



STATE OF NEVADA
DEPARTMENT OF SENTENCING POLICY

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NSC Misdemeanor Subcommittee
MINUTES DRAFT

Date and Time: March 22, 2024

Location: VIRTUAL ONLY

MEMBERS PRESENT

John Arrascada
Judge Steve Bishop
Christine Jones-Brady
Chief Judge Cynthia Cruz
Wes Duncan
Jack Eslinger
Evelyn Grosenick
Eve Hanan
Chief Judge Kevin Higgins
Kristina Mortenson
Lt. Michael O'Brian
John Piro
Marcie Ryba
Leisa Moseley-Sayles
Alisa Shoults
Chair John McCormick

MEMBERS EXCUSED

James Conway
Nick Graham
Dr. Jennifer Lanterman
Executive Director Holly Welborn

STAFF

Executive Director, Jorja Powers
Deputy Director, Jenna Buonacorsi
Management Analyst III, Marie Bledsoe
Management Analyst II, Erasmo Cosio
Administrative Assistant III, Hunter Jones

1. Welcome

Chair John McCormick: Thank you, Hunter. Good morning, everyone and welcome to the first Misdemeanor Subcommittee meeting of the Nevada Sentencing Commission.

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

Chair McCormick: I am going to ask now for NDSP to call roll.

Director Jorja Powers: Thank you, Chair.

(ROLL CALL IS CONDUCTED BY DIRECTOR POWERS; QUORUM IS MET)

3. Public Comment

Chair McCormick: All right. So, now that we have called the meeting to order and taken roll. It is time for the first period of public comment, which is agenda item number two. 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 Subcommittee members and will be included by reference in the meeting minutes. Members of the public who wish to testify may do so by telephone as well. Due to time constraints public comment will be limited to two minutes. Any member of the public that exceeds the two-minute limit may submit your comments in writing to NDSP. At this time, I will ask staff to manage and direct those who will testify by telephone. Ms. Jones?

Ms. Hunter Jones: Thank you, Chair. Members of the public who would like to testify by phone please press star nine to raise your hand. When it's your turn to speak, please slowly state and spell your first and last name. And it looks like we do not have anyone that wants to participate in public comment.

Chair McCormick: Thank you, Ms. Jones. Since we have no one to participate in public comment. We will close that agenda item.

4. Introduction of Misdemeanor Subcommittee Members

Chair McCormick: And move on to agenda item four, which is “Introduction of the Misdemeanor Subcommittee Members”. Now I think a lot of us on this call have run into each other somewhere along the line, but I wanted to give anyone an opportunity to introduce themselves, to make any comment before we get started. So, happy to hear that. And we don’t have any of that and I guess we can close agenda item four.

5. Mission Statement and Purpose of the Misdemeanor Subcommittee

Chair McCormick: And just power through the agenda to item five, which is the purpose of the Misdemeanor Subcommittee and I’m going to share my screen momentarily here. I just wanted to provide a little background on why we’re here and what the mission Sentencing Commission Subcommittee on Misdemeanors is. This Subcommittee was created by Senate Bill 103 of the 2023 session and specifically, in sections 1.3 to 1.7 of that bill and the bill gives us our charge that we are to study existing laws, policies, and practices related to misdemeanor offenses in this state and other states as necessary including, without limitation, sentences imposed for misdemeanors in this state and others and also, to submit a biennial report describing the findings, conclusions, and recommendations of the Subcommittee to the Sentencing Commission. The bill had a few requirements for the membership of the committee, but there is no statutory cap. The statutory requirements are one person who has expertise regarding misdemeanors, administrative assessments, etc. A city attorney and that’s Mr. Duncan, thank you. A criminal defense attorney with misdemeanor experience, we’ve got Mr. Piro and Ms. Grosenick on that. And then, a justice or municipal court administrator and we have Mr. Eslinger – I can talk -- Jack, Alisa Shoults, Christina Mortenson, and Mr. Conway, I don’t believe he was able to be here today.

The important thing here today, the important thing here is the mission – can you see the mission?

Judge Steve Bishop: I can see it.

Chair McCormick: Okay. Thank you. The mission of the Sentencing Commission Subcommittee on Misdemeanors is to undertake a comprehensive review of misdemeanor offenses in Nevada, in order to make data-informed, substantive recommendations to promote justice and fairness across all misdemeanor systems in the State.

So, with that said, it is the purpose and again, what I will ask for here is if anyone has anything sort of specific to say.

6. Discussion on Areas for Study

Chair McCormick: And this sort of leads into the next agenda item, item six, discussion areas for study, but my idea here at this first meeting was to have a discussion on what exactly we want to study, what topics we want to look at as far as the committee, and that will hopefully inform our work. I have a few ideas as to potential areas for study and I am going to share that again right now. In discussions, Jorja informed me that she has about an 80-page list of misdemeanor offenses in Nevada. So, it's a fairly broad topic that we're going to need to start looking at and developing our ideas on. Again, one of the things we need to look at, in my opinion -- and please provide that feedback if necessary -- fines and fees, is our current penalty structure appropriate? Also, should there be reliance by the state and local courts on administrative assessments, which are added to misdemeanor convictions based upon NRS 176.059 and are based on the amount of fines associated with the offense? Other states have multiple classifications for misdemeanors, could Nevada benefit from this type of structure? For example, if any of you have ever gotten gas at Quick Stop in Carson City, you'll see that they have a sticker that says it's a Class B Misdemeanor to steal gas, we don't actually have that here, but is that something that we as a group think we want to look at, sort of stratifying and classifying misdemeanors and associated penalty structures. Clarification on which misdemeanors are arrestable, this has been a topic I think for quite some time. Which are we citing, which do we arrest for, and is that something that this group thinks we need to consider and make recommendations regarding. Classification of certain offenses, for example, battery constituting domestic violence, driving under the influence are both for the first and second offense currently misdemeanors, is that a topic that we as a group want to look at and do we have any feelings about the seriousness of various offenses in their classification? Also, misdemeanor probation status checks and the length of a tail for -- the length of Court can have jurisdiction on misdemeanor defendants, -- I have anecdotally heard some information that this may be an issue in some jurisdictions. So, I think that might be something we also need to look at.

Also, currently in the State of Nevada we have very few jurisdictions comparatively that have Misdemeanor Probation Departments of Alternative Sentencing at the local level and those are all county, city funded so,

is that something we want to look at as a group to potentially make recommendations regarding the expansion of that. Also, as most of you know, with passage of AB 116 in 2021, a number of traffic offenses became civil traffic offenses, but however, some remain misdemeanors and we can provide a list on that if necessary. But there is still confusion and I think some of our judicial members can speak on this and bleed over between those two and the handling of those cases so, that may be another topic that we as a group want to look at. Also, this kind of goes into data, but what amount of general fund support do counties and cities receive from misdemeanor fines, which is related to this constitutional question. First of all, article one, section 8A of the Nevada Constitution, that's Marcy's Law and then, article 11 section 3, that is the provision of the Nevada Constitution that requires any fines levied for violations of the crimes of the State to be directed to the State Controller for deposit in the permanent school fund. So, there's that on the state level versus local charging where it's retained locally so, that may be something we want to look at. Obviously, constitutional amendments may not be our first recommendation, but again, I think it's something important to discuss holistically. Collateral consequences of misdemeanors, driver's license suspensions, professional licensing, firearms. Obviously, when I mention firearms, with the Anderson Decision for the Nevada Supreme Court regarding battery constituting domestic violence, it requires jury trial, now in limited jurisdiction, courts because of the collateral consequence and the loss of constitutional right to firearm possession or ownership. And then, finally, another topic and this has always been an interest for me -- which maybe says something -- but the nexus between offenses, fees, penalties, and the use of those fees. So, those are sort of the initial topics I had thought of going into this, but obviously this I think is the time for the group to discuss what topics we want to look at because I think that will help to inform us as we set up our working groups and also, discuss what sort of data we need to ask NDSP to collect. And I see Leisa has her hand up. You're still on mute Leisa.

Ms. Leisa Moseley-Sayles: I actually did hit the button to try to unmute myself. Good morning, Chair McCormick, and Jorja, and to all the other members. First, let me just say this is very exciting to see this coming to fruition. I wanted to just bring up -- we talked all of the data points that you talked about -- also, I think it's very important for us to think about how we're going to collect local municipal data and related to municipal ordinances and county ordinances. One of the things that came up when we were working on this

bill was the discrepancies between the State, the county, and municipal misdemeanors. There seemed to be different fines, there were different penalties, there were different sentences, and there were some legislators that were concerned, there were some people from the, not public defenders, yeah public defenders also, but also, prosecutors, just everybody had some concern about what the discrepancies were in all of these misdemeanors in these levels. My suggestion is that we take those 80 pages and those are comprehensive, as I understand, it's all of the misdemeanors at the State level and use that to guide our working groups and break those up into different categories. They're already categorized for us. The research division did a lot of the work for us. They're already categorized and as it relates to traffic ones, they've already gone through and labeled all of those traffic ones that have been decriminalized. So, they've done some of that work for us. So, that's kind of my suggestion in guiding the working groups, use that 80 pages of misdemeanors -- it is a lot, we've been going through it -- to guide our working groups, but also, think about demographic data also, that we should be collecting. All the data points that you said, but also the demographic data. What are the zip codes that we're seeing a lot of these misdemeanors being levied in? You know, what are the most common misdemeanors? Where are they? Who's getting them? Those kinds of things. So, those are some of my suggestions and some of the things that we were thinking about.

Chair McCormick: Thank you. Marcie?

Ms. Marcie Ryba: Thank you, Chair McCormick. I just wanted to share with everyone that my name is Marcie Ryba. I serve as the Executive Director of the Department of Indigent Defense Services, and I mirror what Leisa said about the excitement of this Misdemeanor Subcommittee coming together to study this. I wanted to make this committee aware that the State of Nevada has entered into a stipulated consent judgement and in short, the State of Nevada was sued, specifically, in some of our rural counties for failing to comply with the sixth amendment and provide appropriate representation in those rural communities. As part of the agreement the Department of Indigent Defense Services undertook a workload study to determine how many or how much time should be spent on certain cases by case types and the State of Nevada is required to comply with this workload study by November 1st of this year. In the rural communities, which this is limited to, it calls for an increase of 30 full-time equivalent attorneys. This is going to be a hardship because we are struggling with a nationwide crisis of a shortage of indigent defense

providers. It's not just us, it's Oregon, New Mexico, basically most of the West Coast is really struggling with trying to find indigent defense providers and many of us are in lawsuits with the ACLU regarding a lack of criminal defense attorneys. What other states are looking at to try and comply with these workload studies because the reality of finding enough attorneys that we really need to fill these spots is going to be a challenge. So, they're mixing that with an alternative of trying to decriminalize certain crimes that are non-violent or have no victims and that's something being done by Oregon as well as New Mexico. So, I'm happy to provide any data that this committee needs, as to how much time should be spent on these cases by the attorneys. So, I just would hope that would be in the back of our minds too, is that the State of Nevada is obligated to provide attorneys to these cases and one possible solution is us to reduce case types where we need to have attorneys appointed and by decriminalizing some of these misdemeanors, that could be part of our solution. Thank you.

Chair McCormick: Thank you, Marcie. And when you say that, I'm assuming we're talking about misdemeanors for which people face a loss of liberty, so then they're entitled to representation. So, I think again, I think that's a great point -- sorry -- I think that's a great point and something we should probably be looking at is which misdemeanors in the State are we currently looking to punish folks or to incarcerate them for the up to six months and is that reasonable for those offense types in the opinion of this committee, and is that a recommendation that we make to potentially make some of those offenses non-criminal, or to specifically say folks who are convicted of those offenses do not face a loss of liberty. I think we have Eve Hanan next and then, John Piro.

Ms. Eve Hanan: Thank you. My name is pronounced Hanan. I'm a professor of law. That's fine. No problem. I just wanted to say that.

Chair McCormick: I apologize.

Ms. Hanan: No worries at all. For those of you who don't know me, I'm a professor of law at UNLV at the Boyd School of Law and I direct a clinic where students represent people charged with misdemeanors in the Clark County and municipal courts. I haven't run it in the last couple of years; I've done a misdemeanor policy practicum where groups of students have looked at misdemeanor laws and policy, and written policy

papers, and sometimes at the request of lawmakers, and groups such as the Fines and Fees Justice Center. And I echo what Leisa Mosely-Sayles has said and Marice Ryba. I do wear another hat, and my other hat is I'm a monitor of the lawsuit that Marice Ryba mentioned, the Davis Lawsuit. But I'm here in my capacity as bringing the law school perspective as well. So, two points, one is that in some of our research we found that the drafting of some misdemeanor statutes is overly broad or overly vague in ways that is subject to constitutional challenge. Not a great way to change the law through the court process. So, I'd be happy to work on this and if the Subcommittee would approve, engage some students in working on looking at the laws as well, in terms of their drafting and their breadth. Second, in terms of the fines and fees, it's very hard to get the numbers on how much is collected versus how much is outstanding, and whether or not the fines and fees are really even serving their objectives and their roles. So, I hope we'll be able to get more data from the courts about that as well.

Chair McCormick: And that's always been an area – Sorry John to cut you off but we'll go to you next – but that has always been an area I think we've struggled with some data on and nationally the approximate collection rate according to the National Center for State Courts – and this isn't specific to Nevada – is maybe around 40%. So, that could be a starting point too because I do know that the National Center has some information on that. Mr. Piro?

Mr. John Piro: Hey John, you're not cutting me off at all. No sweat. One of the things, again, that I'm excited, as is Leisa and everybody else. My concern is though that sometimes when we change the law at the state level, then the municipalities go back and write their own misdemeanors into their municipal codes and kind of just subvert the work that we're doing, and I just want to make sure that we avoid that a little bit and keep an eye towards that and figure out how we track that data as well. Like, if we're doing these changes and we're making great changes at the state level, but then we're losing data at the municipal level and the county level.

Chair McCormick: I do have a question for you, Mr. Duncan. As Marice indicated, I know there's a real shortage of indigent defense providers, are you encountering that from the prosecutorial side as well?

Mr. Wes Duncan: Well, we actually have you know, of course some contracts with public defenders that do some contract work. So, we actually have some pretty good resources in the City of Sparks in terms of providing the indigent defense here so we're not seeing that. Of course, we have a pretty small court and just two prosecutors in the City of Sparks. So, that's not something we're currently facing, but it is a contract that is through the city, and we engage private attorneys for that.

Chair McCormick: Thanks, and have you had difficulties if you've had vacancies within your office for prosecutors, in filling those positions?

Mr. Duncan: Thankfully not. We were able to fill our positions and haven't had many people transition out, so yeah, I'm fortunate.

Chair McCormick: Appreciate that. Thank you. So, any other comments on areas for study? I think that -- and this is one of the difficulties I was -- sorry Judge Cruz, I see you there, I will shut up.

Judge Cynthia Cruz: You know me, I just hide in the background. One of the things -- and I know John Piro, sits on the CJCC Subcommittee down here in Clark County and it just seems to be something that I think dovetails into a lot of the discussions we are having -- is if there's you know, if there's an appetite to be moving into looking at some these changing what the laws look like, looking at a decriminalization, and you know, having it where you don't have the municipalities just recreating the wheel at the municipal level. You know, maybe part of our study should try to see if we can figure out who are these people that are getting some of these lower end misdemeanors because we do see certain subsets unfortunately that do have propensities for things just due to quality-of-life type crimes. And if that's the case and we're trying to find ways to use some data to identify them, and maybe what are better ways that we might be able to deflect them from even getting involved in the criminal justice system and even having that misdemeanor charge, which you know, just has that cascading effect as to everything that everybody is talking about as to you know, who are we representing? How can we find enough people to represent? You know, talking about incarcerations, I mean it's a very large systemic thing. You know, some of the things that John Piro and I saw just as a subset to what was going on in Miami-Dade, we went down there to see -- talking about mental health issues -- and a lot of the things that they did was creating better programs for people to

intersect that were having these issues that ended up having, that they closed down a jail. I mean, I think it goes hand-in-hand and that might be something that is worthwhile for us to figure out how we try to look at collectively, as we're looking at some of these other issues.

Chair McCormick: Thanks Judge. Mr. Arrascada?

Mr. John Arrascada: Yeah. Thank you. Good morning and don't mean to be redundant to some of the comments that you made Mr. McCormick, but I think regarding the sentencing with misdemeanors, we should consider the sentencing structure. Perhaps caps on certain low-level misdemeanors? Maybe a sentencing structure similar to what we have in felony courts, where you have a mandatory minimum and maximum sentence served and then, also for violations consider doing as the Parole Board's doing now, of dips in custody. So, those people that are convicted of misdemeanor, you know they spend a week custody or more, they're going to lose their housing often, they're going to lose their jobs, so they are going to lose so much. So, I really think we should really look at the sentencing structure as we have it now. Candidly, my experiences it's either 30, 60, 90, 120, or 180 and it's usually 120 or 180 and a violation puts someone in custody. This also serves a purpose of reducing jail population, which I believe, and I haven't seen the stats recently, but some of the last stats I saw at least at the Washoe County jail over 40% of the jail inmates were misdemeanants. So, these are areas that I think we should consider or look at.

Chair McCormick: Thank you. Alrighty, Ms. Mosely Sayles again.

Ms. Mosely-Sayles: Yes, and please let me apologize for not introducing myself when we first started. Leisa Mosely-Sayles, I'm the State Director of the Fines and Fees Justice Center and going back to the data, I think a great starting place for us should be going through that list of misdemeanors and for those of you who have not seen it, it comes from LCB, the Research Division, it is 80 pages long, it is comprehensive, but it only encompasses state misdemeanors. I think that's a great starting place for us is to go through that list of misdemeanors and collect as much data on all of those and I think from that data we'll start to be able to see where these other are – these are all really good ideas, I particularly like what Mr. Arrascada was saying – get that data, not only to say but we're also going to need county jail data, we're going to need probation department data, those are some of the areas. I think once we start to get all of this

data we can start to see where the most common misdemeanors are, we can start to hash out some of those collateral consequences. So, I think a great starting point for us is just to begin to go through that list and collect as much data on each of those offenses as we can and where those offense are happening, who they're happening to, and then we can start to hash out some of these other ideas about sentencing. Definitely need to be looking at sentencing, definitely need to be looking at the fees, the fines that come with them, but also maybe be able to find a way to find out personal data like what are the not only collateral consequences, but what are some of the other issues that come up when people are in the system. I love what Judge Cynthia Cruz was saying. So, I think starting there and getting through that, hashing that out will be a good place for us to start and will help kind of ease us into some of these other areas that we're talking about.

Chair McCormick: Thank you and I agree, and I just think that part of this first meeting or at least my desire was, it was to focus us on that data collection and where we want to go because as I think folks have indicated and can here see here, this is a giant area of study to look at and there's many, many ways to approach it. Marcie?

Ms. Ryba: Sorry Chair. One thing I forgot to request is, is it possible to have the courts track whether or not an attorney is appointed in the case, we are very interested in how many of these misdemeanors attorneys are being appointed to. And members of this committee may or may not be aware but there is a maximum contribution formula, which was put out into Statute in Assembly Bill 518 in 2023 and basically, what it says is it's like, a high deductible health care plan, counties pay for Indigent Defense Services up until their county max and once they reach that max, they can be reimbursed anything over and above that. So, last year we reimbursed our counties over three million dollars for these increases in indigent defense, but we just don't data from the court in what percentage of cases that are being filed, are attorneys actually being appointed? We do have the information once the appointment takes place, but the problem is our data collection points are different than Department of Sentencing collection points, as well as the Administrative Office of the Court's collection points. So, I don't know if there's some way to obtain consistency so all of our data is comparing apples to apples rather than each of us collecting different data, but if we could track when attorneys are appointed that would be helpful for us and I think it would also take into consideration

the fiscal note of what these changes may be for the State because if we do recommend decriminalization or changing certain things, that likely would reduce attorneys being appointed and again, we do have data on how many hours by case types attorneys are you know, supposed to be spending on those cases.

Chair McCormick: Thanks. Not to put the judges on the spot, but I'm going to. How difficult would it be from sort of the court staff's perspective and also, the court administrators to collect that appointment? Because I know obviously you have who an attorney on the case, but to differentiate between appointed counsel and retained counsel or if that's even a concern.

Judge Cruz: With the volume that we have in Las Vegas Justice Court, if you want me to have a mutiny in my clerk division and in my IT division right now, I'll go see if we track it. I mean we can probably run basic numbers as to you know, when counsel is appointed because I think that we have that tracking in there and I can give you that, but trying to go between retained, you know, one of the conflict attorneys and one of the public defenders, that might be a little deeper of a dive that's more difficult, but I can try to see if we can run kind of some of those just broad-brush numbers to get an idea and carve them out into misdemeanors because I will say our numbers of course are going to swell with a lot of the stuff that we have going on down here.

Chair McCormick: Right and is that a concern for the group that Judge Cruz brings up between public defender and then, obviously, contract, conflict counsel if that's something we think is important or is it a more broad picture of just misdemeanor cases in which there is appointed counsel.

Judge Kevin Higgins: Let me jump in. I don't know if it's possible for us to do data on conflict because the public defender's appointed initially and we track that, but if they're conflicted later on, I don't think there's a way to figure that out. As far as private counsel goes you know, anecdotally it's got to be less than 1% of our cases, I mean when I started half of the cases were private counsel, now I think it's very few and far between. So, unless they refuse the appointment of a public defender in Sparks everybody gets a public defender appointed as soon as we can get them to fill out the paperwork, which is at booking. So, when I've got these PC's running here for people are arrested yesterday, I'm appointing the PD in every single case as I'm doing them. So, I think everybody gets a public defender, I think just about probably 99% of the time.

But I think we can run who has one currently but splitting out the data finer than that though I'm not sure we can do that.

Judge Bishop: And we're pretty much the same here in Ely. I imagine DIDS would be able to break down the conflict and the public defender cases because they are the ones who pick the conflict counsel, but trying to figure out who has public defender or who has a private attorney, virtually none. It would be a lot of work to find out, there is virtually nobody.

Chair McCormick: Thanks, Judge. See, we've got four folks with their hands up, I think Mr. Duncan was next and then, Professor Hanan – see I can say the name right eventually – and then, Ms. Grosenick and Ms. Ryba.

Mr. Duncan: Well, thanks so much. You know, I think Mr. Piro had mentioned the Miami-Dade model, but I do really think that this committee should do some serious consideration for like, a pre-booking diversionary program for those with serious mental illnesses, right? And catch those that are you know, up in Washoe County, Judge Walker up here and others are trying to kind of spearhead those efforts, but I really do think that would be a game changer in many ways. If we could be able to, I mean if the State really wanted to get serious about pouring resources into something like that, where we could have that great wrap-around services, catch people early, and you know, misdemeanors, get them the rehabilitative help that they need, and be focused in that area, I think it's important. I do too think that you know, some sort of structure in terms of having some clarity as to what offenses perhaps may require DAS, you know supervision or some of the tail provisions that you talked about John, I think might be important to look at you know. I mean I look at our role as misdemeanor prosecutors with the hope to trying to rehabilitate people at this level, so that they don't commit more offenses and they don't get caught up in the felony system, and so, you know of course, we encounter lots of folks with serious mental illnesses that continue to you know, get caught in the revolving door here and so, I do think that Miami-Dade model is something that I think could be really effective and you know, spend some money up front, but then save a lot of money on the background. So, I think we should take a look at that. Thanks.

Chair McCormick: Thank you. Professor?

Ms. Hanan: Hi. Yeah, thanks. I just wanted to follow up on Marcie's question about appointment of attorneys and just note that in 2019 the law regarding appointed counsel was broadened and now it states that, every defendant accused of a misdemeanor for which jail time may be imposed and of course, anyone with a gross misdemeanor or felony is entitled to appointed counsel, and that's a little broader, so, as we went out with my students to different courts, municipals, and some justice courts, it was the practice in some not to appoint an attorney if there seemed like there was going to be a workout for a fine only. Under the 2019 law, it doesn't look like that would be compliant because the statute, because jail time may be imposed, it uses that language. So, that's my reading of it. I just want to flag the issue because as we're counting number of attorneys appointed or how many attorneys are needed, we should think of it in terms of any misdemeanor for which jail time may be imposed, which is at this point all of them, I think, right? Since the statute just says six months is the max for all.

Chair McCormick: And thank you, Professor. And I think that circles us back around a little bit to some of the ideas we had talked about a little bit earlier as far as you know, which areailable misdemeanors and which are not, and after we collect the data, is that a recommendation that we want to make, you know and just hypothetically if we say we went to a classification system like we have with felonies, so A through E misdemeanors or whatever, you know. So, it's like E, D, and C are notailable or something to that effect, but I think again, that's a solution that would be very appropriate for this group to look into provided you know, we can get that data. And you know, I mean, I think from this meeting it may seem a little bit overwhelming and my intent is to get with the staff of NDSP and start talking about how we're really going to start looking at this data and what we can get, what exists now that we can get reasonably, what do we want that we're going to need to ask people to track that they're not tracking now, and all those types of things. All right, sorry I do not know who was next, if it's Marcie or Ms. Grosenick. How about Ms. Grosenick?

Ms. Evelyn Grosenick: Thank you. I want to echo everything that Marcie said, I agree wholeheartedly with her in that you know, some of the issues with workload on the PD should be part of the analysis because fundamentally the jurisdictions do have to provide indigent defense for cases that are prosecuted with a potential jail sentence. And so, it's just a question you know, of where we want to go with that and whether we want to focus on treatment or jailing people. I know we can get into that later, but back to the point about

whether we can track appointment of counsel, I believe in the justice courts with the Tyler Technology, I think an event code can be put in and it might be something that has to start now and go into the future, I'm not sure if it's something that we can go backwards and look at. And Judge Higgins might be able to correct me if this is wrong, I know the court administrators -- have from the two justice courts in Washoe County who are here -- have represented previously that they can put event codes into that program and then track, you know like, competency requests, and conflicts, and I'm sure if that's possible, an event code could be created for you know, public defender appointment so, that's just one thing to be aware of. We're not the biggest county, but we're also not the smallest, so the data could still be useful even if not every jurisdiction can do it right now.

Chair McCormick: Marcie?

Ms. Ryba: Thank you, Chair and just to confirm, I was just asking for numbers of when counsel is appointed. It doesn't matter to me whether it's a county public defender office or a conflict attorney, we're all one system and we need to make sure that we have sufficient coverage for everyone. The reality is there's going to be conflicts out there and we need to make sure that we have enough attorneys that are able to pick those up when the public defender's office isn't available to cover it. So, for purposes of my request there was no need to differentiate of whether there was a conflict by the public defender, I was simply requesting how many cases are we actually appointing counsel and how many cases is no counsel appointed. That was my only question.

Chair McCormick: Thank you. Judge Bishop?

Judge Bishop: I had two things, with respect to when the counsel is appointed on the misdemeanor, there are some cases where I'm not going to impose jail even though it's an option. Citations, when the State doesn't show up, we had a truancy this week where I'm just not going to do it. So, I didn't appoint counsel on those because while technically it is available, it's not going to happen. So, that's kind of how we've read that statute there. With respect to figuring out the number of cases per public defender, I think it would be relatively easy through my jurisdiction because I think they have to report to DIDS the number of cases they've taken, if DIDS says well they had 200 and then we pulled the number and that says we have 500

total, 500 minus 200 is 300 that should be fairly easy to do that math, and I'm pretty sure they have all those reports they have to do.

Chair McCormick: Thanks. Mr. Young?

Mr. Nick Young: Good morning. Again, I'm standing in for Nick Graham who is our Supervising Team Chief for our Misdemeanor Team. I supervise our Criminal Division of the Washoe County DA's office. Just a couple general kind of comments and thoughts, and actually to echo what Judge Bishop just mentioned, what we have historically done here in Washoe on misdemeanor offenses is at the charging time on a misdemeanor offense, we will identify in our complaint, our charging document J or NJ, which if it's an NJ, no jail, it is telling the court we are not seeking jail time even for a misdemeanor offense. And again, historically speaking if the court were to appoint a public defender beforehand, that's outside of our control, but if the court were to wait to appoint a public defender 'til the filing of our complaint, that would in itself significantly cut down the appointments because we are not seeking jail. So, even though the statute might read you know the potential for jail, we're saying we're not and historically, the courts are acknowledging, hey we're also not going to impose jail, we're going to treat this as a fine only. So, that would kind of influence the stats that are drawn, you're going to have a large swath of misdemeanor charge cases where jail for all practical purposes is not even on the table so, that would be one thought. The Miami-Dade model and somebody on the call mentioned you know, Judge Walker in Competency Court, I'm very familiar with us standing that up, I represent the DA's office since the start through now of all competency court matters and what I would say is it is a step in the right direction definitely, to identify people whose mental health concerns are the driving factor behind the crimes they commit and we're trying to and we are making significant progress in -- you know divert is one of the big words being used -- divert that to kind of wraparound services, but with that said what I've also seen is that speed in that would have a negative outcome on success. So, what we are typically doing is you know, trying to push somebody out of custody and just let them do it on their own without proper services, without proper housing, without proper medication, and a treatment plan, we see those people back immediately. What we are trying to do here is within reason of course, slow things down to make sure they have first and foremost housing which seems to be one of the primary triggers for success, but then all these other things that get there and so, you know

on one hand we're saying, hey, you know misdemeanants let's get them out quick as possible if there's mental health concerns. I think we need to take a step back from that and say let's try to release somebody when it's safe and appropriate to do so for that individual, that's going to be on a case-by-case basis. The public defender I work with, we're constantly talking about hey, is this the right time, is this appropriate and we're treating that there. The other two points I would make is with Valdez, with the legislative enactments, we are seeing misdemeanor offenders being released, I would say quicker than in the past and so, that I could see having an impact on negotiation, jail, revocation, and all the things that flow from it. And then, lastly, just a general point because it hasn't been brought up yet, is you know, our office is a prosecuting agency, our guiding principle is public safety and in seeking justice. I would encourage this subcommittee and any working groups that come from it to at least recognize -- even if it's not embraced -- recognize that public safety needs to be a balance in the equation of what we're looking at and you know, when it comes to decriminalization, and releases, and all the things our office is happy to have that discussion and look at things, but our office will always kind of come back to the forefront of hey, is this a positive forward movement for public safety, and for victims, and that's going to be our guiding light in a lot of this. Again, we are committed to looking at better practices, right? Competency court, the specialty courts we're a part of, so for a long time our office and I know other prosecution offices have shown our commitment to those things, but we do in the discussion need to balance public safety.

Chair McCormick: Thank you, Mr. Young and I think that's important for this group too and I think it dovetails with a lot of what has been said in terms of you know, with mentions of decriminalization you know, and those being the non-violent, non-victim for the lack of a better term, offenses because I think if this group were able to focus on that and make some substantive recommendations on decriminalizing those, making them civil, however we do it, that would hopefully then, free up both prosecutorial and defense resources to focus on those cases that have a bigger impact to the community. I don't know if Professor Hanan or Judge Higgins was first, so I'll flip a coin and go with the Professor.

Ms. Hanan: Oh, I think it might have been the judge, but this is pretty quick. I just wanted to say, I think we are circling back to the idea of looking at the sentencing structure again, because you know, is it possible that it's minimally compliant with the law to say well if the judge is not going to impose jail time, you don't

need to appoint a lawyer, but if the person doesn't pay the fine if they're in that six month max sentencing structure then, they could be sentenced to jail time later even though it was a fine only initial workout. They might get a lawyer at that point, does that comply with the statute? I'm not sure. So, this is more of – I don't want to get too far into the weeds – but I think the big picture is, I think looking at sentencing structure for misdemeanors and considering whether they should all be six-month maximums, or some should be no jail time, or less jail time is a great move.

Chair McCormick: Thank you. Judge Higgins?

Judge Higgins: Well to the extent we're going to start deep diving into data, it might be helpful Mr. McCormick if we get a database computer type person involved in this because I know the AOC has spent years trying to make sure all courts count everything the same way. You know, there's half a dozen different case management systems, the jails use different systems, and what I mean by charge might mean something different to somebody else and -- don't take this as a brag -- this is not the first committee like this I've been on and we spent a lot of time 20 years ago arguing about what a charge was; is that a complaint a charge, is each count a charge, and courts were counting those completely different ways. So, getting into that data is difficult and I can say Odyssey's helpful to a certain extent and I'll ask those questions, but I've asked a couple of times, I said, I'd love a report that shows everybody in Sparks that's been in jail for more than six months and has a bail less than 500 dollars, and Tyler says, we can do that for you just 20K upfront and we'll start and we will probably get to you in two years. So, all of us Liberal Arts majors think that it's easy to get data out of systems and it's not always as easy as would like and maybe it's a prospective thing we need to do, but I don't know if you could risk volunteering somebody from the AOC, that is a data expert. Maybe that would be helpful to get us all on the same page, if we're all counting chickens the same way.

Chair McCormick: I am happy to volun-told somebody. So, I will figure that out and then, we'll get back with that individual. And I see Judge Bishop covering his face there because he heard me say volun-told which is very dangerous. You're on mute Judge. Judge Bishop you're still on mute.

Judge Bishop: I muted myself, I unmuted and muted, sorry. I just wanted to soothe Professor Hanan's concerns about suspended sentencing. Even if there's a suspended sentence, I'm going to give you counsel. If we talk jail at all, you get an attorney in my court, and I see Mr. Young nodding his head as well, so it seems like that we're taking care of that the same way.

Chair McCormick: Right, so I think that itself then lends to the question about, if they're not complying with that suspended sentence or the fine then, we're going to jail. I think again, that's an area we want to look at because I think noticing this morning, we want to look at everything. So, again I think that will have to be a discussion going back with NDSP and figuring out how we can begin to systematically collect some of this data to make this project more sort of doable in small bites because you know, if we just kind of begin to address everything all at once, I don't know that we'll make a ton of progress. Judge Higgins, did you have another one and then -- apparently not -- and then, Leisa, please.

Ms. Moseley-Sayles: Judge Higgins, you didn't have a question, if you did not, I'll jump in. Regarding when an attorney is appointed, I'd also like to know if we can collect the data on if there was a charge to the defendant, if there was the counsel fee charged to the defendant, or if there was not. I'd like that to be one of the data points also. I don't know how the judges do that, if your systems track that, but I think it's important for us to collect that and to know that when counsel is appointed, if there is a fee charged to the defendant.

Chair McCormick: Any comments on that one? Obviously, here we've talked quite a bit about what we want to look at with this group, and how we kind of want to proceed, and I think it will require some conversations after the meeting with Jorja and her team about sort of systemically or systematically rather looking at some of this. And if nobody has any other comments on discussion for areas of study.

7. Discussion on Working Groups

Chair McCormick: That will bring us to item seven on the agenda, which is the "Discussion on Working Groups" and the question I would pose is before we are able to sort of, I think map this out, where we're going to go and what data we want to collect. Is now a time to talk about what working groups we think

we're going to want, or do we want to save that 'til the next meeting after maybe we've thought about what data and how we want to do that.

Judge Cruz: I think you might want to save that and then, just kind of roll out some of the talking points that we addressed today, and put it down on paper, and let us kind of digest it and then, it'll be easier to map out a working group.

Chair McCormick: That was sort of my thought as well Judge, I appreciate it. So, does anybody else want you know, to have a counterpoint on that or want to start suggesting working groups now. And maybe, the first thing we would do is create a data working group to begin helping Jorja and her team in that and perhaps start interfacing with the various partners that we're going to need to be asking for information. So, that I think is definitely a possibility, but I think as Judge Cruz indicated it might be a little premature to start doing that now. Again, I don't want to just hear myself talking in an echo chamber if someone has points here.

Judge Higgins: I'm sorry, I arrived late, my calendar was out of control. Do we have a bill draft for this committee?

Chair McCormick: As I recall in Senate Bill 103, we do not have a specific bill draft for this committee, we make those recommendations to the Sentencing Commission. Jorja, I don't recall but does the Sentencing Commission have any bill drafts assigned to it or do we need to purchase some?

Director Powers: We use the Departments. So, my bill drafts are what we use.

Chair McCormick: And how many drafts do you have?

Director Powers: Actually, we just have one.

Chair McCormick: Okay. Now obviously, I can't volunteer this on behalf of the Supreme Court of the Judicial Council, but the Judicial Branch has ten bill draft requests as well. So, depending on what recommendations come out of this group potentially we could ask the Judicial Council to afford us a bill draft also.

Judge Higgins: And the reason I asked, that means we have to have something in place by September, right?

Chair McCormick: Yes. The deadline for at least the Judicial Branch's bill drafts pursuant to 218D is on or before September 1st in the year immediately preceding the session. Again, I know that Jorja on the Executive Branch side has some other deadlines too working with the Governor's Office, etc. that are even farther back. So, Ms. Jones-Brady? So, you have your hand raised, you're still on mute.

Ms. Christine Jones-Brady: I was just going to say that the AG's Office has 15 also.

Chair McCormick: Thank you. Marcie?

Ms. Ryba: Thank you, Chair. For a data collection point – and I don't know if the Department of Sentencing already had this – but, of the misdemeanors that are placed on probation, if we go by county by county, how long are our justice courts placing people on probation? It's my understanding that some counties are actually placing people on probation for that two-year end time at the start, so I think it might be helpful for us to have information of what is the reality of what we're doing, especially for us in those rural counties. How long are they putting those tail ends? Is it common to have the two-year? Are we seeing something less? And then also, are judges continuing to hold status checks while that person is on probation? We are hearing that you know, although they're on that probation for two years, they're required to come into court for monthly or you know, multiple status checks in some of these areas, which again, I think this is more of an issue in some of our rural counties. Which again, relates back to the attorney's time and whether or not that's appropriate for the judiciary to be holding status checks while a person is on probation. Just kind of wondering if we would get a realistic view of what is misdemeanor probation looking like because I don't know if a lot of us actually see it on a day-to-day basis to know what's actually going on in each of our counties.

Chair McCormick: And again – thanks Marcie – to piggyback off that too, I mean we have only had a few jurisdictions in the State that have that Department of Alternative Sentencing/Misdemeanor Probation. We got Carson, Douglas, Washoe, Clark, and I don't know – oh no, Clark Alternative Sentencing, Judge Cruz is correcting me there –

Judge Cruz: It's at the municipal level but it's not at Clark.

Chair McCormick: Thank you. So, we've then got Las Vegas Municipal, but not countywide. So, obviously it's a pretty big mishmash there and I know a lot of other jurisdictions don't and I think sometimes and this may dovetail with what Mr. Young was talking about you know, is there a concern on public safety which is driving folks to do these sort of longer probationary terms, but again, I think that's part of the discussion we can have. Leisa, again?

Ms. Moseley-Sayles: I want to reiterate my idea about the working group. I do think it's a bit much to take on in this meeting, but Chair McCormick, perhaps when you send out the notes and the data points that we discussed, you could also send out that list of the 80 pages of state misdemeanors, they're all categorized, and I think once we all look at that, I think the working groups will develop organically from those categories, and so, that's just my idea, just all of us can be looking at that and thinking about how to. There's a lot of different categories, some of them can be a working group that focuses on three or four different areas that are related. So, that's my idea on the working group and I think when our next meeting we can have that together.

Chair McCormick: Appreciate that. Thank you for the suggestion because you know, this is sort of a big topic and a big area, and I am just ready for all the help that we can provide each other to try to improve the situation and make those substantive recommendations for improvement.

8. Discussion on Next Steps

Chair McCormick: So, I think that again, leads us into agenda item number eight, "Discussion on Next Steps" and so, I think – and please jump in – that what we will need to do is working with Jorja and her team, to get the meeting notes, kind of iterate the data points we have talked about, and then, potentially provide that separately from the minutes along with that list of misdos to the committee members. So, we can begin looking at that and starting to formulate our thoughts on what we want to do there and then, as we refine those data points then, as I indicated I will work with the Department of Sentencing Policy to see what we can get, what we know we have access to, points that we don't think anybody is collecting that we're going to need to ask people to collect. I will volun-told somebody from the AOC to join us on that and

to provide data. I mean not to go on too much of a self-aggrandizement tour here, but at AOC we are working on right now implementing what we're call a data repository that will hopefully allow us a significant and obviously, it's a long-term project but we are starting to get the first few courts connected, that will give us a much greater ability to dive into court data without necessarily causing the upset that Judge Cruz talked about, where her staff has to fill out the worksheets and create that. If we can come up with a way to do that electronically that will allow other staff to pull that and not put that burden on clerks because I think for a long time -- at least in my experience on the court level and feel free anybody else in a different sector -- that we need the data obviously to inform what we are doing, but then, it becomes a double-edge sword because the staff that courts have in place to process cases and you know, help litigants when they come to court, etc. Then, you know, sometimes end up swinging on the collecting data side. So, that's a little shameless self-AOC promotion there.

9. Discussion of Potential Topics and Dates for Future Meetings

Chair McCormick: I think moving on to item number nine here, as far as potential topics for future meetings, I think we've kind of narrowed that down to data elements, and then, misdemeanors, and then, we'll send that out, and before the next meeting, hopefully all the members of the subcommittee will be able to look at that and kind of formulate some thoughts and working groups. And then, hopefully we will be able to return and have a better idea about what data we can get now, what data we can get later, and what data we're going to have to ask people to collect further so, we can maybe prioritize that collection and the areas we're focusing on. So, if that seems like a reasonable next step, glad to take that on and begin working on that. If anybody has any other ideas, what we should do, I think you know, kind of making this incremental may help because it is as I think is pretty evident now, this is a pretty big area that we're going to look at a number of things and so, then that leads me to my next question, do we want to have subcommittee meetings monthly at this point, what frequency do we want to do, or should we work with Sentencing Policy to see what sort of time frames we can have for some data and some of that discussion before setting another meeting date? And then also, which days work best for you? I don't know if Friday mornings are good for people, if there's another day? I would certainly like to make the meetings at a time where the majority of folks can attend, so any feedback on that is greatly appreciated. Marcie?

Ms. Ryba: I'll provide feedback. This is, for the Department of Indigent Defense Services, this is so important for us to be looking at these misdemeanors because we feel that this is truly part of Nevada's possibility of addressing our shortage of public defenders. So, I would hope that we could meet more often than not, I think the Judge did bring up that we have a short time period before our bill drafts are required, and even if we can reduce the number of cases or decriminalize certain cases so we don't have to have public defenders there. Again, I can't state strongly enough that we have a shortage of public defenders across Nevada, our current public defenders are overworked, and we need to do something. So, I would ask if we would meet monthly. I am willing to do whatever is needed to be done to try and get this moving forward and like I said, the Department of Indigent Defense Services is on a very short time frame where we do have to have compliance with that workload by November and I think that taking steps like this, the State of Nevada could show the judge in that Davis case, that we are actually addressing the shortage. So, I'd ask that we meet more often so that we can meet our BDR deadline.

Chair McCormick: Thank you. So, with that, unless anybody thinks differently, we will look at a date in April for another Subcommittee meeting. So, that would be sort of my recommendation here is we do that and then, we'll send that out again with the information. Leisa?

Ms. Moseley-Sayles: No, I was going to just reiterate what Marcie said. I think meeting more often than not is very important, but I also think looking at some of the deadlines that we have – I don't remember which judge it was, if it was Higgins or Stephen that mentioned BDR deadlines – but if I'm not mistaken, I think there are some report deadlines from Jorja's office. I think just taking all of those deadlines into consideration and thinking about what data we have, and how soon we can get it kind of guides when we should meet, and when we should think about forming subcommittees, but I am all for meeting more often than not. Marcie said once a month, I think this is pretty ambitious, but I'm certainly open to meeting twice a month if we need to, to start because we do have a lot of work to do on the front end before we even get to the point of making recommendations, there's a lot of data to collect, there's a lot of things, even just on this meeting today that we've heard talked about I hadn't considered, and so, there's just a lot of work to do on the front end. So, I'm totally open to meeting as often as other folks are willing to meet, but certainly at least once a month, but if we can meet more often, I'm open to that as well.

Chair McCormick: Thank you.

Ms. Ryba: Chair if I could just add one more thing? I do have the budget timetable for the Executive Branch, the non-budgetary bill draft requests are due to LCB, August 1st.

Chair McCormick: Thank you. And again, we do also, I mean potentially have the option to interface with a legislator about getting bill drafts because they don't necessarily have those same constraints, I just raise that as a potential solution, but you know, as far as next steps, again I think it comes down to me meeting with Sentencing Policy and kind of coming up with a game plan on this data and then, providing information to the members of the group and then, we will look in April for another meeting date to reconvene, look at sort of what we've come up with, and then, start looking at working groups to farm this out so, we're not having to do everything as this larger group. And pursuant to Senate Bill 103, the working groups of this subcommittee are not subject to the open meeting law, so we will be able to convene working groups more quickly than we can convene a meeting of this full group. So, with that if nobody has anything else on that.

10. Public Comment

Chair McCormick: We can move to item number ten, which is the second period of public comment. So, 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, public comment will be limited to two minutes. Any member of the public that exceeds two minutes, may submit their testimony in writing to NDSP at sentencingpolicy@ndsp.nv.gov. At this time, I would ask staff to manage and direct those who wish to provide public comment. Ms. Jones?

Ms. Jones: Thank you, Chair. Members of the public who would like to testify by phone press star nine to raise your hand. When it's your turn to speak, please slowly state and spell your first and last name. And I do not see anyone who wants to participate in public comment.

Chair McCormick: All right. Thank you, Ms. Jones.

11. Adjournment

Chair McCormick: With that I thank everybody for appearing and for agreeing to take on this herculean task that we've all talked about this morning, and we will be reaching out and providing that information we've discussed and Leisa?

Ms. Moseley-Sayles: I just want to add, if we don't already have, is it okay to have a directory of all the members with our contact information. If everyone's open to that?

Chair McCormick: I think that's completely reasonable unless anybody has an objection. When I meet with Jorja and her team to give them a tremendous amount of new work, we will work on that as well. So, with that, unless there's anything else? I will adjourn the meeting. Thank you for your time this morning and we will be in touch relatively soon. Appreciate it everybody, thank you.

DRAFT