

Nevada Sentencing Commission Supplemental Report to the December 2024 Statement of Costs Avoided

STATUTORY REQUIREMENT

The Nevada Sentencing Commission (Commission/NSC) is a 27-member body comprised of individuals representing a wide range of the State's criminal justice process. The Commission meets to discuss topics related to criminal justice policy and procedure in Nevada. The expertise embodied by NSC Commissioners brings varied ideas and points of view to discussions held.

NRS 176.01347 requires the Sentencing Commission, with assistance from the Nevada Department of Sentencing Policy (Department/NDSP) to:

- Develop a formula to calculate, for each fiscal year, the amount of costs avoided by this state because of the enactment of chapter 633, Statutes of Nevada 2019, using specific statutorily-mandated data points;
- Submit a statement of costs avoided by the state for the immediately preceding fiscal year because of the enactment of AB 236, By December 1st of each fiscal year;
- Submit a projected amount of costs avoided by the State for the next biennium because of the enactment of AB 236 by August 1st of each even-numbered year

The Commission and the Department have updated the methodology and formula used to calculate the costs avoided due to AB 236 (2019) three times. The latest iteration uses only the statutory-required data points of:

1. the annual projection of the number persons who will be in a facility or institution of the Department of Corrections (NDOC/DOC) which was created by the office of Finance pursuant to NRS 176.0129 for calendar year 2018;
2. and the actual number of persons who are in a facility or institution of the Department of Corrections during each year.

DEVELOPMENT OF FORMULA(S)

There are many considerations regarding how to accurately measure any true cost avoided from AB 236. Both the Vera Institute and the Bureau of Justice Assistance have discussed the importance of using marginal costs when calculating savings and expense due to policy change. Using average costs often results in overestimation. Marginal costs are the amount that overall correctional costs change as the inmate population changes. The Commission has narrowed, for the purpose of its mandated reports, the costs avoided calculations to use only the percentage of the NDOC budget that represent inmate-driven costs.

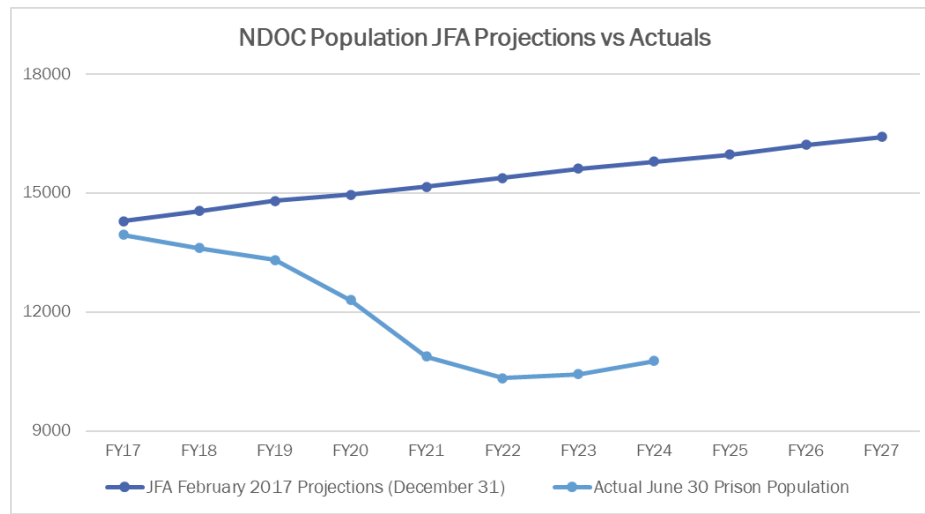
The total NDOC budget is not taken into consideration when calculating costs avoided due to AB 236. The current formula is derived by taking the actual June 30, 2024, Prison Population of 10,759 and subtracting it from JFA's 2017 projection of 15,789 offenders by 2024, to get a current prison population avoided of 5,030 offenders. The annual cost per offender inmate-driven portion was calculated by using the inmate-driven percentage of NDOC's FY24 budget, which was 10.858%, and multiplying that by the FY24 average annual cost per offender, which was \$33,247.85. This results in an annual cost per offender inmate-driven portion of \$3,610.05. This \$3,610.05 was multiplied by the Current Prison Population Avoided, or 5,030, to get the final FY24 costs avoided amount of \$18,158,559.

Source	FY24
JFA February 2017 Projections (December 31)	15,789
Actual June 30 Prison Population	10,759
Current Prison Population Avoided	5,030
Annual Cost Per Offender Inmate Driven Portion	\$ 3,610.05
Statement of Costs Avoided	\$ 18,158,559

There have been discussions within the Commission meetings regarding the Department of Corrections budget increasing even as the population has decreased. Studies show there is little to no correlation between states that spend the most per capita for incarceration and the states with more offenders per capita. Most variations in state corrections' spending ultimately represent the corrections' policies, budgetary factors, and policy decisions important to those individual states.

FINDINGS/CONSIDERATIONS

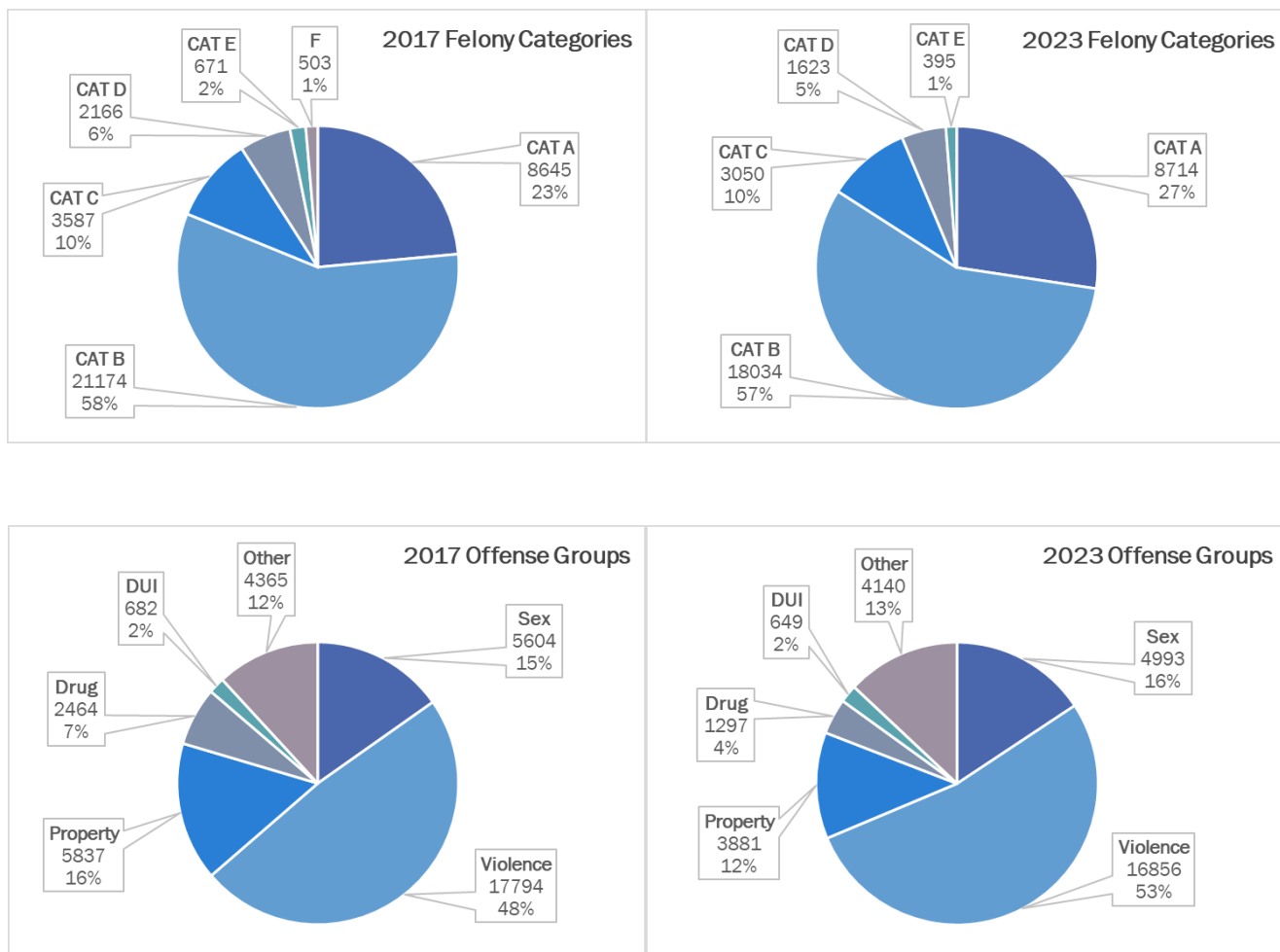
The 2017 JFA report used to craft AB 236 projected a marked increase to the NDOC population, forecasting an NDOC population of 16,206 by FY 2026. The numerous factors including: AB 236, Covid-19, and the fact that the NDOC population had begun a slow decrease prior to any of these influences, make it impossible to attribute all cost avoidance to any one source.



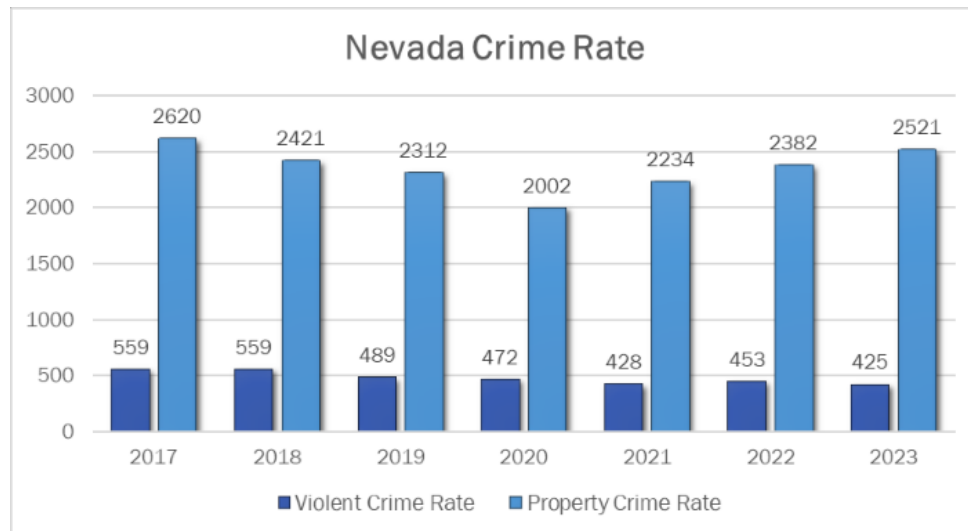
- The entire membership agrees that there are difficulties in calculating avoided costs overall but specifically regarding the enactment of AB 236 as costs avoided are funds that an entity *would have* expended in the future. This is a projection. In the case of AB 236, costs avoided refer to spending that *may* be unnecessary because of a decrease in prison population after AB 236 was enacted. However, due to the varied costs associated with housing offenders in an NDOC facility, the costs avoided are not tangible or measurable funds as they represent potential future savings. Many scenarios can change the NDOC budget and population in any given year. Examples are inflation, global pandemic, statute and policy change, capital improvement need, salary increases, and societal issues.
- In the Nevada Department of Sentencing Policy's December 2021, *Fiscal Impacts of Sentencing and Corrections in Nevada*, it is noted that legislative findings related to the establishment of the Nevada Sentencing Commission include the following: "Sentencing and corrections policies should be resource sensitive as those policies may impact costs, inmate populations and public safety. Criminal justice agencies should strive to effectively measure costs and benefits." (NRS 176.0131, subsection 4)
- The Nevada Sentencing Commission is tasked with making data-driven policy recommendations. The Nevada Department of Sentencing Policy was created to collect and analyze Nevada criminal justice data. One of the biggest issues the

Department faces is a lack of data. The statutory requirements regarding calculated costs avoided due to AB 236 are exclusively Department of Corrections data points which is the majority of usable data to which NDSP currently has access. To be able to create a longitudinal approach to analyzing criminal justice practices and policy in Nevada, the Department would need data from local-level law enforcement, judicial entities, alternative sentencing, and post-conviction data that is currently not available. Prison population and prison spending are only one small piece of the Nevada criminal justice array.

- One impetus behind AB 236 was to use State resources to house the most serious and violent offenders. The charts below display changes to the proportion of the total population by felony category and offense group between 2017 and 2023.



- A point mentioned frequently during recent NSC meeting discussions within the scope of costs avoided has been societal costs. It has been noted that there has been a rise in property crime in Nevada while the prison population has decreased. A counterpoint was--can this be proven to be a causal result of AB 236? The conclusion is that more data would be needed to begin to pinpoint possible causes of increased or decreased crime.



RECOMMENDATIONS

The Nevada Sentencing Commission has been following the mandate set forth in statute regarding developing a formula and reporting costs avoided by the State due to the enactment of AB 236. With time and experience, the Commission's recommendations today include asking the Legislature to allow the Commission to research and revamp the required data points for consideration of costs avoided calculation related to AB 236 (2019) and requesting help to obtain consistent data from a wider range of Nevada criminal justice agencies. The current data points being used are only from NDOC. It must be assumed that as the changes brought about by AB 236 modified sentencing thresholds and outcomes--certain felony categories were adjusted to lower felony categories and others that were felonies prior to the enactment of this law were modified to misdemeanors or gross misdemeanors. Also, some offenses that remained felonies now allow for mandatory probation. This means that some of the costs may not have been avoided but may have been relocated to the Division of Parole & Probation, alternative sentencing departments, and local jurisdictions/jails. If the charge of the Commission is to calculate **costs avoided by the State**, determining if, and if so, to where and to what extent, costs may be being transferred to other agencies is necessary.

For more information contact the Nevada Department of Sentencing Policy at sentencingpolicy@ndsp.nv.gov.