiting to get treatment so that

we could get him back in to mental health court and back on probation, and he was murdered while in the jail.

We try to practice holistic defense, meaning that we have social workers, investigators, and mitigation specialists in our office. We are up to nine social workers now, up from seven. We have been running a pilot program with what we like to call our probation concierge; for a client who may have difficulty on probation, who maybe was a borderline candidate for probation but with a little bit of extra help would be able to be successful on probation, we assign a social worker to help that. They are the ones that really have access to a lot of the services and can make those community connections. We have had great success running that program and are hoping it remains a program that stays around for the long haul.

We carry out the intent of our founders: Liberty cannot be taken without due process of law [page 6, Exhibit C]. Alexander Hamilton was a defense attorney; Aaron Burr, defense attorney; John Adams, defense attorney. We are carrying out the intent of our founders by doing what we do every day.

We talked a little bit about holistic defense [page 7, Exhibit C]. I want to tell you that the system sees a crime, but we see a whole life. We have tried to move from, why did you do what you did? To the appropriate question, if we are looking for a trauma-informed response: What happened to you that brought you here today before us?

There are two great books on that; Oprah wrote one, but also *The Body Keeps the Score*, by Bessel van der Kolk. Those books have really informed our practice. About a third of the women who come into the criminal justice system have extensive trauma in their lives, and that has brought them to where they are. I want to tell you a story. I am going to change her name, but I got permission to tell the story. When you have been in the system long enough, you start to see that sometimes victims become perpetrators later. Oftentimes, we are the first people to run into a victim of sex trafficking, because the crimes are not what you would normally associate with that.

My client came to Las Vegas from Memphis. Two people she knew told her, Hey, there are good jobs out here. You should come out to Vegas and work. When she got here with her son, and she knew nobody else but these people, they said, Look, working at Amazon is slow money, you need to make fast money. Here is how you are going to make fast money. They started pushing her into prostitution. That may have been something that tipped off the police that something was going on, but the ongoing crime that did not tip off the police was the gentleman that was sex trafficking her would break into cars at gyms, steal credit cards, and then make her use them in the store so that she was the one that would be held accountable.

We brought this to the district attorney's attention, and even though it got her away from the felonies, we still had to plead her to two misdemeanors to get out of this situation, and it was frustrating. In order to get those misdemeanors, we had to meet with detectives and explain what was going on. Anybody that works in the system knows that snitching can create large

problems if anybody was to find out that you talked to police. When we sent her back to the place where she lives, we worked with Seeds of Hope to put her in a safe house, away from everybody, while she was in Las Vegas, until we got rid of the case. Then we got her back to her hometown as fast as possible. But I worry about her every day. I worry about what happens if those people go back to where they all came from and search her out because she did talk. Those are concerns that we have and those are some of the things we deal with in our job. We do not only address the court case, but we also address the circumstances that brought the person before us.

We also work on criminal justice reform. Assembly Bill 236 of the 80th Session put into place where there could be local criminal justice working groups. In Clark County, though, we have what is called the Clark County Criminal Justice Coordinating Council (CJCC), and we have been working together as a team for over five years now. Kudos to the Clark County Detention Center (CCDC) that brought in the United States Department of Justice (DOJ) to get us together as a working group, where we have the sheriff, the district attorney, the public defender, a representative from Nevada Attorneys for Criminal Justice (NACJ)—which is my position on that board—and representatives from the court; that is how we work out solutions in the criminal justice system. One of the solutions we worked out was the initial arraignment court. In Clark County, we see somebody when they are arrested within 12 to 24 hours to see if they are appropriate to get out of custody, so if a person is appropriate to get out of custody, they are released as soon as possible. If they are not, they are going to sit there. It has not been like that around the state. Last session, however, we did pass major bail reform that lets people be seen within 48 hours, because we believe the word "prompt" means prompt and that justice should be the same for every citizen of the state of Nevada, whether you live in Clark, Washoe, Elko, or Ely; it should be the same everywhere.

Though we shoot for holistic defense in both Clark and Washoe Counties, we are not quite the gold standard. I would consider the Clark County Public Defender's Office to be the gold standard in the state of Nevada, but the gold standard in the nation is the Bronx Defenders. They have eviction attorneys to help people with housing issues, and family law attorneys to help people with family law, because it is not just one situation that a person is dealing with in the system. If a person has things coming from all sides, it is very hard to be successful. If you could have somebody step alongside you, guide you through the process when you are going through that, you have a much better chance of success. What the RAND Corporation found, when it was studying The Legal Aid Society—which is a more traditional public defender's society like our office and the Bronx Defenders—was that over the long term, the outcomes were better. People were less likely to recidivate; people were less likely to spend more time in jail, saving taxpayers money; people and families have better outcomes, so holistic defense is the model we are shooting for. But we still have a long way to go.

One of the things we pride ourselves in is holistic representation, which means that once I am appointed as your lawyer, I am going to ride this train with you to the final destination [page 8]. I always tell clients if I get you into a specialty court program, I want you to call me and I want you to tell me when your graduation is, because I will be at your graduation. I want to see that, and afterwards I want to get coffee with you and talk to you about what

you thought was effective about the program and what was not, so I can take that back to the judges and we can adjust things to make it better. I have been asked to speak at two drug court graduations for our clients and other people's clients. It is one of the happiest times we have. I will also say that working with the CJCC, we have worked with the Division of Parole and Probation (P&P) to make sure that we have put honorable discharges from probation back on the calendar so that people are getting reductions. If they plead to a felony, but successfully complete their probation, then they would get a reduction to a gross misdemeanor. We are seeing more of those come through the system. We are seeing more and more success stories stemming from our work in the council, but also from A.B. 236 of the 80th Session. I am very heartened in the direction that Nevada is going.

What we do not do, though, is get people out of jail for free; sometimes that is a misconception. That is not what we do. If there is an action that you legitimately did, there are going to be consequences. There is a lack of services here. You all know this because you ran and want to change things for the better. In Nevada, it is sad that getting someone services is easier once he or she has been accused of a crime rather than before. There are not many places people can go to get help before they are accused of a crime; but once you are accused of a crime and we come up alongside you, we can get you services.

The sad part is most poor people do not have insurance. A lot of the time, they go through their whole lives with a mental illness nobody has ever noticed. We come into contact with them and say, "I think there is an issue here. I am going to send you to see some doctors to see what is going on. We are going to get you some treatment"; or "There is an issue here, we are going to send you to get some drug treatment. We know that you have been battling this". If somebody had stepped in long before this crime was committed, perhaps the traumatization of everybody in the system would not have occurred. That is what we are always hoping for: services on the front end, because right now we are fixing problems on the back end, and even the Governor mentioned this in his speech when he said that the jail is a difficult place to fix problems. Not only is it difficult, but it is also expensive. It costs $200 a day for us to house people. One-third of the population in the jail is on some form of psychotropic medication, so it is more expensive to house people if they are not healthy in that way. We spend $73,000 a year housing people in prison. These are costs to all of us, and if we could put that money in the front end, we would see dramatic cost savings.

I went to a mental health summit just recently before coming up to the session. There was a judge from Miami-Dade County, Florida, who talked about all of the reforms that they did there. One of the most prescient things he said was we are building more facilities, and, we are trying to build our way out of this problem. We cannot incarcerate our way out of this problem. They took measures in Miami-Dade to reduce the homeless population from 8,000 to 1,000. They have a housing component to reentry, where people are wildly successful. They have social workers there, they have people who are helping them get jobs there, and those are components we could put in place here. It would take some front-end investment, but there are steps we could take so we are not fixing things on the back end where it is more

expensive, when the traumatization of everybody in the system, including the victim, has already occurred. If we could stop that trauma on the front end, I think our state would be much better off.

Some of the challenges facing our office [page 9, Exhibit C]: we do have high caseloads; I would say overwhelming caseloads; the lack of community resources, as I spoke about. The Nevada Supreme Court issued ADKT 411 [Administrative Order], which is a bunch of aspirational goals which the Court put out for public defense. I will tell you that it is ridiculously difficult to meet those aspirational mandates, especially with our caseloads. One of those mandates, for example, is that every attorney should be with their client during a presentence investigation (PSI) interview. I will tell you, in nearly 11 years, I have never had time to make that happen, not once. I have to give my client a pre-interview speech, like, "Hey, let us talk about what you are going to tell them, let us be honest with them about your drug problems, and be honest with them about your childhood."

One of the issues with trauma is if it has always been bad, you may not know it is bad. We have to sit down and talk with our clients about their childhood because on a PSI report, and that is the only thing that the judge sees—the PSI, it gives a brief history, a criminal history, facts about the case, and then the judge has to decide about the person. If you have only been in front of the judge for the first time for the PSI, the PSI might not be the most accurate reflection of this person's life. For example, most people will say "My childhood was good, I cannot really remember anything bad that happened." Then when you dig in, you notice that that your mom was in prison, and your dad was in prison, and you were removed from your house. You lived with your grandparents. You lived in foster care for a minute. That is trauma that they do not even recognize as trauma. For us not to be there, sometimes that is difficult, but I can tell you with the caseloads, I have not been able to be at one.

The mentally ill population has grown and includes one-third of the people in jail. Jails are basically our mental health warehouses. They are so overburdened and the mental health facilities are so overburdened that we do not even have room to move people in. That is how my client was murdered, while waiting. Also, a ton of other mentally ill people are sitting there waiting to get treatment to see if they can be restored to competency, and if not, continue on a mental health treatment plan. We are at a point where Miami-Dade was. We are trying to build our way out of this; we are trying to build a new forensic facility right now. Really, we may need to just change what we are doing and change directions.

Moving forward [page 10, Exhibit C], we need to explore resources for preemptive rehabilitation before a citizen enters the criminal justice system. Sealing records helps. This body has done amazing work since 2017 in sealing records. You may see another bill come before you. Father Gregory Boyle, the founder of Homeboy Industries, which does amazing work with gang members in Los Angeles says the best cure for crime is a good job. Sealing records helps people get back on their feet, get a fresh start. We can move on in that direction, we would like to move that way. Once you have time, once you have paid your debt, you should have a chance to start over again.

Teamwork makes the dream work. The CJCC has done great work in Clark County, and we would like to see that work brought across the rest of the state, where we are all working together to find solutions to solve problems—not just up here during the legislative session, but in the counties on a more granular level where we are trying to find solutions for the problems that are plaguing society. That will be the end of my presentation.

Chair Miller:
Would you like to take questions now or wait until afterwards?

John Piro:
If we could wait until after Washoe County's presentation, we can take questions together.

Chair Miller:
Certainly. Please proceed.

Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office:
I am going to echo many of the sentiments of my colleague, Mr. Piro, this morning. The mission statement of the Washoe County Public Defender's Office is to protect and defend the rights of indigent people in Washoe County by providing them access to justice through professional legal representation [page 2, Exhibit E]. Mr. Piro touched on this a little bit with *Gideon v. Wainwright* and the right to counsel, so I will not go into the details of that, but I will note some statistics that I think are important [page 3]. In the United States, 80 percent of people accused of crimes are represented by public defenders, and 57 percent of incarcerated men and 72 percent of incarcerated women were in poverty prior to their arrests. These statistics are important when we are looking at who has entered the criminal legal system. They are primarily represented by public defenders, because by and far, they are not getting the services, they do not have the resources that they need to operate in this society. They need those services.

Indigent defense impacts us all [page 4, Exhibit E]. Sometimes we can feel removed from this work, or people can feel removed from this work. Mr. Piro touched on this, but this is the public defender's credo, and it is from a Florida district appellate court case. In defense of a public defender, Judge Gersten wrote that indigent 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. Indigent defenders, by protecting the downtrodden and poor, shield against infringement of our protections, and in reality, protect us all. This is important to me because when we uphold the constitutional rights of one person, we strengthen the constitutional rights of our entire community. It is the constitutional rights of each and every one of us that are protected when a public defender stands up and fights to advance or push back on any government overreach into peoples' lives. These are the constitutional rights of our friends, neighbors, family members, and each and every one of us.

The makeup of the Washoe County Public Defender's Office is broken down here [page 5, Exhibit E]. We currently have 42 attorneys. Our office has expanded since the COVID-19 pandemic. Our teams comprise a category A felony team, a felony team, a misdemeanor team, a juvenile team, family law, a mental health hospital team, an appellate team, an immigration team, and now a government affairs team. We have excellent support staff, an excellent mitigation specialist, two on-staff social workers, and social work interns. I will note that we have recently expanded the bench in Washoe County. In this last election, we had two public defenders elected to the bench. One of which is my predecessor, Judge Kendra Bertschy, and the second is Judge Erica Flavin, who is the first Black woman elected to the bench in Washoe County, and we are very proud of that.

Our office also practices a holistic defense model [page 6]. I am not going to repeat what my colleague said, but I will note that when I spoke to one of our social workers, Natalie Choi, she said that her job is so important because we humanize our clients in a dehumanizing system. This is done not only through a deeper understanding of our clients' life circumstances, but also by connecting them to essential services that are shown to reduce recidivism. It is true; we see the full picture. Our clients come to us with life stories that other people are forgetting. Often, they are victims of crimes, of circumstances, of poverty, and it is our job to make sure that they are humanized, because their lives matter.

This holistic defense model could not be done without our social workers [page 7]. We have two social workers on our staff. Some of what they do is provide general support to our attorneys; they connect clients with mental health services, housing services, and other resources; they collect information for plea negotiations; background history so that we can present that information at mitigation and sentencing; and they even help with navigating the child welfare system. I think it is important when understanding what it is like to have been caught up in the criminal legal system; our social workers are often asked by our clients to just visit with them. I have had many clients who are sitting in custody who are deteriorating, and our social workers set visits to simply talk with them and tell them that somebody cares about them and to tell them they are not alone. They request our social workers to be with them at sentencing hearings because our social workers have the time to build those deep relationships with them. As attorneys, that is not something that we are always able to do. I do not have time to set visits with my clients just to tell them that somebody still cares about them. That is something that they need.

Now, I would like to discuss some changes and challenges in our practice [page 8, Exhibit E]. Our bail practice has changed dramatically; diversion for drug offenses has changed dramatically in the last few years, due to A.B. 236 of the 80th Session. We have seen a dramatic increase in wait times for treatment to competency due to limits of statewide testing capabilities and lack of data.

I first want to touch on the increase in wait times for treatment to competency. My colleague also discussed that, and I echo his sentiment that we cannot build our way out of this issue. Last year, the Interim Finance Committee (IFC) approved funding from the American Rescue Plan Act of 2021 to build a new facility, and we need that. That facility is needed.

The backlog and wait times are unconstitutional. That building is necessary; it begs the question, At what point do we divert those resources upstream? When do we say we are going to fix the problem before we get to the point of being held in custody with severe mental health issues, and now having to be treated by the State? I pose that question to all of you because it is fiscally irresponsible to ignore how the State chooses to divert that money, where we are putting it in, and it is also a moral question of when we treat people.

I will touch briefly on our bail practice [page 11, Exhibit E], which has changed significantly, both since the Nevada Supreme Court's decision in *Valdez-Jimenez* and having that case codified in Assembly Bill 424 of the 81st Session. What resulted was that a bail hearing must be held within 48 hours of arrest. It is the State's burden at that evidentiary hearing to prove, by clear and convincing evidence, that every requested bail condition sought is the least restrictive means necessary to assure the accused's appearance at a future court date, and that it protects the community's safety; and that the presumption of that hearing is of release. That burden was shifted to the State to prove anything other than release is necessary, and that the bail amount set is still the least restrictive means necessary to ensure the public's safety and the accused's return to court.

Although we have moved away from a bail schedule, some of the tools that are utilized in determining the least restrictive means include requiring them to promise to appear, or a warrant would be issued if they do not show up to court; no alcohol; no drugs; phone check-ins with pre-trial services; random testing; mandatory GPS; wearing a SCRAM [Secure Continuous Remote Alcohol Monitoring] units; house arrest; and then lastly, cash bail.

When an individual comes before the court for that initial appearance, the accused is met in Washoe County by our bail team [page 12]. Since *Valdez-Jimenez*, we have built this bail team and it has become a well-oiled machine. We have two full-time attorneys on that team, and all they do is handle bail hearings.

We have one investigator who is present at bail hearings every day, and these hearings are held seven days a week. The investigator is essential because these are evidentiary hearings. It is an opportunity to produce evidence and cross-examine witnesses, if necessary, but what is so important is that when people are booked into the county jail, they are given an assessment and pretrial services will ask if they are employed. If a client says, "Yes, I am employed," but they are unable to verify that employment, that would be a ding against them. If they say that they have a phone number or a place to go, but pretrial services is unable to verify that with a phone call, that would also be a ding. When we see what they are scored initially, the investigator is able to call their employers, to call their parents, or other relatives to verify that they do have a place to live, they do have a place to go; we are able, at this point, to connect them with services. They are also able to, at this point, start working with our social workers, and we can see if we can get them into treatment, if necessary. All of this happens within the first 48 hours of arrest, and it is essential. This has changed our community for the better: we are able to ensure that families stay together, that our clients do

not unnecessarily lose their housing, their employment, custody of their children. All of these things are essential in the first 48 hours. I am proud of the work that our bail team does, and I see every day how much it has impacted our community.

One thing about bail and the change in the law is it requires that an individual be seen within 48 hours even if it is a holiday or a weekend. I asked a member of our bail team to pull some data on individuals who were released. This individual was given a bail hearing the day before Christmas, and was able to spend that holiday with their family. The argument swayed the court, and these things matter, the day matters, when you are able to say, I have a family, I have a job, I need to be with my child, I have a baby; all of these things really matter.

We have a range of felony diversion and specialty courts in Washoe County [page 13]. This is important with the changes in A.B. 236 of the 80th Session, which requires diversion on certain drug offenses. These courts are essential to ensure our clients are able to succeed on probation and diversion. The Second Judicial District Court has done an excellent job with these specialty courts, but our clients need more services. That is something we hear time and time again.

Of the greatest challenges we face [page 14, Exhibit E], No. 1, is affordable housing. Our clients are largely unhoused. They often lose their housing vouchers as a result of being arrested. Other challenges are the lack of substance abuse treatment beds. This goes back to moving upstream; how do we address this beforehand? It is the same with mental health services. Then another thing that I think is important is the lack of affordable childcare, which is something that we hear from our clients frequently.

One of our challenges is limited statewide testing abilities [page 15], and this is in relation to the testing for drugs in a range of cases. Our current statutory scheme for possession, sale, and trafficking of drugs is a weight-based scheme. We determine that a certain weight of a substance qualifies for a different level of crime. However, our testing capabilities in the State are limited. A qualitative test shows only the presence of a particular substance in a specimen. That is the testing scheme in the state of Nevada; there is no testing ability that provides for a quantitative test which shows how much, quantity, of an analyte is present in a specimen. This is incredibly important right now as the landscape of drug use and manufacturing changes in the state of Nevada.

As many of you are aware, fentanyl is now found in most drugs. What that means, though, is when the testing capability is limited to simply determining that fentanyl, for example, is present in the drug, we are not capable of determining what percentage is actually present. I will give you an example. Public defenders love visuals [Ms. Roth held up four packets of sweetener, Exhibit F]. This here is one gram [Ms. Roth held up one packet of sweetener]. If there is a substance found on an individual, let us say four grams were found on an individual, the State's testing capacity at this time does not have the ability to determine whether this much is methamphetamine and this much is fentanyl; or this much is fentanyl

and this much is methamphetamine; or the most likely scenario, that this much is methamphetamine and a teeny, tiny, itsy bit of this is fentanyl.

It poses challenges as individuals are charged with certain offenses, and how we are able to determine what they can or cannot be charged with. I want to set that landscape, now. It is very important to understand that these testing capabilities are not adequate in the state and any changes of law would be seriously impacted by that lack of capability to determine what percentage of a substance is what drug, given that everything is now mixed.

I want to move to a few case highlights [page 16, Exhibit E]. I think it is important to demonstrate a few different cases that are very common in our practice. I highlight this first case, No. 1, because of the weight of the drugs found on our client; and secondly, because of the services that were provided to him that allowed him to succeed. Our client was found with 22 gross grams in weight of methamphetamine. That would be 22 of these sugar packets, and he was originally charged with trafficking of a controlled substance. Often clients are charged with trafficking of a controlled substance based solely on weight, even if they are not found with a scale or baggies or any other indicia of actual sales.

After negotiations, the individual pled guilty to a category C felony. When he was in custody pending sentencing, he was granted an own-recognizance release to the Delancey Street Foundation program in San Francisco. This is a really amazing program that, as they say, teaches individuals to be teachers, and it is a holistic practice. They provide housing, services, and help with employment; and long-term employment, like commercial driver's licenses, things of the sort that set them up for life. I highlight this case because he was granted probation. He is now six months out and is doing incredibly well, and we can see this. When people are found with large amounts of drugs on them, it is not the end of their story. They are human beings, they are capable of succeeding, and they deserve that chance to show the community they can succeed. What they need are those services to help them do it.

Lastly, I want to talk about Anita Rohr's case [page 17, Exhibit E]. This case [*Anita Rohr v. State of Nevada*] is important, and I might get a little choked up, because Ms. Rohr's life story is the story of so many of our clients. Ms. Rohr grew up in rural Virginia in abject poverty. She had no running water, no electricity. She was abandoned at the hospital as a child. She was eventually raised by her grandparents, but left their house at the age of 17. Over the course of her life, she was the victim of repeated domestic violence relationships. Those relationships resulted in the removal of her children from her home because of the circumstances of that domestic abuse. She eventually found herself homeless in Reno, living in an encampment along the railroad tracks.

Ms. Rohr was charged with open murder when the victim was found along the railroad tracks, which was near where Ms. Rohr was living. There was no DNA or forensic evidence linking Ms. Rohr to this crime. When Ms. Rohr was initially interrogated by police, she was

interrogated for nine hours. She maintained her innocence the entire time. She was brought

back for another interrogation of five hours, where statements were elicited from her, and ultimately, she was convicted at trial.

Now this case was just overturned by the Nevada Supreme Court. The Supreme Court ruled that the Second District Court erred in granting a jury instruction, which effectively instructed the jury to adopt the State's argument that Ms. Rohr's confession was voluntary, and that the court erred in restricting Dr. Leo, who was the false confession expert in this case, from identifying and commenting on the interrogation techniques used by police. This case was an injustice. Ms. Rohr deserved to have a fair trial. I bring this to all of you because her story is the story of so many of our clients. Her interaction with law enforcement, her life circumstances, all of these things contributed to this conviction. I want to give a shout-out to the attorneys on this case, Evie Grosenick and Katherine Reynolds. Ms. Reynolds also argued the appeal.

We see these facts and circumstances every single day. I want to take this time to remind everyone here that our clients are humans, they have trauma that they have experienced their entire lives, and they deserve to have justice sought on their behalf. With that, I think we will take questions.

Chair Miller:
Thank you, Mr. Piro and Ms. Roth, for your presentations. We will now take questions from the Committee members.

Assemblywoman Bilbray-Axelrod:
Mr. Piro, you mentioned that a task force was put together by the detention center. Could you expand on that and tell me if you are still meeting.

John Piro:
Yes, we are still meeting. The CJCC meets every two, sometimes three, months. We also have subcommittees that meet regularly. One of those subcommittees designed the initial arraignment task force; another was fixing some issues with P&P, working together as a team. We are still meeting regularly; right now, somebody is taking my place. We are working on deflection and diversion. One of the task forces that I am assigned to with Judge Belinda T. Harris from North Las Vegas is deflection and diversion: deflection being, how do we prevent something from happening, from the case even coming into the system in the first place; diversion being, once you are accused of a crime, how do we minimize the consequences and the impact and your exposure to the system so that you can have the best result possible in that way.

I have learned that there are a lot of programs right now in Clark County, but everybody is working in a silo; services are being duplicated and a lot of people are falling through the cracks. That subcommittee is trying to find out where services are being duplicated and how to get a one-resource allocation. Sometimes the solution is not always a good one. We have the Strip corridor court, so if a crime is committed on the Las Vegas Strip corridor, then it is going before a particular judge, in a particular courtroom. This is our temporary solution to

tamp things down on the Strip, because we do not want problems on the Strip. But, not a ton of services into that court; our measures are basically punitive. We need to figure out how we can reduce crime on the Strip and make sure that when the homeless people are released, they do not go directly back there.

We are still actively working on solutions. I would like to see this taken more statewide, and A.B. 236 of the 80th Session provided the framework for that. I would like to again give a shout-out to CCDC; it obtained the grants and got the Department of Justice to work with us because the jail population was too high. At one point in the jail, people were sleeping on cots. We have worked on reducing the jail population. We have the CCDC downtown, but we also have the North Valley Complex (NVC). At one point in the county's history, NVC was running solely on overtime. There were not enough people to staff it because we were having such problems. We have moved away from that, but we still have a long way to go. We are working together to find solutions.

Assemblywoman La Rue Hatch:
My question is on the 48-hour requirement for bail. We have heard in some presentations over the last week, it is a huge burden on the rural counties. I understand you are not representing those districts, but I would love some insight. We were told one of the big issues was getting attorneys in these rural areas, especially public defenders, and that maybe these counties would need some kind of exception. Can you speak to what you have seen on that issue?

Erica Roth:
I cannot speak specifically to the experience of the rural counties or attorneys. What I can say is there is a requirement that the State provide indigent services across the board. Someone living in a rural county is entitled to the same constitutional protections as someone living in Washoe or Clark County. It is also important to note that we have learned a lot through the pandemic. There are video court capabilities and other solutions to ensure an individual who is brought before a judge in White Pine County, or another rural county, is getting those same constitutional protections, and that is a mandate of the State.

John Piro:
Yes, I have heard those issues. We are in discussions, and I definitely think it is going to come before this body. In the law was the word "prompt," and prompt to me means prompt if we are looking at Merriam-Webster's dictionary. I echo the sentiments of Ms. Roth: I am concerned people are getting less justice somewhere else than they would in Clark County. With A.B. 424 of the 81st Session, we worked on the ability to do Zoom court. We also worked on a legislative fix to let judges from other counties cover for each other. We tried our best to cover all the bases and help folks out, including delayed implementation. I believe we gave a year runway for implementation; it was not an immediate fix.

Assemblywoman Hansen:
I love this process. As the daughter of a district attorney with leanings towards public defenders because that is the system, I love the tension; that is how it is supposed to be. This is really what debate looks like if you have ever done that in high school. When it comes down to it, the burden of proof is on the prosecution for that weight, and you have that due process to protect. Hopefully, somewhere in between, we get where we need to be.

As we talk about the commitments, the number of civil commitments bothers me. We all agree there is a mental health crisis in the state, in the nation. I want to see how you feel from the public defender point of view, even though this is probably a mental health, or health and human services issue. Back in my day, those with really difficult mental health challenges, we housed people in mental health facilities, sometimes not with the best reputations. We all know *One Flew Over the Cuckoo's Nest*, so I am wondering if the pendulum has swung too far the other way, that we released a lot of people, because the system was broken in finding a way to institutionalize those with pretty severe mental health issues. Are we now paying a price for that, and do we visit having those kinds of facilities in the picture done right? I would love to hear your take on that and how it would affect what you are having to deal with on the streets and with these people in dire situations.

John Piro:
One of the major building blocks is housing. Housing is something we have to figure out. We are in an affordable housing crisis. I agree with you that when the institutions were abolished, we had no good solution to solve the problem; we just dumped people into the street, carte blanche. One of the things we know about mental illness is that lack of sleep can exacerbate mental illness. When you are homeless, there is not a safe place to sleep. In Las Vegas, we had people murdering homeless people on the street. You cannot get comfortable at night to sleep. Nor is there any real place where you can go to sleep.

We, as a society, are okay with having a whole community of people living in the tunnels of Las Vegas, and we have not tackled that problem. There is a whole ecosystem of people we have left behind. Some of those people are struggling with mental illness, some from drug addiction. We have learned in practice that a lot of times if you have a mental illness, and maybe it has not been diagnosed or maybe even if it has, you are using drugs to cope with the effects of that mental illness.

One of the most impactful things I have heard in my practice, is a client saying, "Listen, these voices in my head, they are very mean to me. They attack me frequently. I use methamphetamine because that is the only time I feel good. That is the time I feel euphoria and that is the only time that those voices are kind to me." He is currently in mental health court getting treatment. You are 100 percent right; we have no solid solution. At this certain point in time, I do not know that an institution is the right way; but I do know that having community services that are accessible and that are reaching out to folks where they are is probably the best solution. Right now, you could get dumped out of CCDC with maybe a day's worth of medication, and they will tell you, "Hey, I know you have been stable, but

we are kicking you out. It is 2 a.m., find your way to Southern Nevada Adult Mental Health and start getting those services." We do not have pathways and a runway. We never had a runway once we ended what we did; it is time to find that.

Erica Roth:
I want to add that our jails and prisons have become those mental health facilities. That is what those are. We are paying for it, one way or another, and it makes sense to divert those resources upstream. I am not an expert on the best way to treat mental health, but we do have those experts to utilize that information and say, this is what works; this is what does not work. These resources are being spent already because we are jailing everybody. You hit the nail on the head. That is actually what we are arguing, but from a fiscal standpoint, the costs are already being born.

Assemblywoman Newby:
What proportion of the clients coming to the public defender's office is handled by conflict counsel? Do those folks access the same wraparound services, like social workers, if they are being handled by an outside counsel?

Erica Roth:
I do not have those exact numbers for Washoe County, but that is something we could absolutely pull. The process for conflict counsel in Washoe County is we have both the Washoe County Alternate Public Defender's Office and also a conflict counsel panel. If an individual comes to our office and a conflict is determined, maybe we represent a codefendant or a victim in the case, their case would be transferred first to the Alternate Public Defender's Office, and if they have a conflict, there is a panel of attorneys who would then take it. That process can be long. We often see individuals sitting in jail waiting to speak to an attorney because they have to keep getting passed down the line. The exact numbers I do not have, but that is something I can pull, if it is of interest.

John Piro:
Same thing, I do not have those records, but I can tell you two things: we do have a special public defender, who deals with category A felonies—the most serious ones. They do have social workers and mitigation specialists, but those cases are generally more serious where you are looking at prison time as the result, as opposed to probation. The other thing is what we would call "track conflict counsel"; they do not have the resources we have. They have a static paycheck. It does not matter whether they take 1 case or 100 cases a month, the paycheck is the same. They do not have access to a social worker. They do have access to an investigator, but they do not have the resources that our office has.

Assemblywoman Hardy:
You mentioned lack of funding and how money can help solve a lot of our problems and deficiencies; would you share with us some solutions you have found that you are using, and what you have in the works? If the funding you are asking for does not come, or we see there is always a lag in the money, what are you currently doing, and do you have any ideas in the pipeline, as far as staffing or other services?

John Piro:
Unfortunately, a lot of it is based on the treatment courts. We have drug court, where if a person has a drug issue, that is where they are getting treated. We have co-occurring court— shout-out to Judge Yeager, Speaker Yeager's wife. She created co-occurring court. I had a client one time who said, "The drug problem is not the big thing, it is the mental health stuff." When I sent him to mental health court, they said his was not enough of a mental health issue, the drugs were more of the issue. When he goes on probation with no court, he predictably violates on probation. Kudos to Judge Yeager for putting that court together where we are dealing with the intersection.

Then you have mental health court, and that really is the best thing that we have going. It is the one that has the housing piece, the one that has the treatment piece, and that is where they are monitoring treatment and medication and figuring out what is right. Again, I think that with formularies, if someone is being treated for bipolar, and insurance changes the formulary to a generic drug, it can have ripple effects in that person's treatment. There is an adjustment period; there are problems that happen there. Mental health court is really great working on that. We have done some great work in the Legislature in extending Medicaid; getting people on Medicaid sooner, so when they get out, they have the ability to obtain medication.

The one thing everybody is talking about is housing. If you can get somebody housed for a while, give them a safe base to get clean, get Medicaid, get treated, the success outcomes are wildly better. That is one of the main things we would like to see worked on. Those are some of the things that we are talking about in the CJCC. What can Clark County do to bridge that gap in housing; not just, We have got a place for you for 90 days, and then after 90 days, you figure out what you are doing, but more like, Let us help you get on your feet. Let us help you get those wraparound services that you need. Let us make sure that transportation is a thing that actually works out for you, that you know how to use the bus system and you get to your appointments and get your treatment. Wraparound services would be my ask.

Erica Roth:
I will echo that and make one more point. First, I echo the need for housing. I have heard an argument that some people just do not want treatment, and they are not ready for treatment. If you are not housed, if you do not have shelter, food, and clothes, those basic human dignitary rights, the last thing on your mind is doing the 12 steps, doing a personal inventory, and making amends. You have to have those basic resources before you can do the work of treatment. Second, as far as funding, I will again echo my colleague here. I will also say data. It is important on a macro level that we are operating and making decisions from a place with data that is evidence-based, and not reactionary. I think that the State in the last few years has done a lot of great work with the Sentencing Commission, and the State of Nevada, although we are far behind, we are working towards being able to make decisions from a place of data. So, I think there is the micro level, and on the macro level I would say that.

Assemblywoman Considine:
I have a two-part question. First, is there a standard or ideal number of public defenders per client? Is there a number across the country where this has been figured out and this is how many you should have? And if you could each potentially answer or send that answer for each county, how many additional public defenders would be needed to provide the constitutional legal representation at every step of the way—and I am including the PSIs—how many would be needed for each county?

Erica Roth:
That is a great question, and it gets to this need for data. I do not want to speak on behalf of any other departments. If my memory serves me, there is a study being done as far as caseloads. I may be incorrect about that, as I look over my shoulder at Ms. Gonzalez with the Department of Sentencing Policy. There are larger studies done. The Vera Institute of Justice often does these kinds of studies, so on a nationwide basis, that data probably exists. I could not give you exact numbers right now.

John Piro:
We did a study, and I can get you the data from that study. That study is old now, though. It is from when our office was sued when we were woefully inadequate. I can get you our caseload study the national association conducted on our office if you would like. With that being said, I will say that our caseloads are overflowing, much like how district attorneys' caseloads are overflowing as well. For us, if I am looking at a standard year, I could be handling anywhere from 300-400 cases, and that is a mix of felonies and misdemeanors. That is a tremendous amount of people to talk to through the year. I would say that in a given week, I am getting anywhere from 5 to 12 cases a week.

Chair Miller:
Thank you for your questions. Thank you, Mr. Piro and Ms. Roth. With that, we will close the presentation. I will now open the hearing on Assembly Bill 32. It will be presented by Victoria Gonzalez, Executive Director of the Nevada Department of Sentencing Policy.

Assembly Bill 32: Makes various changes relating to criminal justice. (BDR 14-263)

Victoria Gonzalez, Executive Director, Department of Sentencing Policy:
We are a nonpartisan department. I do not have a political agenda, I am a State agent, and we were built to help this state—the lawmakers, the stakeholders, the public—make truly data-driven recommendations. That does include qualitative and quantitative data. Based on the data we collect and analyze, the recommendations that you will hear me present will be a combination of our findings as a staff, what we have found in the data we have been collecting and analyzing, and a combination of discussions and recommendations that came out of the Sentencing Commission (NSC). What you see in Assembly Bill 32 is a combination. A recommendation came out of the NSC, but there were differing views, so we have provided additional materials to help you see all those views and to help you in

making these policy decisions; and make sure you have all the information in one place and give you more than just one perspective on the data and the policy, because there are many pieces to understanding that.

I am going to start out with what the purpose and the goals are of A.B. 32, and then lay out the framework for my presentation today, which will include walking through the bill [page 2, Exhibit G]. I will start by identifying those goals. Next, I will provide background information for sections 4 and 7, and 5 and 8, as these are the most complicated portions of the bill and have taken the most work, and this continues to be a work in progress with stakeholders. I will share data that supports those sections of the bill and how we came to this recommendation. After the data, I will walk through the bill and conclude with a summary of the amendments we have been in the process of developing with stakeholders.

I want to emphasize again, we are here to help you make data-driven recommendations. The intent and goal here with A.B. 32 are to improve implementation of policies enacted in Assembly Bill 236 of the 80th Session—just a couple of those, based on the data we have been collecting and analyzing. Some of the other sections are to improve the sustainability of our new agency. We were established to be data-driven, so the changes we have are to make sure that continues to be the case and we can continue to exist for that purpose.

I want to start with a couple of the basics [page 3]. I took inspiration from the policy brief presented by staff and put up here an outline of probation and parole. For those who are not familiar, probation is generally covered in *Nevada Revised Statutes* (NRS) Chapter 176A. When you navigate those sections of the bill, Chapter 176A means we are talking probation; if you are in NRS Chapter 213, we are talking parole. Probation is when someone has been convicted of an offense, the sentence has been suspended, and the person has been given an opportunity to be on probation. There are conditions these people must follow while they are being supervised. When someone is on probation, it is the judge over the case who makes decisions about violations. To be on parole, someone has to have served at least the minimum sentence in a Department of Corrections (NDOC) facility. The person has been released to parole at the discretion of the Board of Parole Commissioners, to serve the remainder of the sentence, we refer to that as the "tail," in the community.

While you are on parole, there are conditions of supervision you must follow. In the case of parole, the Parole Board is the entity that makes all decisions about violations. Here is a very high level of understanding and consequences when you are on supervision [page 4]. This applies to both probation and parole. What does it mean, very generally, to violate supervision? It means that you could have technical violations, you could have committed a new offense while you were on supervision, and you can also violate supervision by absconding. The consequences vary based on this. Technical violations came out of A.B. 236 of the 80th Session, which I am going to explain because we did not have those in statute before. They were in practice in policy with the Division of Parole and Probation (P&P), but they were not in statute. What we have now in place for technical violations is a matrix of graduated sanctions that P&P must exhaust when responding to technical violations.

The next level, after exhausting graduated sanctions, is temporary revocations are imposed, and I am going to explain those. If you commit a new offense, you could face either the penalty for the new charges for the offense, and/or revocation of your parole for the term that you were serving in the community. If you abscond, you are facing potential revocation. For those, the finding will ultimately be made by the decision maker, whether you are on probation or parole, so it would be the judge or the Parole Board.

Here is what the criminal omnibus bill from 2019, A.B. 236 of the 80th Session, did [page 5, Exhibit G]. It was expansive. There were many policies identified in A.B. 236 of the 80th Session that the reforms were attempting to advance. The specific policy we are going to keep in mind today is the policy to "implement swift, certain, and proportional sanctions" in response to supervision. That was the bar we used to measure if these reforms are working. The data we collected was measured against this policy: Are these policies and reforms swift, certain, and proportional to what is happening when you are on supervision? What A.B. 236 of the 80th Session did is statutorily defined "technical violation." Remember, for probation, which is in NRS Chapter 176A, section 510, is for probationers. For parolees, it is in NRS Chapter 213, section 15101. The definition is a little tricky to read because it is negative; it exempts everything that is not a technical violation. What is listed in the definition are new offenses, and it makes it very clear those new offenses are not technical violations, which means by definition, anything else is a "technical."

What was also established in A.B. 236 of the 80th Session was the codifying of the use of graduated sanctions in this matrix which P&P has developed. That is laid out in the appropriate section, based on parole or probation. I am going to go through the process more in depth, but generally, A.B. 236 of the 80th Session was in response to technical violations, with a series of what they referred to as "temporary revocations." For the first temporary revocation in response to a technical violation, it is 30 days. The second is 90 days, and the third is 180 days, and by the fourth or subsequent violation, the offender is facing a full revocation.

Here is how it works on a high level [page 6], and this would be for both probation and parole. What would happen is while someone is on supervision, P&P is going to use their matrix to respond to the technical violations. As different violations come up, P&P will respond to those using the matrix to apply the appropriate sanction. Once they have worked through those sanctions, and they are guided by the risk level of the individual and the severity level of the violation, they will determine what sanctions are being imposed. Once those have been exhausted for technical violations—again, it is not happening for one technical violation, it is happening based on what is appropriate to the matrix—then if we have exhausted the sanctions, P&P will seek a temporary revocation for a first, for 30 days. What would happen is a probationer or parolee would serve up to 30 days for a first, then they would be released back into the community, and then P&P repeats the process of using the matrix of graduated sanctions to respond to the technical violations. If we get to the point again where they get exhausted, you go for a second, and you get to those 90 days. As you can see as you work your way through, each time the individual is released back to the community, P&P will again apply the graduated sanctions.

What happens for parolees is very different than what happens for probationers [page 7, Exhibit G]. I have a very small note under here because the probation procedure is more streamlined. I want to emphasize that probationers do not go through this process. What happens to probationers is that they are brought before the court after there has been an alleged violation, within no more than 15 days after they have been arrested for the violation, to address the temporary revocation and the judge makes a decision. What happens to a parolee is, first we have worked through the graduated sanctions and now there is an alleged violation. What happens is that P&P will arrest and hold the parolee in custody in a jail. While the parolee is being held in jail, P&P will hold a probable cause inquiry within 15 days of the arrest to determine if a violation has occurred. If P&P finds probable cause, a violation report and a retake warrant is submitted to the Parole Board. The Parole Board then reviews that to determine if it should hold a hearing to make a decision about whether or not there has been a violation. A parolee is a felon and must be held in custody in a facility of the NDOC. If the Parole Board determines there is probable cause that a violation has occurred (and a hearing must be held), the board signs the retake warrant. The retake warrant goes back to the jail and requires the parolee be moved to NDOC to await a hearing.

Again, the probable cause hearing happens within 15 days; you have got time for the Parole Board to sign the warrant, and then there is the time that happens while the parolee is still sitting in jail waiting to be transferred to NDOC. Once the parolee has been transferred to NDOC, the Parole Board has up to 60 days to hold the violation hearing, and the parolee is sitting there waiting. I am going to show the data about what we have found about the length of stay for each of these phases. Again, that hearing happens within 60 days. If the board finds that enough technical violations have occurred, it will order a temporary revocation. Depending on whether it is your first for 30 days, second for 90 days, and so on, they will determine how much time you are required to serve in the NDOC facility. Once you have served that time as the parolee for a temporary revocation, you need to be processed for release. The Department of Corrections is built to house long-term stays; it is not built like jails. It does take some time to process these parolees back out into the community in a way that takes longer than if they were in a jail.

Once you have made it through that process, if you get back out to supervision and you still have your job, your house, and your support system, then you would be subject to supervision again for the technical violation; and if you were to face an alleged 90, then you would be working through this process again.

Obviously, there were some concerns about this as it was being implemented [page 8, Exhibit G]. Several months after A.B. 236 of the 80th Session went into effect, I was having conversations with several criminal justice agencies and they brought this concern to my attention because they were looking at it from the caseload level, and what it was doing to having to process these individuals. What we did soon after these conversations started was to figure out what data we needed to collect to analyze this policy.

Our initial data collection started in and included data from July 2020 to February 2022. This first data collection was very limited. We only asked for a few data elements. We were still getting our footing under us. I did not have the two analysts that I have now; I did have a very strong analyst who understood the system, but we were trying to do a preliminary test of what was happening. I also made a request for a report to get some information about what we know about those lengths of stays in the jail. We are still trying to get the jail data but we were able to get some preliminary information. In our very initial findings that led to this recommendation, we found that, based on data from the Clark County Detention Center, and at a very high level, anybody who was being held there for the purposes of P&P or for supervision was sitting there from anywhere between 10 to 30 days. I could not just aggregate who were the parolees, but we used that data to compare to what was happening before they went to NDOC. Our strongest data was with the NDOC data.

Chair Miller:
Ms. Gonzalez, we are really appreciating the background on this, I was just wondering if we could get to the actual components of the bill?

Victoria Gonzalez:
There is an outline table in the slide to help you navigate the bill.

Chair Miller:
We do not have that on NELIS [Nevada Electronic Legislative Information System], so we are not able to go through it, but I think we can go to the bill, and then I will ask you if you could submit that for the record so that we would have it to refer to.

Victoria Gonzalez:
I submitted it late and I apologize for that. I have multiple materials to help support this. Section 1 of the bill is specific to the recommendations regarding making sure our department is going to be sustainable for collecting data [page 17, Exhibit G]. That first section revises the duties of my position. When it was created, the only requirements for the executive director position were to be an attorney. In practice, while it worked out for everybody today, I am worried about sustainability in the future. The appropriate leader should have the administrative experience and the data collection analysis experience needed to lead. By removing the requirement that the executive director be an attorney, it will be left up to the Sentencing Commission (NSC) to put out the qualifications it determines would be appropriate when it is time to hire a new director. If the Commission wants to require that the future executive director be an attorney, then it has that power, but it is not going to be held by statute. It allows for flexibility in determining the needs of the department and leadership.

Section 2 revises the membership of the NSC. You can see in subsection 1, paragraph (m), what was set up before was that we did have somebody appointed from P&P, and this section allows for flexibility for who appoints that person. By statute, the NDOC director and other positions are statutorily members of the NSC, so it made sense to have a criminal justice agency have a similar appointing authority mechanism to those criminal justice agencies—

similar to the director of the Department of Employment, Training, and Rehabilitation—giving them flexibility to appoint whoever they think is the best expert to be on the NSC. The directors we have had so far have been capable of that, but they asked for the authority to have the flexibility to appoint who they thought would be the best suited to give the information they need to the NSC.

Section 3 came at the request of the P&P. This section is specific to sex offenders on probation, and there is also a corresponding section for parolees. When someone is put on supervision, there is a risk assessment conducted to determine the risk level of the individual, which helps P&P determine how to supervise this individual. This change is just for sex offenders, so that P&P can use the appropriate risk assessment tool. The Nevada risk assessment tool is not always appropriate to sex offenders; they need a more tailored, specified tool, so P&P just wants to make sure that they have that flexibility to use the tool that is the most appropriate.

I will note that in discussions of the NSC, the recommendation brought up was "Maybe we could put something in there that does say that it needs to be evidence-based or supported by research as determined by the Division." That recommendation was not voted on, but I wanted to share that with this Committee.

Sections 4 and 7 are the changes we are recommending, and this was voted on by a majority of the Commission, to address the issues I explained in regard to responding to technical violations. Our data found that parolees were spending somewhere between 60 to 90 days if you add up that jail time in a rudimentary way with the time that they were spending in NDOC for a 30-day revocation. If a parolee is facing a 30-day revocation, but sitting for a combined time between jail and NDOC anywhere from 60 to 90 days, it is going beyond what the sanction was intending. The intent originally was to keep the systems the same, so our recommendation at the time was to make the same changes for both probation and parole, but we are going to work with stakeholders to have a recommendation for that. The proposed resolution for this is to authorize P&P to impose jail sanctions or electronic monitoring as an intermediate sanction before they get to those longer temporary revocations. If the response to supervision is to have that swift, certain, and proportional sanction, having a quick jail sanction—in other states they refer to these as "flash incarcerations" or "dips" to quickly respond to an issue—would help P&P manage the caseload of those.

It also allows those being supervised more opportunities. They are less likely to lose their jobs if they are only serving a couple of days here and there in jail. If they are on electronic monitoring, they are less likely to lose their homes, so we are setting them up for success when it comes to being on supervision. This section of the bill adds that intermediate sanction. Revising this section would authorize P&P to be able to do that, require them to incorporate it into the graduated sanction matrix, and have a policy for that.

In order to do that, we recommended—for the parolees—getting rid of that 30-day temporary revocation, because that is not what is happening in practice. If the first temporary revocation is 90 days, that actually just codifies what the data shows us is already happening

for parolees. There is just no way for a parolee to serve only a 30-day revocation in our current system, because they have to be returned to NDOC; and they have to be housed in jail before they are transferred to NDOC. By removing that 30-day, it just codifies what is already happening.

The amendment we have been working on that I will bring to the Committee is going to alleviate the 30 days for the probationers. Right now, our qualitative data shows that might be working for the probationers; we do not have that data yet because I need to get it from the courts. Our data does not support that recommendation—I guess it could support it if we wanted to treat them similarly, but probationers and parolees are different. It makes sense to supervise them differently and give them different opportunities because of where they are in the criminal justice system. Again, the recommendation, if you look at sections 4 and 7, and then 5 and 8, would be to authorize P&P to have intermediate sanctions where they can impose jail time of 1 to 10 days, in the aggregate of 30 days, before they get to those temporary revocations. They will be exhausting their other sanctions before they get to that. For probationers, leave it so it is 30, 90, and 180 days, which is not in the bill right now, but would be our amendment to propose. For parolees, it would go from 90, 180, and then a full revocation on the third.

Sections 4 and 7 also revise the definition of a technical violation. Again, appropriate for parolees and probationers would be to revise that definition to exempt certain conditions related specifically to sex offenders. When the definition was developed in A.B. 236 of the 80th Session, it did not address sex offenders, which operate under a different statutory scheme. All of their conditions are laid out. What we needed to do was distinguish what is a technical violation and what is a non-technical violation. This definition is a little tricky to read because the technical violation is what it is not, but then there is another negative in there. So, the proposed language in here [lines 22-23, page 9] says: A violation of a condition required pursuant to NRS 176A.410…, other than a violation of, and the paragraphs you see listed in the bill, those are technicals. Reading in the definition, anything not listed is a technical. I can summarize those really quickly because I have those sections listed.

The ones I am going to read are technicals, based on these corresponding NRS sections: certain requirements for your residence, abiding by a curfew; submitting to testing for substances as required by the Division, specifically to substances; abstaining from alcohol; complying with the use of medication, so if they were not complying with that, that would be a technical. We have two other recommendations in our amendment we are going to propose, which would be the conditions to not use aliases or fictitious names and to not obtain a post office box. Those recommendations came from a few agencies.

Just so you have an idea of what would be a technical and what would not be, the types of conditions that would not be a technical would be accepting certain types of employment or volunteer positions without approval by their officer; submitting to a polygraph test; not having contact with the victim; not having contact with certain aged persons; being in certain places where children are; not possessing certain explicit material; not having a device that is

capable of accessing the Internet; being in a business with certain types of entertainment, that would not be a technical; and then not providing certain information about their enrollment in a program. Those would not be technicals. The other thing that changes the definition of technical violation would be, "termination from a program which provides residential treatment." If a person were participating in a residential program and walks away from that program, abandons it, then this makes it not a technical, because right now it is a technical. When they are supposed to be participating in residential programs and they have chosen not to participate, and they walk away, by putting it in here, in this way, it makes it so it is not a technical.

The last thing that I will just mention, which I have up here, is the amendments we are already working on [page 18, Exhibit G]. Adding those additional conditions to the definition would make them technicals, leaving the 30-day temporary revocation for just probationers but not for parolees.

The other thing that came up was requiring the judge and the parole judge to provide credit for time served for any time they are sitting in custody and waiting for their hearings. That is not in statute right now, and qualitatively, it sounds like that might be happening in practice. This would ensure that any time they are sitting and waiting for the outcomes of their hearings, they are getting credit for time served toward their temporary revocations.

The other recommendation here for an amendment would be to have a finding from both the judge and the Parole Board that the graduated sanctions have been exhausted. We are tying that together and adding those conditions for the parolees and probationers.

The other recommendations I have for an amendment would be relating to those sections that revise our statutes. One of the things that has come up in our data collection is the concern about confidentiality, so we would be requesting an amendment to ensure that data we collect remains confidential and is not subject to certain requests. As Mr. Piro mentioned, A.B. 236 of the 80th Session created the Nevada Local Justice Reinvestment Coordinating Council, a coordinating council at the state level, and one of the things the council needs is authorization to accept certain types of grants. This amendment would authorize it to do that, so we can do some of the work that Mr. Piro mentioned in other counties.

That concludes my walkthrough of the bill. I have partners from other criminal justice agencies available to answer questions.

Chair Miller:
Thank you so much for that, Ms. Gonzalez. You keep referencing amendments that will be submitted which is great because we always appreciate knowing when a bill sponsor is accepting, developing, or creating the amendments themselves; we consider those friendly amendments. As we know, and for new members, amendments can come from anywhere. We appreciate knowing when the sponsor is part of that or accepting that. Can you give us an idea of when we can expect those amendments to be submitted?

Victoria Gonzalez:
I can get those to you in the next day or two. It will be a report where I will have an outline of each amendment and then the proposed language and everything we want to put in there.

Chair Miller:
Excellent, thank you.

Assemblywoman Mosca:
When it comes to sections 4 and 7, I understand the problem we are trying to solve is the backup of time. Is it recent, is it a trend, is it because we are now collecting the data, and has it been updated in the past?

Victoria Gonzalez:
I want to make sure that I understand the question. You are just wondering if that length of stay is still longer than 30 days?

Assemblywoman Mosca:
I am trying to understand if this is a recent issue because now we have more issues that are leading it to be longer, or has it been a long-term trend; or, is it because we are now collecting the data? I am trying to understand the origins of why we are now considering changing the timelines.

Victoria Gonzalez:
Assembly Bill 236 of the 80th Session went into effect July 1, 2020. We did not have the data before to really understand what was happening. I knew anecdotally there was an issue, so the criminal justice agencies and I got together and realized we wanted to make sure we had a data-driven recommendation. That is the only reason. We were still getting our feet under us to figure out how to get data, and now that we have got a handle on it, we can. Then when we go back to the data, we can see this has been the issue the whole time. Again, it is because of that statutory structure for parolees. There is no way to make it shorter unless the structure or something is changed on how a parolee has to be transferred back to NDOC.

Assemblyman Yurek:
Even as a trained attorney, I find that statute with sections 4 and 7 difficult to read. I was up last night trying to do the negatives and figure it all out. I would like to clarify something. I appreciate your effort to identify the specifics, specifically for sexual offenders who are on probation or parole, and we now want to include in the definition of non-technical violations, and that would include the termination from an inpatient program, it would include failing to comply with a search clause, and that would be specifically NRS 176A.410, subsection 1, paragraph (a), so we can clarify.

Victoria Gonzalez:
If it is listed there, it is a technical. Because paragraph (a) is listed in the definition of technical violation, and because there is another negative in there, not submitting to the search and seizure would be a technical.

Assemblyman Yurek:
My understanding of reading it, it looked like everything listed there is a technical except for these. So, now we get into double, double negatives.

Victoria Gonzalez:
I totally agree.

Chair Miller:
We can have legal confirm that as well.

Assemblyman Yurek:
I guess maybe if we could just get true clarity on those. . . I noticed a number of the ones I was going to read off were included in the ones that you mentioned as non-technical. There have been significant references for the need of data-based decisions. Do you have information on the data that led to the selection of these specific provisions that we want to include as non-technical and the reasons?

Victoria Gonzalez:
We can have legal verify this, but if it is listed here, it is a technical, because there are two negatives. It is everything, but then it says, a "violation of… other than…" That "other than" becomes a second level of a negative. If it is listed here, it is a technical. To your question about the data, we did not use data to analyze this. We wanted to make sure to address the concern because these conditions had not been addressed.

The problem is because nothing was said about these conditions, it makes them all technicals. The problem then was what to do with these conditions when they came up. It was a discussion among stakeholders. The conversation started with P&P and the Parole Board. At the time, the administration at the Office of the Governor provided insight as well. And the approach that they had there was from the other side. We brought stakeholders together to ask what they thought about carving these out. The question was, do we just wholly exclude these sections, or do we redline and decide what is a technical and what is not? I do think there are a few ways to address this, but if we do not do something, then all of these are technicals.

Assemblywoman Gallant:
My question will not be so technical. Given the fact we are having staffing issues across the board, it seems like if this bill were to pass, then you are going to need more staff to handle the different programs and different ways you would deal with parolees versus those on probation. Are you equipped to handle that? If not, how do you plan to address it?

Victoria Gonzalez:
I am not from P&P, but we can ask them. My take, based on the conversations I have had with them, is this would help alleviate how they are managing that. My understanding is they still need their staffing taken care of, and once they have that, they can handle this. From the NDOC perspective, they absolutely need help with this. With their existing

structure, they are not set up to have these parolees coming back on a regular basis like this. This change would help alleviate it, so they would not need additional staffing to continue to implement this policy.

Assemblyman Orentlicher:
I am glad to hear that the amendments are in the works. As we both recall, there were concerns raised at the NSC by public defenders to make sure that this is a fair approach. I want to make sure the amendments you bring forward will address the public defender concerns. Can we count on that?

Victoria Gonzalez:
Yes. The amendment we will be bringing forward, to go back to the 30 days for the probationers, came from the recommendation of the public defenders. We worked through what would make the most sense for them, so when that amendment comes through, it will be in partnership with them.

Assemblywoman Cohen:
My question is about section 3 and getting rid of the Nevada Risk Assessment System (NRAS) and having P&P administering an appropriate risk assessment tool. Is there going to be any guideline on what that tool will be? Is it something that can change frequently, based on a whim? I want to know if there are going to be any kind of guidelines so that defense attorneys know whether they are going to have to be getting to know new guidelines over and over again?

Aaron Evans, Major, Deputy Chief, Northern Command, Division of Parole and Probation, Department of Public Safety:
To answer that question, we will continue to use the NRAS system on all of our probationers and parolees that are not sex offenders. The NRAS system was not designed to be used on sex offenders, so we want the authority to be able to use a different tool for that population. The way this law is written, it says that all people on supervision will get an NRAS. We are trying to fix the wasted effort of doing an NRAS on that population when we really are doing another assessment on them. This law says we have to use the NRAS on them, so the bill is cleaning up the requirement to do an assessment that does not pertain to that population when we turn around and do another one that actually does pertain to them.

We are required by statute to do an assessment for their supervision and risk levels. I certainly do not want to change assessment tools as it is an arduous process to train everyone on a new tool, have it validated, go through that entire process. In discussion with Executive Director Gonzalez, we have talked about cleaning up some of that language to make it more specific to retaining the use of the NRAS and adding other appropriate language to carve out the other populations that need a separate type of assessment.

Assemblywoman Cohen:
I understand how that can be an issue. I want more information about what will be used going forward: Who is making that decision? Is there is going to be one tool that you use? Is there going to be consistency with the next tool? And what is the possibility of it frequently changing? That is what I am getting at.

Aaron Evans:
Our goal is to be consistent so we can train with it consistently, so we can use it consistently, so the data that is collected and derived from it can be used appropriately. We currently use a tool called the VASOR II (Vermont Assessment for Sex Offender Recidivism II) for our sex offender population. That is what we would use statewide as a validated tool. Should issues arise with the tool in the future, then obviously we would look into replacing it, but it would be standardized across the state.

Chair Miller:
That concludes the questions. We will now open testimony in support of A.B. 32.

Jennifer P. Noble, Chief Appellate Deputy, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
I am testifying in support of this bill today on behalf of the Nevada District Attorneys Association, but I also come to you today as a chief in the Washoe County District Attorney’s Office who knows very well what it feels like when you make a suggestion to Ms. Gonzalez or challenge one of the NSC's recommendations, and she looks at you and says, "That is not what the data says." That is a humbling feeling, but it is also something that gives me gratitude for the work she is doing and this Commission has done in providing evidence-based, data-driven recommendations that will benefit our entire criminal justice system. We are in support.

James Palombo, representing Nevada Prison Education Project:
I want to introduce the Nevada Prison Education Project at this moment, because your group and some of the other people here, we cross-referenced some concerns in terms of reentry and recidivism and reducing public harm. I hope people will reach out to us in the context of your continuing work. The second piece to this is, as I did with Senate Bill 103, I would like to recommend that an ex-offender be on the NSC. I have been part of commissions for four decades and that is always a valuable asset to have, in terms of what is produced, so I am making that suggestion. Thank you for the consideration.

Chair Miller:
Is there anyone else who would like to speak in support? [There was no one.] I will now open testimony for anyone in opposition to A.B. 32.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We agree that the intent is fixing the process for parolees. We are on board with that. We happen to feel that parolees are a little bit differently situated than probationers, so the

change to probation stuff in section 4, subsection 3(a), is what we have issues with. One of the things that we have an issue with is the "flash incarceration." One of the main reasons I have that issue is on October 21, 2022, our office and the courts got a lot a letter from the Southern Command of the Nevada Department of Public Safety [Exhibit H]. In part, it said in June of this year, the Division became aware of misconduct by one of our former employees. The Division learned this person neglected assigned caseload and deactivated cases and, in some cases, the offenders were told that they were no longer on supervision. With the flash incarceration part, there are due process concerns that would maybe not bring us into the picture, but I think we can fix that. One of the reasons it is good that we are in the picture right away on a technical violation, is when somebody is put in through the CJCC, Clark County has been really good at getting the hearings within 15 days for a probation violation.

We are then brought into the process, and we are getting the people services that they may not have gotten at the start of probation, or we have noticed an increase in the need for services and we are putting them back on the right path.

We do not want to change the provisions in probation that A.B. 236 of the 80th Session did. That is one of our main objections. We are fine with the electronic monitoring part, but we do not want to change what A.B. 236 of the 80th Session fixed. We can discuss some of the things as far as technical violations that Executive Director Gonzalez brought up, like aliases; I do not know that I want to make that a technical violation.

Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office:
I will echo those sentiments and thank Executive Director Gonzalez for reaching out and working with all stakeholders. I do think we can come to an agreement.

Beth Schmidt, Director-Police Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are opposed to A.B. 32 as it has been introduced, but we are working with Executive Director Gonzalez. We are hopeful to get to a position of support, and one of the things we do appreciate is the ongoing dialogue, reference these data-driven recommendations. Just for the record, the Clark County Detention Center does fall under the Las Vegas Metropolitan Police Department. We look forward to continuing that work.

Jason Walker, Sergeant, Patrol, Washoe County Sheriff's Office:
I am testifying in opposition to the bill as introduced given some unknown impacts to our detention facility. I have spoken with the bill sponsor and with some language change, we are hopeful to get to a position of support.

Chair Miller:
Is there anyone else that would like to testify in opposition? [There was no one.] We will now open it up to anyone that would like to testify in neutral to A.B. 32.

Christopher P. DeRicco, Chairman, Board of Parole Commissioners, Department of Public Safety:
I am here to testify in neutral in regard to A.B. 32. First off, I would like to commend Executive Director Gonzalez and her staff for all of the work that has been put into this. We speak with her and her staff regularly, and we believe there is some amendment language that could be included, and it appears all of the stakeholders are working directly towards this. I do want to bring up one specific section that has not been talked about, and I am hopeful we may be able to get some type of language in here to remedy this. There is a part of A.B. 236 of the 80th Session that was removed when it was opposed, and might be missing from this bill. Prior to A.B. 236 of the 80th Session, when somebody appeared before the Parole Board, many times the person had less than a year remaining on an alleged parole violation, and they would request to just flatten out and expire the time and finish the sentence because that person did not want to go back out under parole.

With technical violations now, the Parole Board has its hands tied. If someone comes back and would like to expire their prison term, there is no mechanism for them to be able to do so. They would come back on technical violations, they would go back out on the streets no longer than 30 days after that hearing, and essentially, we are returning them right back to what they had before, which is many times nothing: no residence, no family, no support. I would like to work with Ms. Gonzalez on a possible amendment change here, either to come up with a means to allow individuals who qualify, if they want, to just expire that prison term in custody; or, potentially if they are in for a technical violation, that they not be back out and released to the streets until they have an approved plan by the Division.

Chair Miller:
Anyone else? [There was no one.]

I would like to make a comment on everyone that testified in negative, thank you, and I appreciate you for following the rules that it be based on its entirety. I also appreciate the conversations we have already had in that all of the stakeholders are already working with the sponsor, and the sponsor has already been receptive and will be submitting amendments. We look forward to that. With that, I will go ahead and close the hearing on Assembly Bill 32. Ms. Gonzalez, would you like to make any final remarks?

Victoria Gonzalez:
We have all been working really hard on this, and I appreciate everyone's support. It is too bad we cannot just have the vote on me because it sounds like we can all work together. I love that. I just wanted to comment on the work with the jail data. Our intent would be to not add more pressure; the hope would be to take some pressure off of everybody with this process. I anticipate collecting that data and will include that when it comes to supporting any amendments that we bring forth. Thank you.

Chair Miller:
Thank you, I wish we could just vote on you, Ms. Gonzalez, as well. I will go ahead and close the hearing for A.B. 32. Next up, we have Assembly Bill 83, which is relating to authorizing the modification of sentence of certain prisoners released on parole under certain circumstances.

Assembly Bill 83: Revises provisions relating to sentencing. (BDR 16-490)

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
The folks who have been on this Committee for quite some time and members of the 2019 Legislature will remember that we passed Assembly Bill 236 of the 80th Session, which was an omnibus criminal justice bill. It was a huge bill with a lot of pages, and we, Mr. Jones, Ms. Noble, members of law enforcement, and I, spent extraordinary amounts of time with each other hammering out the details of the bill. Sometimes things get missed and this was one of the things that got missed and we are trying to rectify that.

Assembly Bill 236 of the 80th Session was a bipartisan piece of legislation that set us on the road to data-driven policy recommendations. The State Board of Parole Commissioners had requested that we move a portion. The intention was to take this portion that is now being added back in and move it out of *Nevada Revised Statutes* (NRS) Chapter 176, where it did not belong, and place it into NRS Chapter 213, which, as Director Gonzalez said, that is when we are talking about parole; so move it away from one part of the statute and move it into a different one; and also add a requirement for early discharge of parolees that mirrors the one for early discharge of probationers, but with some clarifications.

Section 1 of this bill would authorize the State Board of Parole Commissioners to petition the court to modify a person's sentence on parole if the person meets certain criteria. That criteria must include that they have served one-half of the period of parole or have been sentenced to life and have served 10 consecutive years on parole. There are notification requirements. The Board must give notice of the petition and hearing to the Office of the Attorney General or district attorney who had jurisdiction in the original proceedings, and it would go before a court, and the court would have to find good cause to do it. It is not an automatic thing; it is just allowing people to petition. It is putting something back into the law that was taken out accidentally.

We are going to see another bill come before this Committee, Assembly Bill 51, where we are putting something back into law that was accidentally taken out before. We are just asking to put this back into law.

Chair Miller:
Members, do we have any questions?

Assemblyman Yurek:
I was not here for A.B. 236 of the 80th Session, but I am certainly aware of some of what those intentions were, I think great intentions, to try and bring reforms that are going to help. It is important to view this bill in the context of those efforts. I understand you said that things were inadvertently taken out and we want to put them back in, but as I look at it, the goals of A.B. 236 of the 80th Session were to reduce sentencing guidelines before incarceration. We were looking to reduce the length of incarceration. We were trying to reduce incarceration for non-violent crimes. It looks like this bill wants to ostensibly go a little bit further by now modifying a sentence of a person who, even after all of those reforms, was tried and convicted, was sentenced to prison, and has presumably exhausted all of their potential appeals, by now modifying or reducing the sentence that was imposed in some cases by years or even decades. What are you proposing to accomplish with this bill? Is it because of an overburdened system, and we are looking to lighten that, or is there reason to believe that these efforts are going to reduce recidivism?

John Piro:
It is giving people a chance to petition. You are absolutely correct, Assemblyman Yurek, that they have served their time on parole—so they have done their prison sentence, they are doing parole—so if things are going well, it gives them the chance to petition to reduce the length of parole. It is with their parole officer's blessing that it even goes before the court; or if, a defense attorney puts it before the court, it is still going to have a hearing in front of a judge, with the district attorney or the Attorney General able to weigh in. I do not want to speak for the Division of Parole and Probation; if there are people who are more overburdened than us, it is them.

Assemblywoman Gallant:
Looking at it with the life imprisonment, I am curious, how many nonviolent or nonsexual crimes would elicit a sentence of life imprisonment?

John Piro:
Off the top of the top of my head, I can only think of drug trafficking; high-level drug trafficking. As far as sex offenses go, you never get off lifetime supervision. A lot of attorneys from my office even get confused that probation and parole are separate from lifetime supervision. You will always be on lifetime supervision if you commit a sexual offense. That is not something you are going to be getting off of.

Assemblywoman Summers-Armstrong:
Section 2, subsection 6 says a risk and needs assessment means a validated, standardized tool that identifies risk factors. There was a change suggested in the previous bill; does that need to be meshed together so there is clarity about whether their assessment is, I think the term was, "appropriate"? Does that need to be fixed here, so that these are talking to one another in the same language?

John Piro:
It may be best for P&P to answer that question since they are the ones that do those assessments.

Assemblyman Gray:
I want to make sure that I am reading this right, as I am not an attorney. If an individual received a lifetime sentence, was granted mercy, and then was put on parole, they can now be taken off of parole and be clear of supervision?

John Piro:
It would be permissive for them to petition for it. They could if everybody agrees, so if everybody does not agree, no.

Chair Miller:
There are no additional questions from members. I will open it up for testimony in support of A.B. 83. [There was no one.] With that, I will open testimony for those wishing to testify in opposition to A.B. 83.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
Sentences reflect how a trial judge or jury viewed the case at the time the case was heard. They determined what they considered to be the most appropriate punishment. I will note that case law is pretty clear; both the State and victims deserve finality in sentences. That is something I cannot stress enough. There are not many procedural vehicles to challenge the implementation of a sentence after it has been imposed. I would also like to point out there are no standards in this bill, or what circumstances either NDOC or the Parole Board should consider when sending this motion to the courts. There is no standard of what a judge may consider when deciding this motion.

I also want to point out that when we are talking about life "tails," we are talking about murder cases, sex assaults, lewdness with a minor; cases where a judge has considered all of the evidence and determined that somebody should be on parole their entire lives. We heard that parolees are different than probationers, and I think that applies to this bill as well.

Finally, there are no mechanisms by which NDOC or the Parole Board could notify the victim. As I testified when I presented in front of this Committee, it is everybody's job to notify victims pursuant to Marsy's Law. In this instance, if you guys are to consider and pass this, the Parole Board or NDOC should be charged with notifying the victims that this is being requested.

I do plan to work with Mr. Piro to see if we can come to an agreement. We spoke briefly prior to this hearing and will continue those discussions.

Chair Miller:
We will now open the hearing to let people testify in neutral to A.B. 83.

Aaron Evans, Major, Deputy Chief, Northern Command, Division of Parole and Probation, Department of Public Safety:
First, I would like to answer Assemblywoman Summers-Armstrong's question about the risk and needs assessment. In the other bill, Assembly Bill 32, Nevada Risk Assessment Tool (NRAS) is defined as a risk and needs assessment. The language in that bill intends to change it to the appropriate risk and needs assessment. We do not feel that there is any need to marry up the language. When this section of law was removed in A.B. 236 of the 80th Session, it changed the path for somebody on a life term of parole to get some sort of sentence modification or commutation. What happened when this part of the law went away was that their only relief was through the pardon process. As a division, we complete the pardons investigation reports that go to the State Board of Pardons Commissioners; we adapted procedures to add commutations into that process. It is not quite a sentence modification, I am not an attorney, but a commutation would be a step-up from a sentence modification; it would still allow someone to get off of life parole.

In the pardons process, our investigators do a very in-depth investigation of the individual that covers the minute they got out of prison and what they have done since: their personal life, professional life, record on supervision, how the victims feel about them potentially getting a pardon or commutation. We reach out to the judges that may have sentenced this person to see if they have any input. It is probably a 20-page report, which is then provided to the Pardons Board, which will then hear the case. The Pardons Board, made up of the Governor, the Attorney General, and the Supreme Court justices, decides if these life parolees should have their sentences commuted, which would let them off of their lifetime tail. When this language went away, it streamlined the process; it provided a comprehensive report for the Parole Board to able to decide as a whole as to whether or not these people should be released from supervision.

Chair Miller:
Your two minutes are up, please wrap up your testimony.

Aaron Evans:
Adding this back in there, it says, "upon the recommendation of the Division," to Mr. Jones' point, there is no standard of what that means. The Division of Parole and Probation could just say no to every case. It says, "The Board. . . may petition the original court of jurisdiction. . . ." The Parole Board could choose to not petition the court. I just wanted to give those ideas of where it used to be and where it is now.

Chair Miller:
We know that the bill sponsor is open to working with all of the stakeholders. Is there anyone in Las Vegas who wants to testify in neutral?

Christopher P. DeRicco, Chairman, Board of Parole Commissioners, Department of Public Safety:
I want to follow up a little bit here. I am testifying in neutral in regard to this bill. I do not think it was really overlooked; we created a new statute as a part of A.B. 236 of the 80th Session with regard to early discharges, which is contained in NRS 213.1543. These cases, these lifers as I will call them all of them, now have the opportunity to be heard before the Parole Board, as Mr. Evans indicated, with a very extensive investigation involved. My office houses the executive secretary of the Pardons Board, who handles all of the contacts to district attorneys, victims, defense counsel, anybody involved; it is a very good process. The process has been working, especially with the Pardons Board, doubling the number of their hearings that they conduct each year now.

A little background on this: if it goes back, and this language is reverted to the way it was before, to the Pardons Board making a recommendation, I think it adds a lot of bureaucratic garbage in here that we do not need. It used to be the Division needed to make a recommendation, then to the Parole Board, which would then make a recommendation to the underlying court that heard the case. How it is now, the Division makes a recommendation directly to the Pardons Board, with an extensive investigation, and a decision is made. I am not sure if we are going back to putting the Parole Board back in the middle of this; the Division could make that recommendation right to the court itself. We get thrown into this for a second recommendation when we have a process now that we only have a recommendation to the Pardons Board. I would say that more work could be done there. This is being met right now with the Pardons Board.

Chair Miller:
Sir, would you like to change your testimony to opposition?

Christopher DeRicco:
We are testifying in neutral because there could be some language change in there to potentially remove the Parole Board from the language that is in the bill now.

Chair Miller:
Is there anyone else who would like to testify in neutral? [There was no one.]

We will now open the meeting to public comment. [There was no public comment.]

Thank you, everybody, this meeting is adjourned [at 10:32 a.m.].

RESPECTFULLY SUBMITTED:

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Connor Schmitz
Committee Secretary

APPROVED BY:

____
Assemblywoman Brittney Miller, Chair

DATE: ______________________________________

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a copy of a PowerPoint presentation from the Clark County Public Defender's Office, presented by John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office.

Exhibit D is a video, 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 from the Washoe County Public Defender's Office, presented by Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office.

Exhibit F is a photo of four packets of sweetener, submitted by Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office.

Exhibit G is a copy of a PowerPoint presentation from the Nevada Department of Sentencing Policy, presented by Victoria Gonzalez, Executive Director, Department of Sentencing Policy regarding Assembly Bill 32.

Exhibit H is a letter dated October 21, 2022, from Michael Van Dyke, Sergeant, Southern Command, Division of Parole and Probation, Department of Public Safety, submitted by John J. Piro, Legislative Liaison, Chief Deputy Public Defender, Clark County Public Defender's Office, with regard to Assembly Bill 32.