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NEVADA SENTENCING COMMISSION

MINUTES DRAFT

Date and Time: January 23, 2023, 9:00 AM

Location: VIRTUAL ONLY

MEMBERS PRESENT

John Arrascada
Chief Michelle Bays
Dr. Shera Bradley
Chairman Christopher DeRicco
Director James Dzurenda
Athar Haseebullah
D.A. Chris Hicks
Jim Hoffman
Dr. Jennifer Lanterman
John McCormick
Julia Murray
Jon Ponder
Director Beth Schmidt
Director Christopher Sewell
Assemblyman David Orentlicher
Senator Nicole Cannizzaro
Vice Chair Christine Jones Brady
Chair Justice Lidia Stiglich

MEMBERS EXCUSED

Judge Scott Freeman
Judge Tierra Jones
Kimberly Mull
Senator Pete Goicoechea

STAFF

Executive Director, Victoria Gonzalez
Manager of Policy Analysis, Jorja Powers
Management Analyst II, Erasmo Cosio
Management Analyst I, Connie Liu
Administrative Assistant, Jose Sepulveda

1. Call to Order / Roll Call
[Meeting called to order at 9:00 a.m.]

Chair Justice Lidia Stiglich: All right, I'll now call to order the January 23, 2023, meeting of the Nevada Sentencing Commission. So, good morning, it's good to see you and welcome to those who are viewing the meeting on the Department of Sentencing Policy's YouTube channel. We have some new members to welcome as well, Director Christopher Sewell from DETR, Director Beth Schmidt from Las Vegas Metro, and Director James Dzurenda from the Nevada Department of Corrections. Congratulations to you all on your appointments and welcome to the Commission, welcome back for some of you. I'll now ask Director Gonzalez to take the roll.

Executive Director Victoria Gonzalez: Thank you Chair.

(ROLL CALL IS CONDUCTED BY DIRECTOR GONZALEZ; QUOROM IS MET)

2. Public Comment

Chair Stiglich: I'll now open agenda item two. This is the first period of public comment; there are two periods of public comment, one at the beginning of the meeting and one at the end. Members of the public have two options for submitting public comment. First, members of the public may do so in writing by emailing the Department of Sentencing Policy at SentencingPolicy@NDSP.nv.gov. Public comment received in writing will be provided to the Commission and be included by reference in the minutes of the meeting. Members of the public who wish to testify may do so by telephone. Due to time constraints public comment will be limited to two minutes; any member of the public who exceeds the two-minute limit may submit your comments in writing to the Department of Sentencing Policy. At this time, I will ask staff to manage and direct those who wish to testify by telephone, Mr. Sepulveda.

Mr. Jose Sepulveda: Thank you Chair. Members of the public who would like to testify by phone, press star 9 to raise your hand. When it's your turn to speak, please slowly state and spell your first and last name. Caller with the last three digits 499, please slowly state and spell your first and last name for the record. You will have two minutes. Caller with the last three digits 499, please slowly state and spell your first and last name for the record. You will have two minutes. You may now begin.

Ms. Jodi Hocking: Good morning, my name is Jodi Hocking. I am the founder and executive director of Return Strong. We are an organization of impacted people, people who are currently incarcerated, people who have been incarcerated, and families and people who care about those who have been impacted directly. I'm really here just briefly to talk about our concerns regarding sentencing. We're thrilled that the Interim Judiciary Committee has made sentencing credit reform a priority this year and that the Sentencing Commission is working on the data to support that work. Since we brought AB 241 to the table in 2021, the impact of the way credits are handled in Nevada and the problems with it have become glaringly obvious. Former Director, Director Daniels, made it seem as if the issues with the credits are easily resolvable; that you can just go to a case manager and get things corrected but that is not the true experience for impacted people. The process is a maze and no one really gets an answer that is clear in a timely amount of time often leading to them being in prison longer than when they should have been. In addition, all of the things that were opportunities for people to access to earn time have disappeared. We have lifers right now that have been moved to Ely who were at Warm Springs earning college degrees and programming while working. Now they're forced labor at the kitchen in Ely. They're threatened with disciplinary action if they refuse to work, they're untrained on how to safely work within the culinary program, they lost scholarship funding and money with no recourse or remedy available to them; it also impacts their credits. My loved one has been sitting at Southern Desert for the past four years on a violation without any opportunity to program. He just was allowed in anger management program for the first time that he started last week. People are being warehoused; and while this is about fixing sentencing credits, we want to urge you to do that without looking at unintended consequences and to remember that there are real live people behind the dates and numbers and that their experiences will tell a very dark story that we can't forget as we move forward with the change. We absolutely agree that change must happen. We would like to ensure that we understand all of the implications so we don't end up in a situation like what happened with AB 241 which did not fix the problem because of one simple phrase which was a mistake and not the legislative intent, days of credits

instead of talking about flat credits. Let's make sure that this time the voices of impacted people are part of this process. Thank you, have a great day.

Mr. Sepulveda: All right, caller with the last three digits 036, please slowly state and spell your first and last name for the record; you will have two minutes. Caller with the last three digits 036, please slowly state and spell your first and last name for the record. You may now begin.

Ms. Ashley Gaddis: Good morning, my name is Ashley Gaddis, and I am a person who was formerly incarcerated in Nevada. I'm familiar with both the AR's and NRS's surrounding sentence credits. I currently work on staff with Return Strong and work specifically to focus on AR and sentencing change. I'd like to share my experience. My experience with the days and credits have been that no one really understands them inmates, case managers, legislation, not even corrections staff. I do remember a person said in a meeting once that there's only two people in Nevada that really understand how the credits and days work and that's not okay. I feel like we all should understand our days and credits and release dates going into a prison. From my experience I know that there's a breakdown of the flat time, work time, good time, meritorious, and stat. Which all these are credits given to us in advance upon coming into prison assuming that an individual will be working and staying out of trouble and that's kind of unrealistic for a multitude of reasons. Mostly with the job availability there's just not enough jobs in prison for an inmate to hold their day and receive that work time. So, when there a lack of job programming, there's a loss of days there and which moves a person's release date again not knowing when they're getting out. So, another problem has been with the meritorious credits. Meritorious credits are given upon completion of a program and what happens is I take a three- or four-month program that says I get 30 days of *[inaudible]* Okay so the problem here is in trying to get resolution and solution we have to go through our case worker, our chain of command. They don't know anything about it. They shoot us to OMD, OMD then tells us that we have to go through the grievance process and talk to our case worker. So that takes about an eight or nine month process where there's no definite answer, resolution, or solution, and results in the loss of time again not knowing when you're getting out.

Mr. Sepulveda: We have no more callers Chair.

Chair Stiglich: Thank you, Mr. Sepulveda. I'll close the first period of public comment.

3. Approval of the Minutes of the Meetings of the Nevada Sentencing Commission held on November 4, 2022, and December 13, 2022

Chair Stiglich: Moving on now to agenda item three. Members of the Commission have been provided copies of the minutes from the November 4, 2022, and the December 13, 2022, meetings. Are there any edits, comments, or corrections? All right, hearing none I will now entertain a motion to approve the minutes from the November 4 and December 13, 2022, meeting.

JOHN MCCORMICK MOVED TO APPROVE THE MINUTES OF THE NOVEMBER 4 AND DECEMBER 13 2022 MEETINGS

JON PONDER SECONDED THE MOTION

MOTION PASSED (JOHN ARRASCADA APPROVED NOVEMBER 4 MINUTES ABSTAINED FROM THE DECEMBER 13 MINUTES, JAMES DZURENDA AND CHRISTOPHER SEWELL ABSTAINED)

4. Discussion of Assembly Bill No. 32 (2023) and Possible Action on Proposed Amendments

Chair Stiglich: I'll now open agenda item four. Discussion of Assembly Bill No. 32 (2023) and possible action on proposed amendments. This is the only substantive agenda item and the focus of our meeting today. At our last meeting, the Commission moved to hold a special meeting in advance of the 2023 legislative session to discuss Assembly Bill No. 32. AB 32 is based on the recommendations that came out of the Department of Sentencing Policy and this Commission. Director Gonzalez is going to review the bill; she and her staff have also prepared some supporting materials and she'll review those as well. After that I'll turn to the Commission for discussion of any proposed amendments we would like the Director to present at the bill hearing, Director?

Director Gonzalez: Thank you Chair. Good morning everyone, I will quickly summarize the key sections of the bill as it's been provided to you in advance. Section one of the bill revises the qualifications of the director, my position, section two revises the membership of the Commission and how certain members are appointed. Section three changes the provision related to the risk assessments tool used by the Division of Parole and Probation and applies to probation, a similar change is made in section six for parole. Section four authorizes the Division of Parole and Probation to impose no more than 10 days in jail or no more than 60 days of electronic monitoring as part of the graduated sanctions in response to technical violations. This section also requires the division to adopt guidance on how to use the sanctions. Section four also revises the definition of technical violations to exclude certain conditions related to sex offenders and exclude termination of certain programs. This means these are not technical violations. This section applies to probation and similar changes are made in section seven to apply to parole. Section five removes the 30-day temporary revocation instead making the first temporary revocation 90 days, a second 180 days and the third a full revocation. Temporary revocation is in response to technical violations. This section applies to probation and similar changes are made to section eight to apply to parole.

The next item I will review is an infographic we made which I will share. This illustrates the process for temporary revocations and captures the changes that AB 32 makes to the process. We intend to distribute this with the bill to provide some quick and accessible information about the process and the changes. As this commission will recall, we presented a visual of the process of a temporary revocation and how the data that we found was reflected and how the process was currently being implemented. This is a summary of that so that you can quickly access that information and make it hopefully easier to review for everyone. The final item we included is a sample of a report of AB 32. I will share that. The purpose of this report is to provide a summary of how these recommendations were developed. In the history of the proposal section, we've included a summary of the commission meetings when these recommendations were discussed and what additional steps we took to vet, research, and develop the recommendation. You can see that we also included a summary of the impacts as they were presented at the meetings. These impacts were identified by me and my staff. The next large section we designed is to capture the views and perspectives of the Commission. There is a supporting section, an opposing section, and a neutral section. The substance of each of these sections came from the May 9, 2022, meeting, and the summary of what was stated in the minutes. Any supporting, opposing, or neutral position stated in today's meeting will be added to this. I will circulate the final version to the Commission to make sure I have captured all the perspectives. I'll provide and present this report at the AB 32 hearing.

The last thing I want to mention is that Parole and Probation has developed a draft of their graduated sanctions and violation response matrix to show how this policy would be implemented should AB 32 go into effect as written. I will send this out to the Commission as soon as possible and I'll remind you that this is a draft only but shows what the division could contemplate which would be consistent with the mandate in the bill for the Commission or for the division to adopt guidance on how to implement the sanctions. I will describe some of what is on the matrix which you will be able to see as soon as I send it to you. The matrix is organized by risk level of low, moderate, high, and very high. Then within each risk level there is a severity of violation by less severe, severe, and most severe. A most severe violation for every risk level is a recommendation for a revocation for a non-technical violation and a temporary revocation for a technical violation. For the low, moderate, and high-risk levels, the jail sanctions and electronic monitoring may be used in response to a severe violation. For low risk and severe violations, a sanction could be up to two days in jail. For moderate risk and severe violations, a sanction may be up to five days in jail. It looks like the up to 10 days will be reserved for high and very high-risk levels where there is a severe violation. Again, at the bill hearing this information will also be shared with the committee. I will now turn the time back to the Chair.

Chair Stiglich: Thank you Director. Are there any questions, I'm sure there are questions or comments on the Director's Report? Ms. Lanterman.

Dr. Jennifer Lanterman: Thank you. Director Gonzalez can you just remind me of the justification for the sections three and six change from the language of essentially re-administering risk assessments from the Nevada Risk Assessment System or successor to appropriate risk assessment tool. I'm not recalling the discussion about the justification for that change.

Director Gonzalez: Thank you Dr. Lanterman and I will also turn to the Division of Parole and Probation to make sure I have this right. I believe the rationale for that was the need for flexibility for a type of assessment depending on the type of individual that they're supervising. Generally, that risk assessment can be used for everyone but if I remember correctly the risk assessment needs to be flexible for sex offenders is a different type of risk assessment so I'll turn to I believe Deputy Chief Evans is here if he could just verify that, please, thank you.

Deputy Chief Aaron Evans: Yeah good morning, Aaron Evans from Parole and Probation. That is correct is just the Nevada Risk Assessment system is designed for non-sex offenders, so this just clears up and allows us to use another tool for the appropriate population.

Dr. Lanterman: Okay, thank you.

Mr. John Arrascada: I have a question for Director Gonzalez. I just received the email with the graduated sanctions; perhaps you could ask or someone from the Department of Public Safety Parole and Probation can answer. Is this a near final draft or is this -- I mean where are we at in the drafting process because it's kind of significant to the rest of any discussion we may have?

Director Gonzalez: If I could Deputy Chief Evans, I'll answer first and then turn it to you. One of the things it's going to be early because for this commission we don't get or the Commission does not have the final say, and so I'll say for the division, they will adjust it depending on what happens because ultimately this bill is going to go before the Legislature and they will discuss -- if there's any changes there will be additional changes that have to be made depending on what other ideas or policy recommendations come out of that. So that's the only caveat I would add to whatever draft we have, it's always going to have that but then I'll turn to Deputy Chief to add anything else he wants where we're at with the status of the draft.

Deputy Chief Evans: Mr. Arrascada, this is our current violation matrix that we use. I've added the electronic monitoring and flash incarcerations in there with kind of an estimated number of days just kind of you know loosely basing it on the risk level of individual, the severity of the violation, etc. So this is what our violation matrix looks like today and the two particular items in this bill were included like I said for illustration purposes. Electronic monitoring is in there already. This bill would change the process of us having to go back to the court or board to request that permission to put somebody on electronic monitoring, give the division the authority to do so.

Chair Stiglich: Thank you, Vice Chair Brady.

Vice Chair Christine Jones Brady: Thank you Chair Stiglich. The question I have about the appropriate, the change for the risk assessment tool by using the word appropriate. I'm wondering if that or I'm concerned that that undermines the idea of a scientifically based risk assessment tool because I know that the Nevada pretrial risk assessment tool was based on data that said if you, that these certain things tend to cause increased risk or decreased risk in a person, same with the sex offender tool so I get that there does need to be a difference with the sex offender tool versus the regular risk assessment tool but by saying appropriate, I'm wondering if various you know jurisdictions throughout the state might then turn to just random or different criteria or factors that -- I don't know. So that's my question is at some point could appropriate be too vague?

Chair Stiglich: Director, anyone like to field that question?

Director Gonzalez: Yeah I could. One of the thoughts I have is we could add that, so I'll make a similar report the one that I made for the temporary revocations. I can make one for each of these recommendations for the bill so we can identify all the discussion of the Commission. I could put that on there as an issue that was brought up and I mean if the Commission wants to approve a recommendation to amend that to evidence-based, I think would be the consistent language if you wanted to specify that, that could be something this commission does, or I just mention that at the bill hearing that this was something that was brought up. So that's possible, I guess I'd want to know too if the division has any thought about that distinction for what they need to make sure that the assessment's appropriate, but it seems to me if we add evidence-based, that would cover that.

Chair Stiglich: All right, thank you. Dr. Lanterman.

Dr. Lanterman: Yeah I agree with Director Gonzalez. I also had a concern when I read so the reason I asked about the switch from Nevada Risk Assessment System to appropriate was how that might be interpreted in practice because the whole purpose of the risk assessment tool is that you're using an actuarial risk and needs assessment that filters out all sorts of essentially bias or it's like judgment calls that we don't necessarily always recognize and that don't help us appropriately assess the risk associated with a person's particular background. But that said there are some situations in which people have been convicted of certain types of crimes where other types of assessments would be appropriate particularly in the case of sex offenders. So, I would support modifying this language to read appropriate evidence-based risk assessment tool or appropriate actuarial risk assessment tool. Actuarial would have the best predictive validity but in some cases that is not an option with every tool. So, you have some flexibility there in terms of the language you can use. At a minimum I think it should probably read appropriate evidence-based risk assessment tool.

Dr. Shera Bradley: I maybe have a couple questions before my comments but I'm wondering who is actually administering these? So, the question of how appropriate is interpreted is sort of dependent on who is in charge of making that decision and administering them. So maybe if we can get some clarity on that first then I could comment further.

Director Gonzalez: The Division of Parole and Probation administers them.

Dr. Bradley: But what type of professional within the division? Is it a probation officer doing it, is it a licensed clinician whose doing that?

Deputy Chief Evans: We have officers and non-sworn staff that administer this assessment. A risk and need assessment is defined in NRS 213.107 and it says a risk and need assessment is a validated standardized actuarial tool that identifies risk factors that increase a likelihood of a person reoffending and factors that when properly addressed can reduce likelihood of a person reoffending. So, in this section that it's looking to modify, it says that the division shall administer a subsequent risk and need assessment to each probationer. So that assessment it already defined in other sections of NRS. Internally we were working on developing a little bit cleaner version of this language other than just putting appropriate; we just ran out of time before submitting something for this meeting so we're open to changing it to make sure it's clearly a you know evidence-based tool and this section only pertains to the Division of Parole and Probation for these assessments so for any other agencies it doesn't necessarily apply.

Dr. Bradley: Okay, so I can appreciate the concerns everyone's bringing up. I think one of my concerns is this, there's not always going to be an evidence-based tool for every person. I don't know what kind of research the division is doing into these risk assessment measures but it's almost impossible to really validate a measure on all different sort of age groups, ethnicity, whether someone is primarily an English speaker, I mean there's all kind of different factors. I don't know what kind of standardization is going to be done on this based on this as a state level so evidence-based might be overstating it a little bit potentially but if it's being done by the officers and there's a decision being made as to what appropriate means then I think it's okay to leave it up to them as long as there's consistency across the state, which it sounds like that's what would be happening. There's somebody higher up who would be determining what the measure is and then everybody would use the same thing if I'm understanding that? So there would be, if it's a sex offender case for example, there would be some option for a risk tool for sex offenders that's approved of at high administrative level, was that accurate?

Deputy Chief Evans: The problem currently is the way that this section of 176.8435 reads is that the division shall administer an NRAS risk assessment to every probationer. The problem is that, like you said, one assessment doesn't fit all and so we are kind of administratively having to go through and do an NRAS assessment on sex offenders when that tool is not designed for them. So by law we're doing work that is not useful and we should be using a different, better, more targeted tool to those populations. So that's what the initial intent of this change was was to fix that clearly just using appropriate may open up other issues, so we'll continue to look at it.

Dr. Bradley: Perhaps there's the suggestion maybe could be appropriate as determined by and then put some indication as to who would be making that decision so that individual officers or individual cities or locations are not making up their own standards for how they're choosing maybe would be a way to get around that.

Chair Stiglich: Director Dzurenda?

Director James Dzurenda: I hope this might help Shera Bradley too. I was here when the state took the NRAS system and developed it. It was actually to help with it, it was a validated system with University of Cincinnati; it was actually the Ohio Risk Assessment. All that I'll answer for Department of Corrections, we use the NRAS but we changed nothing based upon the original Ohio Risk Assessment System and just incorporated into the state of Nevada's NRAS for the corrections department but it is a validated system. It was evidence based which was supplied from like I said the University of Cincinnati and I believe that's the same way the same system that Parole and Probation took as well however it did not assess those that are sex offenders only but it did have a separation between the gender specifics but it was a Ohio Risk Assessment System is validated and evidence based.

Chair Stiglich: Thank you Director. Mr. Evans, you had your virtual hand up and it went down when you answered a question did you have something?

Deputy Chief Evans: No Chair, it was just in reaction to one of the questions.

Ms. Julia Murray: I'm just a little confused as to the need to expand for sex offender specific parolees and probationers at this time. The current state of the NRS requires that all sexual offenders have a sex specific risk assessment done prior to release on parole or probation and they are already required under for that to happen by a licensed professional that's been trained in doing so and in assessing that criteria, and that applies to parolees as well. So someone who's a high risk remains in prison by law. So I'm just curious as to why the need to expand off the NRAS when we already have a secondary tool that is required for all sex offender specific individuals that are imprisoned?

Deputy Chief Evans: I'll answer. The Nevada Risk Assessment System is for while they're on supervision so I know like sentencing sex offenders will have a psychosexual evaluation prior to sentencing that'll gauge some risk and re-offense scores there, but this tool is once they're out on supervision. If there's a tool that says prior to release they're to have a sex offender specific assessment, I'd like to know what section you're referring to because it's not coming to my mind right away. So this is targeted at those on supervision. If you have somebody on for two, three years clearly their situations can change. Risk levels can fluctuate with other things going on so this is the continued process of either once they're released or once they're sentenced to probation so that we can set a supervision level so we know, you know, how involved we need to be with them on their supervision. So that's what this section is pointing to is a supervision-based and not just a static one that happens at release and then you know we never reassess them.

Ms. Murray: Okay, I just want to make sure I'm following. So you're looking for a tool that would be used after a psychosexual has already been completed and somewhere along the supervision course, is that correct?

Deputy Chief Evans: Correct. Assessments are nothing new; we've done assessments forever. We moved to NRAS in 2017 something like that. Psychosexual evaluations for parolees most of the time are many years prior to their release. So a lot of information in a psychosexual evaluation is old right, because then they go to prison usually on a sex crime for many years and by the time they came out things could have changed. So this is post-conviction, post-incarceration, how do we best supervise this person, what kind of risk category do we need to put them in, how much attention do we need to pay to them, what kind of services do they need. And again, this separates that NRAS, NRAS is not designed for sex offenders.

Ms. Murray: No, I acknowledge that; I agree.

Deputy Chief Evans: Yeah and so by law we're just trying to clean up some of the basically busy work that our officers and civilian staff have to do by performing this NRAS on the sex offender case load when they then turn around and do other sex offender tools that really are more telling to what that population needs.

Ms. Murray: Okay, I guess my follow up becomes one of where does the counselling come into play because again by per the NRS all individuals convicted of sex offenses are required to undergo a period of sex offender specific counseling and it sounds to me like we're sort of cutting out the opinion of that counselor to be able to evaluate along the way and to generate reports and substituting it with -- I don't mean untrained in the sense of no knowledge but -- the clinically untrained officer to come in and make a needs assessment. We have in every single case where there is a sex offender, there's someone who's been convicted of a sex offense, we have an individual who is specifically trained in assessing needs and that's that person who's running the counselling so why are we sort of sidestepping it with an officer?

Chair Stiglich: Can I ask a question though Ms. Murray?

Ms. Murray: Yes.

Chair Stiglich: I think there's a difference, I need to understand, there's a difference somebody is on supervision being counseled that's one thing, this is somebody who's alleged to have violated their release. So, then it would seem to me that we're at a different inflection point. Am I not understanding what we're talking, I want to make sure that I understand where we are talking about?

Ms. Murray: That's part of what I'm trying to get at as well, so I mirror your confusion. That's what I'm trying to ask is where is it that we're looking for this assessment because if someone's been out on supervision which is where Director [sic] Evans began, they should also be in counseling and there's already someone doing these evaluations and these need assessments. I just don't see where the untrained in the sense of not a clinical technician not a licensed social worker or medical professional I don't see where they come in as qualified to assess.

Director Gonzalez: If I may Deputy Chief Evans and then let me know. I want to make sure I understand. So there are a series of different types of evaluations that are done and so if you're talking about a counselor again that's a completely different purpose. This assessment is for the purpose of supervision and so while it will seem that there's different types of evaluations and assessments being done, it's because of the purpose. This assessment for counseling is not related specific to how counseling and treatment is going to be administered, it's about how the division must best supervise the individual based on their risk and needs. So, it's very specific to supervision and there's an evolution of assessments when it comes to someone moving through the criminal justice system whether they're being incarcerated whether they're being supervised, whether they're on parole and so these assessments occur at those different stages in order to ensure that whatever the individual the state is doing at that point in the process is addressing their needs appropriately and I think if treatment is required or related to that assessment that is the treatment itself is going to be separate it's going to be that the assessment itself indicates there should be treatment, there should be classes, there should be programming in making sure how that person is being either supervised or incarcerated. And so I can turn it back to the Deputy Chief if that is the proper distinction between what this assessment does and see if that clarifies it for Ms. Murray.

Ms. Murray: I follow where you're coming from and I understand why there's confusion about what I'm asking, but we have as a legislative body Nevada's been very careful about who they select to be in the position of assessing the individuals' needs when it comes to something that's largely clinical arguably mental health related, something that touches into this more medical side of criminal justice. The law's very specific about who can assess the needs and the best way to treat a sex offender. So the heart of my question comes back to why would we substitute all of that and put an officer who doesn't have that same clinical training and clinical background and or medical background into that equation? I don't understand where an officer would be qualified without that underlying background to assess something that touches so very close if not is a mental health related item.

Chair Stiglich: I'm sorry can I jump in one more time? It would just seem to me that at the point of an alleged violation or a violator, we're not talking about their treatment plan at that point, we're talking about you know a risk of public safety. Are they going to get the privilege of supervision again to be out and get treated? I don't know that they're apples and oranges and it is entirely plausible and possible that I'm missing something but I want to understand again what it would seem to me that's a different analysis being

made still under a tool that is more appropriately in the toolbox of the division than would be in their treater. If that makes sense?

Ms. Murray: Perhaps my confusion is because I don't know what tool we're going to be using. So in my mind opens the door to a whole lot of tools that, one, wouldn't be available to an untrained in the medical and or clinical sense officer because they wouldn't be qualified to utilize the tools. So, I guess maybe I need to know what the tool is, maybe that's where I'm stuck. So, I'll let it go for now and listen to what others have to say.

Chair Stiglich: Thank you Ms. Murray. Dr. Lanterman and then Chairman DeRicco.

Dr. Lanterman: So I too do not know the tool that P and P uses to assess the risk associated with people being convicted of sexual offenses. I will say as a general category those tools don't disregard the clinical needs of the individual being assessed. What those tools do is sort the likelihood that a person might commit an intra offense like a new intra offense crime, so another sex crime. It doesn't necessarily assess for the fact that they don't repeat a sex crime but perhaps because of the restrictions associated with their living conditions and the community maybe they commit property crimes, financial crimes, things of that nature right so it's not assessing for that, it's assessing specifically for the risk that they will commit another sex offense while they are on supervision and then that triggers different levels of essentially surveillance that parole needs to apply in that particular case, but again because I don't know the specific tool I can't say for sure but often what happens is these tools try to maintain some boundary between what has to happen in a clinical setting and the clinician not reporting information to a supervising officer that's going to create some problems there with their clinical relationship but the clinician reporting whether or not there are compliance problems with the treatment plan that the clinician has identified as appropriate for the needs of a client right? So there is communication between the clinician and the parole officer but they're not sharing essentially the details of what's going on in that treatment because there are some boundaries there with respect to privacy in that medical or clinical context. So, I mean maybe Deputy Chief Evans can speak to this more but it's not that the tool disregards that but those tools are also specifically designed to get at the supervision issues that parole needs. Also understanding that most parole officers are not medical doctors, they are not NSWs, they don't have clinical expertise in working with sex offenders. So the tools are specifically designed to assess the risk of reoffending with the knowledge of the people assessing those tools are not going to have that type of background and then the training for those tools is built around that absence of education and like clinical licensure and so that's how that tool is working or was designed to work.

Chair Stiglich: Thank you Doctor. Chairman DeRicco.

Chairman Christopher DeRicco: Yes, good morning. I want to say from recollection from some time ago after the last session and discussion with the Division of Parole and Probation, the talk around this change had to do with it says specifically [*inaudible*]. Well what happens if you know two months from now we're using the super duper risk assessment and it's a different assessment in name and this change here gave that division that ability to use which assessment which is which they've determined potentially to be the best assessment or the one that they're going to use and to use it. If you continue on and I'm just looking at section six of the statute, it talks about this assessment as being a dynamic assessment to occur multiple times over the period of supervision I guess given that someone might have a lengthy term of supervision and it's for the sup -- for the basis of the supervision level to either potentially reduce that level of supervision, it could potentially increase that level of supervision. So I think in my read or my take from this is that it is just for that language change and I agree potentially it might need some additional clean up but it was not to lock them in should they ever change the assessment that they're using.

Chair Stiglich: Thank you Chairman. Any other comment, concerns, or questions? Mr. Haseebullah.

Mr. Athar Haseebullah: So my question is I'm actually looking at section eight subsection 4B of the proposed AB 32 and that section addresses the temporary revocations of parole for technical violations. I just wanted to know sort of the databases and any underlying data to be provided or if there's a plan to provide any underlying data to demonstrate the need to sort of modify such standards to eliminate the first provision which is you know for 30 days for the lowest level of sanction on the first offense automatically

shifting it to 90 days. I did see a slide that said the parolees spend an average of 69 days for a first temporary revocation, but I didn't know if there was raw data beyond that; I'm not sure if that's you know three or four offenses extend out and sometimes that sort of data ends up demonstrating that. But to me it obviously posed significant challenges in terms of reading that. I'm not sure the rate though as well of those that haven't reoffended after that first offense and so eliminating that kind of is an option. There became a little bit of a challenge I recognize there's discretion involved at that point, but it seemed to exceed what I was hoping for. So is there data that you have for this body or that can be provided and justification sort of to demonstrate what that leap was based on?

Director Gonzalez: Yeah thank you. Yeah the data that we had again is specific to parolees and so what the data that we have is specific to just the first temporary revocation and I can provide that again to the Commission. In regards to the time we added that it took the individual from being arrested for an alleged violation, sitting in jail waiting for a probable cause inquiry to determine if an alleged violation has occurred, and then the time it would take for the parolee to then be transferred to the Department of Corrections where they would wait for a parole violation hearing to determine the official outcome of whether or not there was a violation of a technical violation that would result in a temporary revocation. And actually with the jail time combined it was more than what I put on the infographic; it was closer to 90 days. So, by changing the first temporary revocation here to 90 days in essence codifies what's already happening for parolees who are facing a first temporary revocation. Then the balance of that was to authorize the Division of Parole and Probation to provide jail sanctions rather than going right to that temporary revocation that first temporary revocation seeking that out, but giving the individual being supervised additional opportunities to address issues before we go to that temporary revocation which was a longer time that they're sitting there. The official recommendation that we had was for parolees. We advised that it could be expanded to probationers because by adding that authorization to the Division of Parole and Probation to impose jail sanctions again it gives those individuals additional opportunities rather than jumping right to 30 days that would disrupt their lives, their jobs, their housing potentially. So that's where the data originally came from for the parolees and then made sense from a general policy perspective as far as what AB 236 intended to do to offer those opportunities to probationers as well. We are going to work on getting additional data to figure out what's happening after that because the, I would say the qualitative information for those second and third so the 90, the 180 days were going along with what we expected. The major concern was with that first temporary revocation of 30 days where people were spending much longer than what was originally intended by the policy and so offering this other mechanism so that the individual has more opportunities and so that we're better using our resources for those that are housing these individuals as they're facing a potential temporary revocation.

Mr. Haseebullah: Thank you for that explanation. So just my only data request would be to try to make that portion holistic as possible specifically for the first 30 days or after the first 30-day period to both assess what the violation was based on but also the raw data. Sometimes I think in this space there tends to be percentages argued right, and there are certain numbers that can end up skewing in specific directions but I'd prefer to see you know that before being able to come to a conclusion. Obviously I know some of what you shared here and some of what's been shared in the presentation but having access to that data would be useful for the decision making process, thank you.

Director Gonzalez: Yeah and just to clarify your request for raw data. So just have it more of a breakdown of what those individuals look like as far as offenses and felony categories and things like that?

Mr. Haseebullah: Correct, and raw and numerical data. So effectively what I'm trying to get is like the pervasiveness of this need to eliminate that first portion. I understand the ability to have more discretionary sanctions you know internally before anything occurs but with the 30 day provision after the first offense or the first technical violation being removed statutorily from this, I wonder sort of the underlying basis that's being used to justify it and sort of the need as well as the scale for which we recognized the 30-day sanction to be ineffective such that it would need to be removed. So that data would help in going a long way towards that. I'd also be curious to see if there's any trends coming out of that to assess if there were typical violations that ended up stemming that ended up triggering this. So, for instance I observed that DUI was included obviously within that or you know there might be another offense. Are there specific trends where

we're recognizing offenders at least for that first offense we're viewing is maybe not necessarily being as efficient in terms of what the sanction might be? I'd be interested in knowing if there's a trend there.

Director Gonzalez: Great, yeah we will work on that and see what we can put together.

Chair Stiglich: All right thank you. Senator Cannizzaro.

Senator Nicole Cannizzaro: Thank you Justice Stiglich. Mine's more of a comment. Obviously this is a bill that is being proposed at the legislature; I serve in the legislature and so I just want to note that you know I know that bills are going to go through changes. There may be amendments adopted, other legislators who may have input, and so my lack of saying that there ought to be an amendment or ought not to be an amendment I'm sort of going to reserve that right so that I can do that in a legislative capacity and be able to have that discussion at the policy level there and certainly appreciate all the work that the committee has done and everyone's comments today. Looking forward to the bill but ultimately I sort of have to do my job also as a legislator to say that this bill is going to come before us, and it may go through many changes before it ultimately may end up in the senate before our committees and our members. So, I'm certainly going to support anything that the Commission is doing or the Division is doing to put a bill before the legislature so we can have these policy discussions but ultimately I want my participation here to sort of be as a member of the committee and not necessarily indicative of what the legislature as a whole may do or what comments or amendments may be adopted along the way.

Chair Stiglich: Thank you Senator. Any further questions for the Director? All right, hearing none at this time I can entertain any motions for proposed amendments if that is the desire of the committee or however you'd like to proceed, so waiting to hear.

District Attorney Christopher Hicks: Thank you Chair Stiglich. I would just make a motion that we accept this AB 32 as proposed and move it on to the legislature. The reason I would do that is because it's obvious by looking at the historical data that Director Gonzalez has presented and hearing these conversations today, the people that know the most about what's needed to improve what's addressed in AB 32 have met multiple times have put forth this bill. I think it's problematic for this Commission to kind of create its own mini legislative hearing when we start debating interlineations throughout this entire document; all of that can happen in the legislature as Senator Cannizzaro just touched upon. So, I would recommend we get this moving forward understanding that this bill is going to be looked at closely, there'll be testimony in support, testimony in opposition, different points can be made then and we all know what that process looks like and it's a long one. So my motion is to move along with what they put forth today so that we can get it to the legislature and have it go through the policymakers there, thank you.

Chair Stiglich: All right, thank you District Attorney Hicks. I have a motion, is there a second?

Chief Michelle Bays: I'll second that.

Chair Stiglich: All right I have a motion and a second. Is there any discussion?

Mr. Haseebullah: Chair, I would just ask for clarity on the motion. The motion is simply to advance AB 32 to the legislature but not necessarily a recommendation from this committee to accept in its current iteration or form is that a correct understanding of the motion?

Chair Stiglich: I think to be clear, this bill's already in motion. Question is whether we try to amend it in advance of their consideration or not. So yeah it'd be as is now, that's my understanding. Director, if I've got that right?

Director Gonzalez: Correct. So the question before the Commission is if there's any amendments that you would like me to present at the bill hearing when I present the bill. And so as this motion has been proposed it would be for me not to present any amendments that have been approved by the Commission but rather include the report that I submitted where it lays out all the opposing, supporting, and neutral views, any supporting information that's already been presented to the Commission as is without any proposed amendments from this Commission that everyone agreed upon.

Mr. Haseebullah: Thank you for clarifying that. My challenge here is I still think there are provisions that need to be flushed out and I don't want to preclude the opportunity for this Commission or any of its members to engage further on modifying the language, proposing amendments, and then create any sort of conflict during a bill hearing on it. So, I'm happy to get with you afterwards because I have challenges with respect to at least certain parts of this, namely the sanctions I just mentioned without having the data. I won't be supporting the motion and its iteration today but happy to work with you on that and certainly some of the elements I'm absolutely supportive of including the technical change in terms of what the requirement is for the director's position and things of that nature. I simply don't want to be precluded into a space especially organizationally where it appears that my organization or myself has supported the iteration of this as it stands without amendments.

Director Gonzalez: Thank you for that. Then what I could do -- anything that the members of the Commission would like me to include, I can include in that report as far as like different perspectives. And of course, at the bill hearing because most of you are criminal justice stakeholders will have that opportunity to present those policy perspectives and you know related to how you served on the Commission and what you're doing when the bill is actually being heard before the legislature.

D.A. Hicks: Chair Stiglich maybe I should clarify my motion, I apologize. My motion is to move forward AB 32 as it's proposed which has already happened. We already voted on this in the past, but by all means I certainly want to empower Director Gonzalez to, at those hearings; be able to put forth the differing views of the Commission because there are nuances of course. That is why we're all here, we all have different views that hopefully collectively land in the right spot but I think if we sit here today and we try to go line out, strike through certain language and change it, it's just not going to be productive. I think it's more productive for us to continue moving this forward and then give Director Gonzalez the ability to certainly relay the different commission members concerns or suggestions so the legislature can consider that. I'm quite certain that this bill will change throughout the legislative process. So that's a very long motion I apologize but I'm saying that just for the understanding of everybody. I don't want to make this more difficult than it needs to be, but my motion is to move it forward as we have in the past and then of course give Director Gonzalez the power to explain the differing views when she's asked at the hearing.

Chair Stiglich: All right, thank you. Mr. Hoffman.

Mr. Hoffman: So, I wanted to speak to what Mr. Haseebullah was saying because I know that on a substantive level I think the defense bar agrees with a lot of the concerns that he has but on a procedural level frankly I have to say I think District Attorney Hicks has the right of it. You know we've talked this out a lot; we've come to consensus where we can. On the places where we can't, I think maybe it makes more sense to just move it on to the legislature let any other fighting that has to happen, happen there. So I will be supporting D.A Hicks' motion, thanks.

Chair Stiglich: Thank you, Mr. Hoffman. Mr. McCormick and then Mr. Arrascada.

Mr. John McCormick: Thank you Chair. I mean I just wanted to clarify and see if this is okay with D.A Hicks that nothing in his motion or no action that this commission takes today precludes any member or any members employer organization from expressing their views on the specific legislation at the legislature. That because we advance or approve the bill whatever we want to say we do today, there's nothing that precludes any entity here from working on it constructively during session?

D.A. Hicks: No, for clarification I certainly am not seeking to tie anybody's hands. I recognize like I said we all have our different views that we bring to this and I know that will come out in the legislature.

Mr. McCormick: Just thought it was important to get that on the record.

Chair Stiglich: Thank you.

Mr. Haseebullah: With that clarification Chair I'd also be happy to support. I think the main thing was you know I don't want this to be a situation where bill's presented as is, there's no necessarily amendments offered today but you know any of us myself especially end up in a precarious position because we have not voted today to offer the amendment. I recognize there'll be time for negotiation but also don't want to put

any of the hard work Director Gonzalez or her team has done in a precarious position or throw them under the bus so thus the reason for that but happy to hear D.A. Hicks offer that position that you know we'll continue to work together to potentially offer amendments organizationally and see where we land.

Chair Stiglich: All right, thank you. Mr. Arrascada did you have something?

Mr. Arrascada: No, Mr. McCormick stated what I was going to state much more eloquently than I could.

Director Gonzalez: If I could just add and then piggyback on what was just discussed. Of course, then I would look forward to a -- since officially like our department is the sponsor of the bill then look forward to you reaching out to me and letting me know what amendments you are thinking of and then we can work to presenting those together as well if that's something which would be a great way to proceed as far as when we get to the bill hearing. So, I just wanted to thank you for that and of course look forward to whatever we do during session.

Chair Stiglich: All right I have a motion and a second is there any further discussion?

CHRIS HICKS MADE THE MOTION TO PUT FORWARD AB 32 AS IT'S PROPOSED AND EMPOWER DIRECTOR GONZALEZ TO PUT FORTH DIFFERING VIEWS

MICHELLE BAYS SECONDED THE MOTION

MOTION PASSED

5. Discussion of Potential Topics and Dates for Future Meetings

Chair Stiglich: I'll now open agenda item five. The dates of the meetings for the rest of the meeting cycle are provided in your agenda. Our next meeting will be February 24, 2023, and we'll meet on March 31, April 21, May 26, and June 30. Our staff is already working on more topics and items for discussion at future meetings and if anyone has anything to be considered for a future meeting, you can add it now or provide it to Ms. Gonzalez and her team. Does anybody have anything they wanted to add at this time? Mr. Hoffman.

Mr. Hoffman: Thank you. I know I've talked about this before, but I think it would be good to hear from Ms. Hocking and Return Strong. In addition to the issues at NDOC, there's also these issues with sentencing credit. I just wanted to share I have two cases right now of people who their sentencing credits were incorrectly calculated by NDOC. So that is some kind of something that I think we should be talking about. I would like to ask the Commission to hear a presentation from her at some point in the future, thank you.

Chair Stiglich: Thank you Mr. Hoffman. Any other items at this time?

6. Public Comment

Chair Stiglich: I'll now open the second period of public comment. Just as we did during the first period of public comment, those who wish to testify may do so by telephone. Due to time constraints, this public comment will be limited to two minutes. Any member of the public that exceeds a two minute limit, you may submit the balance of your testimony in writing to the Department of Sentencing Policy at SentencingPolicy@NDSP.NV.GOV. At this time, I'll ask Mr. Sepulveda to manage those that wish to testify, Mr. Sepulveda.

Mr. Sepulveda: Thank you Chair. Members of the public who would like to testify by phone press star 9 to raise your hand. When it's your turn to speak, please slowly state and spell your first and last name. We have no callers Chair.

Chair Stiglich: All right, thank you Mr. Sepulveda. That concludes our second period of public comment.

7. Adjournment

Chair Stiglich: I want to thank everyone for your time, your comments. It certainly helps me better understand you know the bill, the concerns. I want to thank staff and the members of the Commission, and if there's nothing further we will see you all in February and often so looking forward to it. This meeting is now adjourned. Be well, keep up the good work.

DRAFT