

STATE OF NEVADA



# **Nevada Sentencing Commission**

## **Projected Amount of Costs Avoided Report**

**August 2020**

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# BACKGROUND

## *History*

In 2018, Governor Brian Sandoval, Supreme Court Chief Justice Michael Douglas, Speaker Jason Frierson, and Senate Majority Leader Aaron Ford requested technical assistance through the Justice Reinvestment Initiative (JRI). As part of this JRI effort, the Advisory Commission on the Administration of Justice (ACAJ) was charged with developing policies to reduce crime and recidivism, while shifting resources toward more cost-effective safety strategies. The ACAJ is a statutorily established commission comprised of 18 members representing a bi-partisan group of criminal justice stakeholders, including representatives from the judiciary, legislature, law enforcement, prosecutorial and defense bars, corrections agencies, and the community.

Over a period of six months, the ACAJ conducted a rigorous review of sentencing and corrections data in Nevada, evaluated current policies and programs across the State, discussed best practices and models in sentencing and corrections from other states, and engaged in in-depth policy discussions. Based on this review, the majority of the members of the ACAJ supported 25 policy recommendations which were introduced in Assembly Bill 236 (AB 236) during the 2019 Legislative Session.<sup>1</sup> AB 236 was passed by the Legislature and was signed into law by Governor Steve Sisolak on June 14, 2019. However, all of the provisions of AB 236 did not become effective until July 1, 2020. Therefore, the objectives of this report are limited because of the lack of data since the effective date.

## *Goals of Justice Reinvestment*

The recommendations developed by the ACAJ were designed to accomplish five goals of the JRI effort in Nevada:

1. Strengthen responses to the behavioral health needs of offenders.
2. Focus prison resources on serious and violent offenders.
3. Improve the efficiency and effectiveness of community supervision.
4. Minimize barriers to successful reentry.
5. Ensure the sustainability of criminal justice reforms.

This report will help address the statutory mandates in NRS 176.01343 and 176.01347 and advance all of these goals by using prison population projections to calculate savings and then make recommendations to reinvest potential savings realized as a result of goal number 2 and recommending reinvestment into programs, agencies, and services related to goals 1, 2, 3, and 4, which will ultimately advance goal number 5.

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<sup>1</sup> See Appendix G.

# CONSIDERATIONS IN DEVELOPING A METHODOLOGY

## ***Statutory Requirements***

**NRS 176.01343** requires the Nevada Sentencing Commission (Commission) to track and assess the outcomes resulting from the enactment of AB 236. Assembly Bill 80 (AB 80) of the 2019 Legislative Session established the Nevada Department of Sentencing Policy (Department) and moved the Commission, which was previously housed in the Legislature, to be housed in the Department.<sup>2</sup>

The Department assists the Commission in carrying out its powers and duties, including those requirements concerning the oversight of JRI as enacted in AB 236. Tracking and assessing outcomes resulting from the enactment of AB 236 means that the Commission identifies various performance measures and indicators and produces statutorily required deliverables. One deliverable is this report.

**NRS 176.01347(3)** requires the Commission to prepare and submit a report each biennium on the projected amount of costs avoided because of the enactment of AB 236. The statute requires for each report:

- Submitting the report to the Governor and the Director of the Legislative Counsel Bureau for transmission to the next regular session of the Legislature no later than August 1 of each even-numbered year.
- Providing the projected amount of costs avoided by the State for the next biennium because of the enactment of AB 236.
- Providing recommendations for reinvestment of the projected amount of costs avoided into behavioral health programs and services to reduce recidivism.<sup>3</sup>

## ***No Methodology Prescribed***

The statute does not prescribe a formula or methodology to calculate the projected amount of costs avoided. Therefore, the Commission needed to adopt a methodology to do so. The Commission met on April 29, 2020, June 24, 2020, and July 29, 2020 to discuss and approve a methodology. The methodology approved and adopted by the Commission takes various factors into consideration including the formula for the *statement of the amount of costs avoided* and the methodology used by the ACAJ in 2018 to calculate possible savings if JRI criminal justice reforms were enacted.

## ***Formula for Statement of the Amount of Costs Avoided***

The Commission considered the *statement of the amount of costs avoided* required pursuant to NRS 176.01347(1) and 176.01347(2). The Commission is required to adopt a formula for the *statement* and the formula must include the following:

- The prison population projections required pursuant to NRS 176.0129 for calendar year 2018; and
- The actual number of inmates incarcerated by NDOC during each year.

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<sup>2</sup> See Appendix B.

<sup>3</sup> See Appendix C.

## ***Prison Population Projections***

Pursuant to NRS 176.0129, the Governor's Office of Finance (GFO) is required to annually contract with an independent contractor to complete forecasts for the prison population in this State.<sup>4</sup> These prison population projections must include a ten-year forecast, referred to as the forecast horizon, during the ten years immediately following the date of the projections. This contract is currently being fulfilled by JFA Associates (JFA) and the current contract requires three separate forecast cycles to be completed in April 2020, October 2020, and February 2021.

JFA was also the independent contractor who completed the prison population projections for calendar year 2018. JFA completed three prison population projections for the 2018 contract cycle which were completed by April 2018, September 2018, and February 2019.

To determine which 2018 projections to use and to further inform the methodology to adopt for the projected amount of costs avoided, the Commission reviewed components of the methodology used by the ACAJ in 2018.

## ***2018 Methodology for Projected Amount of Costs Avoided***

The policy recommendations supported by the ACAJ projected to reduce the growth in the prison population which would result in savings related to corrections if such recommendations were enacted. Those savings can be referred to as the projected amount of costs avoided identified in 2018. Therefore, the Commission reviewed certain aspects of the methodology used by the ACAJ in 2018 to inform the methodology that the Commission would adopt for the projected amount of costs avoided in 2020.

In 2018, the ACAJ relied on prison population projections completed in August 2018. The introductory statement in the August 2018 projections indicated that it represented the September 2018 forecast cycle required by its contract with GFO.<sup>5</sup>

## ***Variable Cost Per Prisoner***

Another component of the methodology used by the ACAJ in 2018 to calculate the projected amount of costs avoided was a variable cost per prisoner. This variable cost per prisoner was multiplied by the difference in prison population projections if the policy recommendations were adopted and successfully enacted, and the projections if the policy recommendations were not adopted.

The variable cost per prisoner used in 2018 included certain costs for incarcerating inmates. These types of costs were identified as costs that change as the number of inmates increased or decreased. These variable costs included, without limitation, costs associated with:

- Medical treatment
- Institutions
- Remote camps
- Non-remote camps
- Transitional housing

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<sup>4</sup> See Appendix A.

<sup>5</sup> See Appendix D.

Fixed costs such as administrative and facility maintenance costs were not included as they do not change without a significant reduction in prison bed usage. The inclusion of fixed costs in prison projections are only used when there is a facility or unit closure anticipated.

## ANALYSIS OF SAVINGS

### ***2018 Projected Amount of Costs Avoided***

The analysis conducted by the ACAJ in 2018 found that the prison population in Nevada had grown significantly which resulted in higher spending on prisons and fewer resources available for measures to reduce recidivism. This included a lack of funding for treatment and services. The ACAJ identified key drivers of the prison population in the State and made policy recommendations to address those key drivers which would slow the growth of the population of incarcerated persons. If successfully enacted, the policy recommendations made by the ACAJ in 2018 would result in certain impacts and projected savings, or a projected amount of costs avoided.<sup>6</sup> The possible impacts and projections through 2028 included:

- Reducing the growth of prison population by more than 1,000 beds
- Averting 89 percent of the projected growth
- Avoiding over \$640 million additional corrections costs

Now that the policy recommendations for criminal justice reform have been enacted in AB 236, the Commission is tasked with tracking and assessing the actual impacts from this reform, identifying the projected amount of costs avoided each biennium, and making recommendations for reinvestment.

### ***2020 Projected Amount of Costs Avoided***

On July 29, 2020, the Commission adopted a methodology to calculate the projected amount of costs avoided. The methodology adopted by the Commission will promote sustainable and reliable projections of costs avoided. In light of the previous methodology used by the ACAJ in 2018, the statutory requirements for the formula for the *statement of costs avoided*, and the need to include additional considerations, assumptions, and contexts related to the costs of incarcerating persons, the methodology will include:

- A comparison of prison population projections from August 2018 and the most current projections available which are from February 2020.
- A variable cost per prisoner, which will include, medical costs, institution costs, remote camp costs, non-remote camp costs, and transitional housing costs and calculated as an average annual operating cost for NDOC as a whole.
- Other relevant considerations, assumptions, and contextual considerations when identifying the projected amount of costs avoided.

The intent of the projected amount of costs avoided is *not* to present a concrete tally of savings. The Commission recognizes that there are various operating mechanisms to consider when calculating correctional costs. The intent of the Commission in identifying the projected amount of costs avoided is to review certain trends in corrections and costs associated with corrections, and then identify

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<sup>6</sup> See Appendix G.

potential savings that can be reinvested to provide direction to the Legislature and the Governor to further the goal of JRI in Nevada.

### **February 2020 Inmate Projections**

As noted in the introduction of the prison population projections, the forecast prepared and published by JFA for February 2020 identified what it called a “dramatic decrease” in the male and female population in the latter half of 2019 and through January 2020. The decrease was due to an “unexpected decrease in the number of new court commitments” which mean there were fewer intakes at the Nevada Department of Corrections (NDOC).<sup>7</sup>

Because it is too early to tell if this decrease is a trend or a one-time occurrence, for purposes of the projections, JFA identified two types of assumptions to be used for the forecasts: Baseline and Worst-Case Scenario.

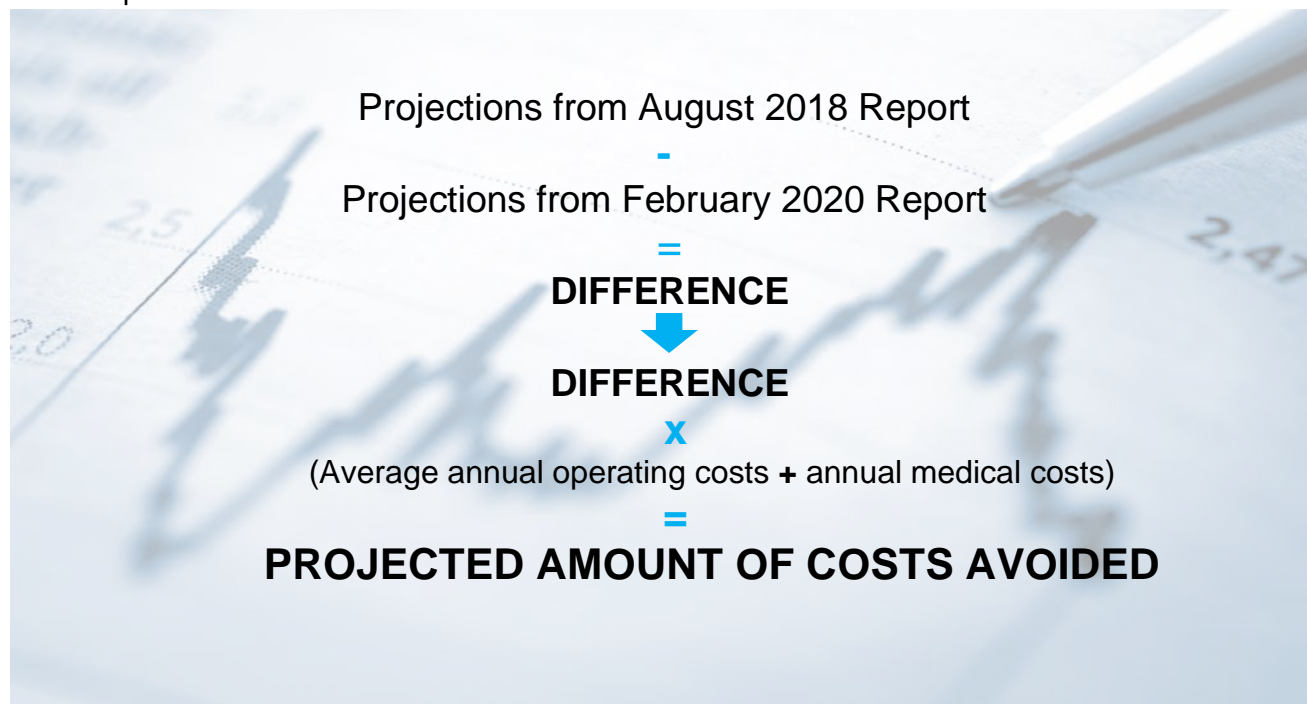
**Baseline Scenario:** The projections for the baseline scenario assumes that there will not be a rebound in new court admissions and the growth will average 1.6 percent through the ten-year forecast horizon.

**Worst-Case Scenario:** The projections for the worst-case scenario assumes that there will be a rebound in new court admissions and then they will “grow modestly” for the rest of the ten-year forecast horizon.

For the purposes of this report, the Commission will use the same terms and identify separate projections based on these two possible forecasts. Additionally, JFA explores possible explanations for this and the Commission will explore its own considerations and will closely watch the trends over time. These will be discussed in the “Possible Drivers for Unexpected Decreases” section of this report.

### **Calculations**

The formula for calculating the projected amount of costs avoided uses the methodology stated above and is represented as:



<sup>7</sup> See Appendix E.

The table below represents the calculations of the projected amount of costs avoided using the methodology adopted by the Commission on July 29, 2020 and the formula stated above. Again, the intent of these calculations is *not* to represent a concrete tally of potential savings over the next two years. These amounts represent an evaluation of certain information that is used to identify costs associated with the prison population in Nevada. Later sections of this report include additional considerations for identifying potential savings that could be associated with criminal justice reform.

	2022		2023	
	Baseline	Worst Case*	Baseline	Worst Case*
Projections from August 2018 JFA Report	14,181	N/A (use Baseline)	14,331	N/A (use Baseline)
Projections from February 2020 JFA Report	12,789	13,157	12,859	13,058
Difference	1,392	1,024	1,472	1,273
FY 2020 Average Daily Operating Cost	\$46.53	\$46.53	\$46.53	\$46.53
FY 2020 Average Annual Operating Cost	\$16,983.45	\$16,983.45	\$16,983.45	\$16,983.45
FY 2020 Average Daily Medical Cost	\$10.38	\$10.38	\$10.38	\$10.38
FY 2020 Average Annual Medical Cost <sup>8</sup>	\$3,788.70	\$3,788.70	\$3,788.70	\$3,788.70
Projected Amount of Costs Avoided	\$28,914,832.80	\$21,270,681.60	\$30,576,604.80	\$26,442,946.95

### ***A Note About Individual Institution Costs and Impacts of Closures***

At the June 24, 2020 meeting of the Commission, NDOC indicated that as the inmate population increases or decreases, the operating costs for each institution do not change dramatically. NDOC further indicated at that meeting that the closure of any facility, unit, or camp would result in significant and tangible savings. At the writing of this report, NDOC has not indicated any specifics regarding potential closures of facilities, units, or camps.

The Commission will continue to review the status of facilities, units, and camps of NDOC and include any savings identified if any of these are closed.

### ***Possible Drivers for Unexpected Decreases***

As discussed above, there were unexpected decreases in new court commitments from June 2019 through January 2020. JFA stated that “while there is no clear explanation of why” the new admissions dropped, further analysis from JFA indicated that the decline occurred mainly in “lower serious and non-violent offenders.” JFA also noted that at the time the projections were completed, AB 236 had not gone into effect yet. The “recent decline occurred in large part among populations targeted in AB 236 (excluding parole violators).” This means it is possible that criminal justice agencies began putting into practice policies that are consistent with AB 236.

JFA also noted a decrease in the prison population due to increased releases to parole. There has been an increased rate the last couple of years and JFA noted that the overall parole rate increased to 65.2 in 2019.<sup>9</sup>

It can be concluded that there is a trend of criminal justice reform in Nevada. The decreased new court commitments demonstrate a shift away from the incarceration of certain offenders. No matter the

<sup>8</sup> See Appendix F for source of costs.

<sup>9</sup> See Appendix E.



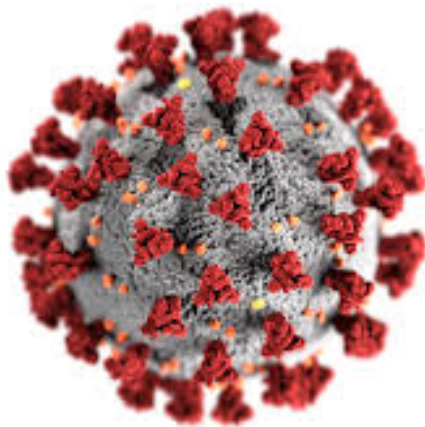
amount of savings due to such a shift, to maintain this criminal justice reform and promote public safety, the Commission recommends that the Legislature and the Governor consider reinvesting the amounts saved into behavioral health and treatment programs to decrease recidivism. This will reinforce the policy recommendations adopted in AB 236 throughout all three branches of government and the entire criminal justice system in Nevada.

The Commission will closely track the prison population projections and trends over time and return to these potential explanations and continue its analysis of the impacts of criminal justice reform in Nevada.<sup>10</sup>

### **COVID-19 Crisis**

The second week of March 2020 marked Governor Sisolak's significant responses to the COVID-19 Crisis in Nevada. That week the Governor directed schools, state offices, and non-essential businesses to close to the public. At the April 13, 2020 meeting of the Commission, Director Charles Daniels of the Nevada Department of Corrections reported to the Commission that NDOC had started taking preventative measures in February 2020 to protect NDOC institutions from infection. At the June 24, 2020 meeting of the Commission, Director Daniels reported that there was less than one percent rate of infection among inmates. As of the writing of this report, the citizens of Nevada are required to wear masks in public and practice social distancing. This means that many businesses and state agencies have remained closed and the future of school attendance in Fall 2020 is unknown.

The COVID-19 Crisis may have an impact on sentencing and corrections in this State. At this time and at the time that JFA published its forecast of prison population projections, it is too early to determine if and to what extent that impact will be. The Commission will continue to research, and review data related to the COVID-19 Crisis and its impact on sentencing and corrections in Nevada. The data, calculations, and methodologies identified in this report are a strong starting point for these discussions and will be revisited by Commission on a regular basis.



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<sup>10</sup> In the future, the Commission will also consider the costs on local jails and other local detention facilities to assess the relationship between the projected amount of costs avoided on the local level and costs diverted to jails.

### 31<sup>st</sup> Special Session

On July 8, 2020, the Nevada Legislature commenced a Special Session to address the budgetary shortfalls facing the State as a result of the COVID-19 Crisis. Every state agency made substantial cuts to their budget, most averaged around twenty percent. NDOC was not exempt from these cuts. The following cuts to the budget of NDOC were made in section 34 of Assembly Bill 3 (AB 3):<sup>11</sup>

Facility	2020-2021	AB 3
Prison Medical Care	<del>\$49,645,119</del>	\$49,560,119
Correctional Programs	\$8,805,647	NO CHANGE
Southern Nevada Correctional Center	<del>\$230,715</del>	\$230,700
Southern Desert Correctional Center	<del>\$28,526,480</del>	\$28,505,636
Nevada State Prison Correctional Center	\$73,709	NO CHANGE
Northern Nevada Correctional Center	<del>\$31,400,077</del>	\$30,912,584
Warm Springs Correctional Center	<del>\$12,568,277</del>	\$12,561,352
Ely State Prison Correctional Center	<del>\$30,955,001</del>	\$30,510,506
Lovelock Correctional Center	<del>\$27,953,898</del>	\$27,414,155
Florence McClure Correctional Center	<del>\$18,472,165</del>	\$18,462,301
Stewart Conservation Camp	<del>\$1,882,097</del>	\$1,881,624
Ely Conservation Camp	<del>\$1,534,034</del>	\$1,533,511
Humboldt Conservation Camp	<del>\$1,540,289</del>	\$1,539,841
Three Lakes Valley Conservation Camp	<del>\$3,116,454</del>	\$3,115,657
Jean Conservation Camp	<del>\$1,813,993</del>	\$1,813,445
Pioche Conservation Camp	<del>\$1,938,308</del>	\$1,937,711
Carlin Conservation Camp	<del>\$1,454,181</del>	\$1,453,525
Wells Conservation Camp	<del>\$1,494,526</del>	\$1,493,854
Silver Springs Conservation Camp	\$4,471	NO CHANGE
Tonopah Conservation Camp	<del>\$1,513,507</del>	\$1,515,978
Northern Nevada Transitional Housing	<del>\$457,943</del>	\$457,656
High Desert State Prison	<del>\$58,600,514</del>	\$58,568,801
Casa Grande Transitional Housing	<del>\$3,435,064</del>	\$2,942,328

It is reasonable to expect a recovered economy and to see budget projections restored. The Commission will consider restored costs when it submits its next report.

## GUIDING PRINCIPLES AND PRIORITIES FOR REINVESTMENT

**NRS 176.01347** provides guiding principles when making reinvestment decisions. This guiding principle is to:

“Reinvest the amount of [savings] to provide financial support to programs and services that address the behavioral health needs of persons involved in the criminal justice system in order to reduce recidivism.”

The Commission is aware that it is not an appropriations body but a recommending body. The Commission will not make specific recommendations about how much should be spent on any specific program, agency, or service. However, NRS 176.01347 requires the Commission to prioritize specific

<sup>11</sup> See Appendix H.

recommendations to meet certain needs related to criminal justice reform. Pursuant to those statutorily recommended needs, the Commission recommends that the Legislature and the Governor target the following needs, in accordance with the principle identified above and the five goals of JRI in Nevada.

**Reentry:** Funding for reentry programs should help to build robust services and programs to assist people who are leaving or have recently left prison and help reduce recidivism. The Commission recommends that the Legislature and the Governor reinvest in:

- ❖ NDOC programs for:
  - The reentry of offenders and parolees
  - Vocational training and employment of offenders
  - The education for offenders
  - Transitional work
- ❖ The Housing Division of the Department of Business and Industry to create or provide transitional housing for probationers and parolees and offenders reentering the community.

**Behavioral Health Needs:** The ACAJ in 2018 found that many jurisdictions in Nevada have launched programs to respond to individuals with behavioral health issues but a lack of funding limits availability throughout the state. The Commission recommends that the Legislature and the Governor provide funding to:

- ❖ A behavioral health field response grant program developed and implemented pursuant to NRS 289.675.
- ❖ The Nevada Local Justice Reinvestment Coordinating Council created by NRS 176.014 for the purpose of making grants to counties for programs and treatment that reduce recidivism.

**Behavioral Health Needs and Reentry:** Reinvesting in the Division of Parole and Probation would meet both needs identified above by providing funding to support:

- ❖ The Division of Parole and Probation's:
  - Services for offenders reentering the community
  - Supervision of probationers and parolees
  - Scientifically proven programs to reduce recidivism

While the statute requires that only the programs at the Division of Parole and Probation be scientifically proven, the Commission recommends that, to the extent possible, the majority of programs which receive funding be those that have been rigorously evaluated. The focus should be on evidenced-based programs. In the last couple of years, NDOC has moved towards evidence-based programming in practice and in statute. Reinvestment could help strengthen this endeavor. Whether the programs are evidence-based or not, the funding of programs should include an evaluation component to ensure that the programs are being effective in implementation and effective in meeting the needs of Nevada.

Reinvesting in these programs, agencies, and services will meet many and real pressing needs for justice-involved persons throughout the entirety of Nevada and provide tools to those charged with

changing behavior and outcomes. Reinvesting in programs, agencies, and services like these will also improve public safety. They are essential to the success of criminal reform in this State. The Legislature and the Governor should endeavor to meet the needs that Nevada has right now. Without significant reinvestment, the criminal justice system will not achieve the desired outcomes of reduced recidivism and improved public safety as articulated in AB 236.

## CONCLUSION

The calculation of projected amount of costs avoided is premature because of the effective date of AB 236, yet the prison population projections indicate the potential impact of AB 236.

Additionally, the Commission recognizes the budget cuts made in response to the COVID-19 Crisis will impact any calculation of a projected amount of costs, were it to be made. However, it is never too early to consider reinvestment and strengthening those programs, agencies, and services to promote public safety, reduce recidivism,<sup>12</sup> and ensure the success of the criminal justice reform enacted in AB 236. This report is the first step of the Commission in fulfilling the promise of AB 236 and ensuring the sustainability of these reforms. The Commission looks forward to reviewing the prison population projections, evaluating savings, and recommending reinvestment for the good of all Nevadans.

### Appendix

The Appendix can be viewed by accessing the report under the “Resources” tab at <http://sentencing.nv.gov>

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<sup>12</sup> In the future, the Commission will take into consideration the definition of “recidivism” or “recidivism rate” from various agencies, including, without limitation the following definitions:

- a) “The number of people who are convicted of a gross misdemeanor or felony in the State of Nevada within three (3) years after termination from any case in which that person was supervised by the Division of Parole and Probation,” as provided by the Division of Parole and Probation of the Department of Public Safety.
- b) “The number of offenders who return to the NDOC for a new conviction or parole violation within 36 months after being released to the community after completion of a sentence, or after serving the minimum mandatory sentence and being released to parole in the community,” as provided by the Nevada Department of Corrections.