



STATE OF NEVADA
DEPARTMENT OF SENTENCING POLICY

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NSC Misdemeanor Subcommittee

MINUTES

Date and Time: May 8, 2024 1:30 PM

Location: VIRTUAL ONLY

MEMBERS PRESENT

Judge Stephen Bishop
James Conway
Chief Judge Cynthia Cruz
Wes Duncan
Jack Eslinger
Nick Graham
Evelyn Grosenick
Eve Hanan
Chief Judge Kevin Higgins
Dr. Jennifer Lanterman
Kristina Mortenson
John Piro
Marcie Ryba
Leisa Moseley-Sayles
Alisa Shoults
Chair John McCormick

MEMBERS EXCUSED

John Arrascada
Christine Jones-Brady
Lt. Michael O'Brian
Executive Director Holly Welborn

STAFF

Executive Director, Jorja Powers
Deputy Director, Jenna Buonacorsi
Management Analyst III, Marie Bledsoe
Management Analyst I, Jose Sepulveda
Administrative Assistant III, Hunter Jones

1. Call to Order / Roll Call

[Meeting called to order at 1:30 p.m.]

Chair McCormick: I will now call to order the May 8, 2024, meeting of the Sentencing Commission's Misdemeanor Subcommittee. Good afternoon, good to see everybody here and welcome to those who are viewing on the Department of Sentencing Policy's YouTube channel. This is going to be the second meeting of our current biannual meeting cycle. I'm going to now ask Director Powers to take the roll, please.

Director Jorja Powers: Thank you, Chair.

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

Chair McCormick: Thank you, Director Powers.

2. Public Comment

Chair McCormick: The next item on our agenda is public comment and this is the first period of public comment. There are two periods of public comment, one at the beginning of the meeting and one at the end. Members of the public have two options for submitting comment. First, you may do so in writing by emailing the Department of Sentencing Policy, at sentencingpolicy@ndsp.nv.gov, and public comment received in writing will be provided to the Subcommittee and will be included by reference in the meeting minutes. Members of the public who wish to testify may also do so by telephone due to time constraints, public comment will be limited to two minutes. Any member of the public who exceeds the two-minute limit may submit comments in writing to NDSP at that same email address. At this time, I'll ask staff to manage and direct those who wish to testify by telephone. I'll turn it over to you, Ms. Jones.

Ms. Hunter 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 last name. Looks like no one wants to be participating in public comment today.

Chair McCormick: All right. Well, with that we will close the first period of public comment.

3. Approval of the Minutes of the Meeting of the NSC Misdemeanor Subcommittee held on March 22, 2024

Chair McCormick: And move onto agenda item number three, which is approval of the minutes of our last meeting. Members of the Subcommittee have been provided with copies of the minutes from the March 22nd meeting. Are there any comments, corrections, or concerns? Hearing none, I will entertain a motion to approve the minutes from the March 22nd meeting.

WES DUNCAN MOVED TO APPROVE THE MINUTES OF THE MARCH 22, 2024, MEETING.

JACK ESLINGER SECONDED THE MOTION.

MOTION PASSED.

4. Misdemeanor Statutes to Recommend Repealing or Modifying

Chair McCormick: All right. The next item on the agenda is what we are referring to is "Misdemeanor Statutes to Recommend Repealing or Modifying". So, the charge of this Subcommittee is fairly broad, and my thought with putting together this list that was included in the meeting materials, was potentially this would be a way to sort of start framing it and begin the discussion on perhaps recommending to the Sentencing Commission for the repeal or modification. You've got what is basically a two-and-a-half-page list, it is in numerical order in that left column and in going through this, I did stay away primarily from like, the regulatory body misdemeanors because my thought on that was, that's a conversation to have with the

medical board or the whoever, the cosmetology board, or whoever that is on those misdemeanors, but just in my review going through here, a lot of these seemed sort of old, and outdated, and that maybe we didn't need them anymore. And I thought that maybe as a group, we could potentially agree on making this recommendation and kind of chalk that one up and then, move onto I think what more of our task is, which is really digging into sort of the misdemeanor structure and everything surrounding that. But again, like my rationale on this one, for example, NRS 2.250 and 2.55 those are the statutes which say, if my colleague Elizabeth charges more fees than are allowed by statute, it's a misdemeanor, which kind of seems to me to be unnecessary at this point, that we have that expectation. Again, the next one on there, if a district judge accepts a gratuity for performing a marriage, that's technically a misdemeanor. And we do have the constitutional and statutory structure of you know, the Judicial Discipline Commission to handle those types of issues and then, again some of this is not saying that, for example, a Justice of the Peace should not keep their fee book open to public inspection, but if you know Judge Higgins -- because I always like to pick on Judge Higgins -- were to hide his fee book, I don't necessarily know if that is matter for criminal prosecution with a potential penalty of up to six months in jail, not saying that perhaps there are people in Washoe County who may not want to pursue it. So again, that was the rationale on a number of those were the unauthorized fees and stuff. And that again, in the notes column you see on that spreadsheet there, there's my notes such as you know, that "JP keeping the fee book open" that was added to NRS in 1883 and has not been substantively amended since then. Professor? I see you got your hand up and then, Leisa.

Professor Eve Hanan: I think Leisa may have had her hand up first, but I can go ahead. Either way it's fine.

Chair McCormick: Right. She just happened to be on the left side of the screen, and you are more in the middle.

Professor Hanan: Teaching on Zoom during the pandemic, I know how hard it is to track of everything, and the hands, and all that. I guess, I am just interested in just taking a step back a little bit and understanding the process of arriving at this list, and I really appreciate the effort you've already made here, and just wanted to understand. You've said a little bit about your criteria for inclusion, which was if something seemed old or outdated, but does that mean that, I guess, I thought our job was going to be more to think about what the priorities are, and think about criteria for recommending repeal or amendments, and it sounds like this is recommended for repeal and amendment based on being old or outdated. But does this mean you've gone through all of the list of 80 pages, and these are the ones that aren't used? Is there data on how much they are used? And so, is this maybe the cart before the horse? Should we be talking about what our priorities are? If they're certainly, like cleaning house, things that aren't used, would be removed, but maybe things that are also having an outsized impact on certain communities, things that are unfairly applied, things that might be disproportional, is there a systematic way to approach that?

Chair McCormick: Right, and I certainly appreciate that, and that was part of my struggle and figuring out how to sort of get this train rolling. So, from what I decided to do in producing this list, is go through and this was my call on these, there's no, you know, it was not a systematic thing, but I went through that full 85-page list, and these were the ones that stood out to me as being, "huh"? So, I kind of did a "huh" test on these, you know? And maybe, if the group doesn't want to approach it that way, that's fine, but I was trying to give us a starting place. Because I do certainly think our task is as you have iterated, that it's really to dig into it, and find the misdemeanors that are charged frequently, and do have that disproportionate impact or are somehow problematic, you know? And again, my thinking on this and obviously, I'm not the end all be all, was that some of these just seem sort of silly to have in statute and frankly, my thought process was this gives us a solid recommendation to build off of, but again, this is all open to discussion. I'd certainly like the perspectives of the people working in the system, doing the charging, doing the defending, you know. Again, if I can refer to one of them on the list, 199.270 makes it a misdemeanor for a citizen to refuse a command request by an officer or magistrate to make an arrest or assist in an arrest, and to me, that just seems so outmoded that we would have a misdemeanor on the books that potentially a citizen of the state could be charged with for refusing an order from a law enforcement officer to assist in that officer making an arrest. To me, that seemed like that's a huge liability issue on the agency side and those kinds of things. So, that again, was my thought process and if I'm not articulating it, please ask. But again, that was kind of the

idea and I guess maybe it was like, for a lack of a better term, it kind of gives the group a win to build off of and move forward because I certainly think and the next agenda item, I think is where we're really going to start digging into it, and seeing those data, and what the data we can collect, and what it supports, and if we identify any of those trends. And then, you know based on my experience from having worked in this field for some bit of time, we generally end up having a conversation about public safety and those types of things. And so, I thought, again, moving forward if anything on this list appears that it shouldn't be on the list, we can certainly do it, we can certainly scrap this list and start over too. Like, none of this is set in stone, or my way, or the highway type of situation, but that was sort of my rationale and I mean some of these statutes to me -- again, not making an official determination -- seemed that they may have some facial constitutional challenges rather than, I think the ones that we're going to need to dive into to see if the application, etc. is presenting that challenge, if that makes sense? Leisa?

Ms. Leisa Mosely-Sayles: Thank you Chair. I echo some of Eve's concerns. I think she might be psychic, we have some of the same concerns. I certainly appreciate your thoughtfulness, and how you've gone through this list, and thought about that, I don't think there's many on here that we all wouldn't agree probably shouldn't be. My concern is that we're sort of putting the cart before the horse and making the recommendations when we haven't established, you know what the mission -- I think we all know what the mission is -- which is in writing what the mission of the Subcommittee will be, what the criteria will be for recommending removal, repeal, decriminalization, legalization, and just having some processes in place. So, even with this list, like you've come up with this list, what would be our process for deciding on whether we move forward and suggest repeal for all of these. So, that's my concern is just how are we, the structure of the group, what is the criteria that we're going to use to make recommendations, what is going to be the process for data collection, and thinking that all of the recommendations that we make are going to be data-driven and data-informed. So, just wanted to -- and we don't have any data on any these, I know you went through, and you looked at all of them, and it's crazy that some of them are like from the late 1800's or early 1900's of course, and haven't been used, but we'd like to know that like what is the data on any of these; have they ever been charged, have they ever been used, who's been charged, how are they adjudicated? So, thinking about that and establishing those things first before we move forward with making any recommendations, that would be where I would want to see us go as a Subcommittee.

Chair McCormick: Point well taken. You with that being the case I think -- sorry, I have a million files open here on my desktop -- you know, that being the case, maybe I'm out of order, so to speak in the agenda order, and having that list, and maybe we table this, and we look at it later, after we have some more of that discussion because you know, Subcommittee data requests and maybe that's not the articulate name, but it's like, there's so much information and data to collect on this. Am I breaking the open meeting law because I'm jumping around here a little bit? Somebody slap me upside the head if I am, but it does sort of bleed over into agenda item number five.

And maybe that's what we need to talk about is data, because as you indicated, we want to be data driven, but I think we have to define we need to drive us and what data is available now, what data is available then, you know, and kind of systematically look at that. So, I mean I'm not married to this list in any way shape or form. Again, a lot of it was just like, really? Apparently, for those of you of the male gender on this meeting, if a firefighter comes to you and says you shall assist me putting out this wildfire, it's a misdemeanor if you don't assist, but they can only do it five times during the year. So, you know that was some of mine, was maybe trying to get some of that sort of, I don't know for a lack of better term, silliness out the way. But again, if the will of the Committee because this is a committee, and we're here to study this together and figure it out collaboratively is to start talking about the data to drive it, I'm happy to do that discussion now, and we can certainly table this, and come back to it later after the group is more comfortable with sort of criteria, or direction, or whatever. And again, like, I don't think I'm speaking out of term here, but our charge as a group is so big that I was trying to figure out a way to start -- again, like I indicated -- start that train down the track. So, Leisa and anyone else? I think we got Leisa, and then Judge Cruz, and then, Judge Higgins.

Ms. Moseley-Sayles: No, I was just going to offer my support for your thinking on this, that we start somewhere and one, some of these are so outdated, some of them are almost funny, but again, I think

moving forward we at least like, if we all agree that these should go, then what is the process for that. Let's at least establish the process for whether we all agree or not for the ones that we necessarily don't need data for. Some of these are just so old, do we really have to try to dig to see when someone was charged with these and how long ago, what the adjudication was? But I think having a process in place for that would make a lot of sense, even when making recommendations for a list this early. That's all.

Chair McCormick: Appreciate that. Judge Cruz?

Judge Cynthia Cruz: I think that what we're talking about here is, I think your list helps us start -- not that we're saying, we're approving this list -- but I think it starts the discussion as it seems like one of the areas that we should have on our criteria to look at is statutes that appear to be so antiquated or old that they're not with how our society and our communities have evolved and developed that they would be, one, not even applicable, or two, not even used. And that could be just one piece of our criteria to start working on developing what our criteria would be, and I think that might be where you're going to hear, and that's what I seem to keep hearing, where your thought process was, Chair McCormick, and what everybody else's kind of also doing, we need to establish our criteria, but maybe this is one piece that we have as one of our criteria that we look at.

Chair McCormick: Thank you, Judge Cruz. That was a very nice articulation of that I think, because I was kind of you know, stumbling around and I think after Judge Higgins goes, we've got Judge Bishop, but real quick first, Judge Bishop did comment in the chat, that some of these appear to be pretty low hanging fruit and maybe, that's where I was coming from, like, that aspect. Judge Higgins?

Judge Kevin Higgins: Not to belabor this, but unless a group like this asks to have these repealed, no legislator is ever going to waste a bill draft getting any of these repealed. But then, they run the risk if I failed to help the sheriff stop a riot, I have committed a misdemeanor. The statute from 1868 requires the Justice of the Peace to assist the sheriff, and you shall appear at the riot, and disperse the riot, and if I don't, you know that's silly, but all it takes is one DA that doesn't like, one JP and all the sudden somebody's being charged with something. So, I don't think this probably is the most important part of our process, but unless we say here's a list of these 87 things, it's never going to get fixed, unless we do it. And frankly I can't imagine there's any data on this anywhere. There's a NOC code for these and I'm willing to bet these don't have any NOC codes, unless there's a NOC code for these, there's no way that the data was ever kept in the first place.

Chair McCormick: Appreciate that, Judge, and you know, I think the last thing this group wants to do is dig into NOC codes.

Judge Higgins: No.

Chair McCormick: We've got Judge Bishop next and then, Ms. Grosenick.

Judge Stephen Bishop: Judge Cruz kind of touched on it, but while he was talking, I was thinking about it, if we play around with this low hanging fruit list and we get a group of maybe a dozen or so, two dozen, these are silly, and we need to get rid of them. We might be able to identify some common criteria amongst them to help us build a framework to address some of the harder stuff, right? I think it might be worth playing in this area a little bit and if nothing else, it's kind of funny.

Chair McCormick: Yeah. Yeah, the one about transporting indigent people between counties in the State sort of blew my mind to be honest. Ms. Grosenick?

Ms. Evelyn Grosenick: Thank you. I was just going to chime in, I really appreciate all the work that went into this list. Also, last time we talked about some bigger areas, I think last time was sort of a brainstorming session, where we talked about sort of things that people thought might be an issue, where we should focus our data inquiries, or make those recommendations. And so, some of those big topics were you know, using fines and fees, assessments, should the courts be reliant on them, are they disproportionately impacting

vulnerable populations, the citable offenses versus arrestable offenses and do we need more clarity on that, and then, I think, I'm vested in this topic, but we did go into the impact on public defense also. So, I think it might be helpful if we just kind of take a look again at what was on people's minds last time as big topics of where to start data collection because we also have some people at this meeting that we didn't have last time, who might be able to answer questions about what data we can collect.

Chair McCormick: Thank you, and again, the next agenda item's on that one. So, you know, I mean if we want to have that discussion prior to looking at you know, sort of silly Civil War era statutes, we can go ahead and table item four and then move onto the data requests. And sort of let that conversation see about driving it. If the group is more comfortable with that? Not seeing any objection we can table agenda item number four and then we'll come back to that at some point in this meeting or a future meeting and discuss after we've maybe thought a little bit more about criteria and data points.

5. Subcommittee Data Requests

Chair McCormick: And with that Director Powers has put together a list regarding some of the issues, or challenges, or concerns, or whatever we want to call it, with collecting that data. So, I'm going to ask Director Powers to share her screen and start talking about data a little bit.

Director Powers: Thank you, Chair. Jorja Powers, Executive Director of Nevada Department of Sentencing Policy. I'm going to share my screen. Real quick, I'm going to introduce Jenna Buonacorsi, she's the Deputy Director at NDSP and she is our data guru. So, I may be calling on her a bit for some of this, but wave to us Jenna. Thank you. All right.

So, what we did was put together -- when we were doing minutes for the meeting -- we put together basically a two-page document of everything that people asked for. Data we thought we might want to collect and basically, it came down to what's on this page, at least a good starting point. So, it all fit into these categories, which misdemeanors are being charged and punished, everybody wanted to know what was jailable, should we be restructuring these, maybe have a hierarchy like we have for felonies in Nevada, are the punishments that are currently being used, are they reasonable? If we have a hierarchy, where would we place loss of liberty, and arrest, and being jailed, and what are the collateral consequences of these punishments. And then, the next area would be demographic data, who is being charged, especially the lower end misdemeanors, can we track mental health as a demographic data point, and where are these things happening, where are they being charged, and how do the sentences look as far as disparity throughout the State? And then, probation information, which offenses require or allow alternative sentencing, and then, there were a few mentions of probation tails and why. Are we talking about public safety, are there other reasons that these tails seem longer than they might need to be? Fines and fees, determine collected versus outstanding as far as fines and fees, are they serving the objective for their original use, what was that, and then again, collateral consequences of these fines and fees. And then, the last subject would be defense, can we track attorneys that are appointed and are they being charged? If there's things that were important to you that were left out of here, let me know, we can add to this, but this would be a starting point. Some of this data is available, some of it will be available to be sampled from different places. I'm going to go back to the discussion you were having about this list or the whole 80-page list, we have information from RCCD, and we can pull things out from 2017 to 2024 at this point. Can I tell you if something was charged in 1896, probably not, but we definitely can get started on what we have from '17 to '24 and as this Subcommittee makes their decisions and tells me how they want to move forward as far as data collection, you know we can take you know, ten pages at a time and I can tell you from the years that I have, how many were charged, how many were convicted and what happened from there. So, that's a start that I'll give you and I'll let you discuss what you might think comes next.

Chair McCormick: Thank you very much, Director Powers, and I think that's a good way to do it, and I think we do need to, and my intent with this agenda item was to kind of funnel that down because as I indicated, there's a lot of data in a lot of places and you know, NDSP is limited in time and resources. So, it's distilling that down and I think Jorja has done a pretty good job of doing that for us here with this list. I just grabbed the Annual Report of the Nevada Judiciary because you know, I have copies of that all over my office if

that's an indication of anything, but last year there were just about 100,000 criminal filings in Justice in Municipal Court. So, that's sort of the scope but that also would then include you know, prelim stuff, the felonies and grosses filed into Justice Court initially. Sorry, I am fiddling with my view here. There we go, so thoughts on that, I mean that's a lot of homework for the members of this group and I don't what the potential appetite or capacity honestly for people to do that is, do we want to go through the list and pull ones, do we want to ask you know, NDSP to take apart and pull that data to the best of their ability? You know, again, this is where we go from here and how we get started because that's been my struggle, is figuring out how to tackle this giant monster. Professor, you have your hand up?

Professor Hanan: Yes. Thank you, Chair McCormick and I also wanted to let you know that I do like your list, and I will probably use it in my criminal law class. Right now, I have a list of some federal crimes I share with the law students, which I include pulling the tag off a mattress being a misdemeanor. So, I'm all for having a doesn't pass the laugh test as part of the criteria when as we move forward. I'm wondering if our discussion of working groups would fit with this discussion we are having now and you know, thinking of like contribution from the law school or from me in the first category, which is more about the definition of the laws and the punishment, how it's structures, how other states structure it, that would be the kind of data that I would think would be like, the law school institutional contribution could be to a certain extent. So, I don't know if this is the time to talk about things in that way, I was just wondering if there was an interest. Different folks here have interest in different areas that might help divide the work and help us think it through.

Chair McCormick: Thank you for that suggestion. I think it's a great idea because again, this is a big task that we've got here and you know, doing the multi-search surveys of other states, and how they do it, and I personally would be particularly interested in the classification systems, if they have multi-level classification systems in other states because in my mind you know, if we can come up with that classification system – and Leisa I see your hand up, I'm just going to yap a little bit here – if we can come up with that classification system, does that help us frame it and to say that -- you know, I'm just going to make something up – that class A, B misdemeanors are loss of liberty misdemeanors, are arrestable, category C,D aren't, category E are citation only. However, maybe that is a way to begin looking at it and that could be informed because again, this is not a disparagement or anything, but because of our constitutional structure on our Legislature, we have kind of a unique, we add to statute quite a bit, but never really sort of subtract and so, maybe that's a way to approach it. Leisa, you had your hand up.

Ms. Mosely-Sayles: Yes, Chair. Thank you. I was just going back to some of the data points that were listed on the sheet and just wanted to make sure that we were also thinking about when it's fines and fees in particular – assessment -- we add on their collection and what's outstanding, but what's also being assessed, what I've learned is that, there are fees and that some courts assess, that other courts don't and also, the case with some fines and just making sure we add the assessed data point and then, with the demographic data, adding some of the other things; age, race, all of things. I think that will inform our work down the line when we make the recommendations for what reforms we want to see, and what recommendations we want to make to the Legislature, and also, where we're getting the data from. So, initially when we were thinking about this, we were thinking about getting data from the district level, justice level, Municipal Court, law enforcement agencies, jail data, prosecutor data, and I know – don't yell at me everybody – that's adding to our already gargantuan task, but I think it's important to make sure that we are thinking about the data from all of these places, so that when we may come to point of making the recommendations for reform that we have done our due diligence and we're not overlooking any particular part of this. So, just wanted to point that out.

Chair McCormick: Thank you, and I certainly agree that the more data we have to inform the process, the better. My concern is the sort of feasibility of collecting data and starting in a place where we can get it. Like as Director Powers indicated from RCCD, you know they've got that, they've got the reporting of all the reportable misdemeanors, so that may not necessarily include some traffic misdemeanors, but we have a limited amount of traffic misdemeanors now and Professor if you want that list, I think I got it somewhere too. Yeah, so like, I guess that's the, to a point like, in a perfect world, all the stuff we want, and then, how we begin approaching that, and I think the work group idea is good too, and I will admit that I've had a hard

time wrapping my head around how to funnel this down, and I certainly appreciate everybody's suggestions on that one. Director Powers, I don't know if you're comfortable commenting on what data we can get now without upsetting the or not upsetting, but like, a ton of stuff and that kind of thing, and one other quick point on the data, last session the Legislature did include the potential for a new position for NDSP to assist this group in collecting some of that data, and I believe we will be pursuing that at IFC in June, if I am not mistaken.

Director Powers: That was pushed on. The last time I talked to you, yes, it was June. Between our budget analysts at ASD and GFO, we are now going in August for an October 1st start date. So, right now we are using our current staff to do anything that needs to be done, and collected, and analyzed, and such, so.

Chair McCormick: And then I see Judge Higgins has his hand up. Maybe not. Might have been an inadvertent hand raise.

Judge Higgins: Sorry. I was getting telephone calls at the same time. I appreciate the need to track mental health status, I'm not sure how we're going to do that because it's not like there's a box to check that the officer is concerned about mental health status or if somebody goes through an evaluation process and attached to a particular case, that's not something you know, it's not date of birth, social security number, age. So, while it's important to keep track of mental health, I'm just not sure how or what that would look like as far as tracking it. I think it's important, but I think it's something else we have to wrap our heads around.

Chair McCormick: Judge Cruz?

Judge Cruz: So, I'm going to chime in there. I think -- and I'm sure Mr. Piro would also really chime in -- if we're trying to like, figure out and a lot of the data points are going to come through potentially the court system. Like, you would have to -- I mean are you now saying that you want us to have a flag in a case that somebody has a mental health issue, which I don't think I would agree and that is just a liability issue for the court to make that judgement call because and then, your next step is, who's going to be making that determination? Is it like Judge Higgins said, is it the officer, is it the judicial officer, is it a defense attorney, is it that we're having them assessed, is it that we're having them evaluated? I think it's a slippery slope and I think it's very difficult for us to figure out and we would spend a very long time trying to quantify that data point.

Chair McCormick: So, if I may here, I mean I think there are those difficulties associated with mental health and I think from this group, I don't think I'm going out on a limb here if I say there is some consensus that mental health plays a significant factor in misdemeanor criminality or alleged misdemeanor criminality, but is that something we collect the other data on first and then, see how we can marry those up because as Judge Cruz indicated, I don't know how we're going to track mental health status and like Judge Higgins said, what's the criteria? The officer thinks there may be an issue, you know the defense attorney, the prosecutor, the judge, are we having them assessed, is there is an actual diagnosis? Then, are we getting sort of hinky with that kind of information, so. Again, that's you know, maybe incumbent on me, but I just feel like that we do need to sort of distill that down with what we can get and start building there. So, maybe, you know and obviously, just an idea, you know maybe we have or we ask NDSP to go through, and pull certain data points, and bring that back to us, so we can start there looking at it, is that a foundation to build on or? You know, again, it's how to begin to tackle this. And putting together a list of criteria, we've got you know, antiquated -- for lack of a better term -- other you know, disproportionate enforcement, I think everybody was sort of on board with that being another criteria to examine in this, you know. And then, so do we let the criteria drive the data requests, do we let the data requests drive the criteria, and again, I mean we all have our own individual employers and roles, and maybe familiar with the data limitations or that kind of thing that exists on that end, and so, how can we best do this, because as Judge Cruz indicated, you know for the Las Vegas Justice Court -- which is clearly the highest volume justice court in the state -- to come up with that criteria to track potential mental health concerns and then, program it into their CMS, so it would flag and they would determine the flag, and then, you know that may not be the number one priority because it's a long-term thing. And you know, I don't want to pour cold water on what we want to know, but I also want to make it so we can know something to inform our moving forward. Don't all speak at once. Sorry, Marcie.

Ms. Marcie Ryba: Thank you, just going to the mental health, are we concerned about the client confidentiality, I don't know how a court would be able to tag that, and it wouldn't be imposing on the confidentiality of that client. Especially regarding mental health, I think that if employers or other individuals learn that this box is checked regarding mental health, it could have long-term consequences that are harmful to our clients. So, I don't necessarily know what the definition of that mental health would be, what the purpose is, or why we would be collecting it. I guess my question is, when we're proposing what data we're collecting, did we look at any sort of studies that make recommendations of what sort of data we could collect, because I do notice that demographic data seems to be missing from that list and I think in misdemeanors that might be something very important for us to be tracking as well, as the demographics of the justice involved individuals, but I don't know why that isn't necessarily something that we would be tracking because that seems to be in every police report and could be something that is very objective that we could enter in. Where that mental health is more subjective; I don't know who's making that decision, I don't know how they're making that decision. So, I would encourage us to use objective data of you know, things that we can all agree on is what we should be collecting like, demographics. Human Services, I think that would be helpful, you know whether they're coming from different areas and jail data of whether they're being released or not. So, those are just my initial thoughts.

Director Powers: Just quickly, when I put the heading demographic data, I was assuming regular demographic data. So, anything on gender, race, age, things like that. I did not list them there, but of course, I made the assumption that would be understood, I apologize for that, and we'll add it to the list.

Chair McCormick: And then, again we have misdemeanor probation data on this list you know, and that's such a patchwork in this because there are a number of courts who don't have alternative sentencing, or any other mechanism and it becomes a status check with the court. So, yeah, again, I don't know and maybe I'm somewhat at a loss on this as far as how to start. I mean is there on that monstrosity of a list, you know do we just want to break that up page by page and ask NDSP to collect data, or do we want to have a working group to identify the misdemeanors we want to look at for the data, or do want to let the data drive the review of the list again. Yeah.

Mr. James Conway: If I could, John. I hate to just jump in, but I've been trying for like 20 minutes to find the hand raising function.

Chair McCormick: No worries.

Mr. Conway: And I cannot find it for the life of me, so I'm just going to have to butt in. At risk of sounding contrarian, I don't really know how helpful data is going to be in making a lot of these decisions. I think a lot of this is just strict policy determination of you know, what conducts should be criminalized and what conduct shouldn't. I'm not saying data can't be helpful at all, but I've been in a lot of these committee meetings, where we just jump right into "all right, we need to collect data, we need to collect data, we need to collect data" and we spend the whole time chasing numbers without ever actually making a determination of what we are planning to do with the information in the first place. So, I don't know. You know, I can run reports in our case management system, and kick out numbers, and statistics to you all day long, but I don't know how it's going to help us make any decisions on what legislative changes need to be made. So, I guess my point in all that is, I think it makes more sense to just start with which misdemeanors -- kind of starting where you sort of did -- where just digging into the statutes as they stand as is and see what changes we think need to be made just independent of any data or statistical issues.

Chair McCormick: John Piro?

Mr. John Piro: I just want to push back on that point a little bit. I agree with you in a sense that I don't think we should chase our tails seeking data -- which our State is not a good keeper of data -- to stop us from moving forward on the project, but I will say, well I'm thinking forward, I think John is thinking forward, Leisa and other people who have appeared in the Legislature, as well as Wes Duncan who's a former assemblyman can tell you, you could try to tell the Legislature what kind of policy you want to pass, but you got to have a little bit of backup to it, if you want them to move anything in that building. Kind of how they did

with AB 236 and CJI had a big report. I think it'll be incumbent upon us if we're going to move something forward in there, we're going to want to have a little bit of something backing us up, other than saying some of those statutes from the 1800's and 1900's are garbage.

Chair McCormick: Thanks. I think Leisa you had your hand up.

Ms. Mosely-Sayles: I was just going to talk about the data for a moment, and thinking back to when the bill was written to establish the Subcommittee, and to review the misdemeanor system period, the reason why that was. We all understood that there were some misdemeanors that were being charged more in some areas, there were some that were not being charged at all, there were some old ones, there were just disparities in the system that everyone agreed needed to be addressed, and the only way in my mind to identify those disparities effectively, is to look at data. There are some we can at this list, and on the top of our heads, and say, "yeah, these probably should go", but then, there are going to be some that when we look at the data, we're going to say, "wow, I had no idea it was that bad". And so, I think going back to what I said at the top of this meeting, establishing the process for how we review these misdemeanors, how we make our recommendations, would be a better starting place than say, "Okay. How do we tackle the list"? I think just establish -- and it sounds like it's just organically happening in the conversation -- that we are organically establishing some processes for these, but I think it's important that we do that, how are we going to make the recommendations for reform, how are we going to collect the data, what data points -- which we've already talked about -- but we already know the mission of this, but establishing the processes and what systems are we putting in place, I think would be a great place. Once we get those things established -- at least in my mind -- I think it'll make the rest of the conversation easier to have about what data points we need to collect and how we're going to make these recommendations. These are my thoughts.

Chair McCormick: Thanks, and so, I've been attempting to take notes during this, you know. So, we've talked about and kind of talked you know, criteria for examining things; are they antiquated, you know? And then, to a certain extent to paraphrase James, you know is this on a basic policy level objectionable to this group, like is that you know, like those kind of determinations where -- and that to me is a fine line, and that's maybe where I struggle with data versus policy, and that kind of thing -- is this group comfortable with making some determinations that facially we don't think this misdemeanor is appropriate you know, and is that how we weed it out and then, we move onto the data. But we've got antiquated, you know we've talked about disproportionate enforcement, I'll use that as a big area, but I think generally we know what that means you know, geographically, community, demographics, you know is it disproportionately affecting one community of folks over another, those kind of things, are we charging you know whatever misdemeanor, a ton in Lincoln County, but not in Esmeralda County for example -- and you know, we usually pick on Clark and Washoe, so I figured I'd go somewhere else -- you know, disproportionate enforcement. Another criteria and I have it written as policy versus data trying to paraphrase or follow along with Mr. Conway and Leisa, you know and maybe is it facially objectionable to this group that that exists as a potential crime. For example, on that list NRS 331.200, if any of you come to the Capital -- Mr. Piro, I'm looking in your direction -- and you walk on the grass on Capitol grounds, that's technically a misdemeanor because it is a crime to walk on and damage any grass on State property. So, again, do we facially think that's just sort of silly. So, maybe that's another criteria and then, you know what other things, you know do we want to examine there because I'm sure there are more criteria on that, you know disproportionate enforcement. And then, for example, just listening to the discussion, obviously mental health is you know, it's hand in hand with some of this, but listening to the experts we have on this group, tracking that is going to be a challenge, so maybe that's not our first data point, you know? And then, you can look at usage rates and all sorts of stuff, but as we know and Mr. Piro indicated, Nevada's never been super great at collecting data and there are some other services we are challenged in providing, so how do we reconcile that. And then, Judge Higgins, and then, Professor Hanan.

Judge Higgins: I read somewhere once that the best way to eat an elephant is one bite at a time. So, I think we got to figure out what our first ten bites are and I'm sure we can find ten statutes that we all agree are problematical and get to work on pulling the data on those. You know, the Court of Appeals used a cannon to blow a hole through the obstructing and resisting statute -- I'm not even sure what that statute

means now after that opinion -- and so, that's been a catchall for years. So, if we think there's potentially something being misused, that's probably a good candidate to pull the data on, who is being charged for misdemeanor obstructing and resisting, and I'm sure between this group here we could come up with nine more that are the most likely culprits. I think we can spend all day long trying to parse out what are out of hundreds of statutes, what are the ten. I think we ought to just pick some and get started one bite at a time. And you know, Ms. Grosenick, the other public defenders probably know very well -- probably better than I do -- what people are commonly charged with, and you know, is drug paraphernalia being overused? You know, we have various, I think the loitering and well, laws have gone away for the most part. But I think there are some of those status type statutes we should take a look at, and not try to fix the entire. We've got 150 years' worth of NRS we've got to fix, so instead of trying to fix all those and I think there's a whole list that we could just dump, in my opinion. But as far as things that need to take a look at that would be a place to start, so maybe we would parse that out somehow John and get a little subcommittee going, and we all pick up page, and we all agree on one thing on that page that needs to be looked at, but that's just my suggestion.

Chair McCormick: Thanks Judge.

Professor Hanan: Chair McCormick, I wasn't sure if you called on me, I just unmuted myself assuming I was next here. Yeah, I think I'm hearing in this conversation that we have differing foci and so, our focuses for this. So, perhaps back to the working group idea that would make sense, like there are some which don't require data, you can just look and see, and we may have disagreements around the edges, but we may all be in agreement about many, such as on your list. But it also sounds like there's a real interest in some goals which would require more data. And demographics by zip code seems very important to me for fines and fees because you can correlate zip code to poverty and you can see whether or not you have effectually a regressive taxation system, you know in some areas which is important to do. So, for like that working group, I'd assume that they would need more data. So, I'm just floating it again to see if there's any interest in thinking in those terms.

Chair McCormick: Well, I appreciate that, and you know, I mean, not that I would ever volun-told anyone, but you know, maybe that is what we do here, is to develop sort of some of those working groups to start looking at. You know, we could have you know, like Judge Higgins indicated, collectively the most problematic misdemeanors or at least perceived problematic misdemeanors from across our audience or membership here to start pulling the data on to start digging that way, again. I think Judge Bishop was next, sorry.

Judge Bishop: Judge Higgins talking about the paraphernalia kind of made me think of something. My paraphernalia charges have gone really high recently, but that is to benefit the defendant because if the DA doesn't have the paraphernalia, then they're going to take the felony. And so, we got to be careful that we don't cut off the ability to benefit the defendants with stuff like breach of peace, obstructing, obstructing in lieu of like, battery on an officer and stuff like that. If we start cutting too much, we're going to box people in, and box them in from the bottom, and push things up. So, something to think about there, are the unintended consequences.

Chair McCormick: All right. I think we got Marcie or Leisa next. Whoever can unmute faster.

Ms. Ryba: I can beat Leisa. Yay! So, the one thing on a global level, I was hoping we could look at is NRS 4.373 and NRS 5.055, talking about the length of suspension of a sentence. You know, when we look at the suspension of a sentence for a gross misdemeanor and a felony, the length of time that those sentences can be suspended is actually less than what we can suspend for a misdemeanor. So, is it also appropriate for this group to determine what length of a suspended sentence is appropriate for certain cases and what that definition should be, because it could be anywhere from two to three years based upon those statutes.

Chair McCormick: Leisa?

Ms. Mosely-Sayles: My thinking was going back to what Professor Hanan said about the working groups, and maybe thinking about establishing the working groups and then, breaking this list up by chapters. It's a lot of chapters but I think if we start and just break them up like, each group takes a particular set of chapters, there are some that are going to overlap I think and each group take a certain set of chapters, and we have our criteria, and everything established. So, we start going through those chapters, collecting the data on the offenses in those particular chapters, and then, making the recommendations from there. I think that might, as Judge Higgins said, make our ten bites a little more maybe palatable, but easier. At least, we'll know where to start biting on the elephant. That's kind of what I'm thinking. I just wanted to pose that to the group, and see you know, what everyone else thought about that, and maybe that's where we start with just breaking this out by chapters. If we go through these thousand misdemeanors and pick each one.

Chair McCormick: And I certainly appreciate that Leisa because if it's not obvious to everybody, that's what I'm struggling with is how do we get this bus moving. And so, yeah, I mean if we want to break into working groups and I think that you know, let's see once we get up to maybe past, you know get up toward the 600's that may not be where we want to focus at this point because that's sort of the individual employment type stuff and the regulatory stuff. So, if that's something we want to do, you know if we say, you know we break into a few groups and I don't know if you want to do that by audience, or just randomly assigned, or what, but to start looking at these and picking the ones that you know, the groups think are certainly problematic because you know, I'm looking at my list here of all the highlighted stuff that I worked on and you know, there are some I had initially highlighted and thought better of. So, again, I really kind of like Leisa's idea about breaking up in groups. I don't know if anybody has further thoughts on that.

Mr. Conway: I have a question to complicate and muddy the waters further, if that's okay?

Chair McCormick: Of course.

Mr. Conway: I was just curious whether or not there is a separate subcommittee or if it's conceivably within the purview of this Subcommittee? Considering the issue of gross misdemeanors and felonies that maybe should be classified as misdemeanors because that's also a fairly significant issue within our criminal justice system. I don't know if someone else is looking at that, if so, we can leave it to them but if nobody's looking at it if it's proper to be within the purview of this Subcommittee it's something we should talk about, considering.

Chair McCormick: Thanks Mr. Conway. I certainly agree that needs to be looked at, and I think that could be part of our charge, and as I recollect reading the bill, there's no end date on this, it can go on. So, hopefully we can get started and then, maybe look at that down the road after we kind of look at the misdemeanor stuff. Then, we can go back and say, "Okay. So, then on this list we've got a bunch of grosses, why are some gross misdemeanors and why are some just regular misdemeanors"? You know, and the whole thing, there's just so much to dig into because if you look through the list, there are misdemeanors in this State that have a felony level monetary penalty attached to them. So, you know in my mind does that even still qualify as a misdemeanor because a misdemeanor is up to, unless specified by another statute, but you know, a five or a \$10,000 fine by a misdemeanor, which is commiserated with the cat C, or the cat B seems sort of disproportionate. So, and again, I'll reiterate that I don't have the answer, but that's what I'm struggling with is how we get going, and I'll come back, and I really do like Leisa's idea of sort of creating some working groups or individual tasks that you go through and you pick your top ten that you want data on you know, and we start from there. And then, we can take advantage of our UNLV resource and they can potentially look at other states, and how they classify things, and we'll just kind of have that overview so we have that, but maybe that's what we do. And I don't want to make everybody stay on this meeting forever because I don't know how many of you have been in meeting led by former Justices, which went on for forever and didn't have breaks. I learned that lesson, we're not doing that one. Anyways, just kidding. So, again do we want to break it up by working group, do we want to have everybody get an 85-page homework assignment to go through and find their top ones. Do we want to break – I don't know how useful it would be to -- break up by sort of profession area. I don't know if that makes sense, but we have the judges have a judge working group and they identify their top ten. We have a prosecutorial working group, and they identify their top ten. We have a public defender, if that or does that create artificial division

within the group because I mean ideally and I'd like us to sort of you know, have as much consensus as we can on this, and I'm not going to be naïve, and think everybody's going to agree on everything, but I would like to move in that direction. And I think that kind of lends itself to the next item on the agenda item which is broadly public safety misdemeanors. And oftentimes in these discussions, we talk about public safety, and the interplay, and my thought there would be asking our folks on the prosecutorial side of the bar to identify those misdemeanors which they think are essential to that public safety function so, we're not running around in that way. So, maybe we do have work groups by sort of profession for lack of a better term to identify the top misdos for each group, come back, discuss those, distill it into a list, and then, send NDSP off into the data waste land. I don't know if that works. Leisa, you have your hand up again.

Ms. Mosely-Sayles: You mentioned prosecutor and it made me think of something. Having conversations with DA Willson here in Clark County about a year ago, that he had a list of things that this office just did not charge for. And maybe, we reach out to prosecutors across the State – thinking about, you mentioned prosecutors – just reach out to them and say are their things that you all in your office don't charge for. I think that will be a good place to start with some of those things that they just don't even charge for. At least, it will give us something to look at, it will give us some charges that we can start with.

Chair McCormick: And I'm happy to do that. I'll reach out to the DA's Association and see if we can.

Ms. Mosely-Sayles: It also makes me think about where we are getting data from. Like, going back to the mental health piece. Do we only have to get criminal data that's associated with mental health? Is there a way to get mental health records or hospital records that were a different person who has been admitted to or has been treated has had some interaction with the criminal legal system? Is that a possibility? I don't know, I'm asking the attorneys and the judges on the call, but I'm also just thinking about where we're going to be getting data from and where are some other places that we could get data that might be a little easier to get than through just NDSP.

Judge Cruz: I'm just going to jump in and say you're not going to be able to get health data like that.

Ms. Mosley-Sayles: Okay.

Judge Cruz: Your just not.

Chair McCormick: And I think, I mean not to get too sideways here and Judge Higgins just pop something up in the notes that I think is worth looking at and I totally forgot what my point was. So, anyways. But, again, oh yeah, it was on the competency stuff, because even that is not the most clear thing in statute because district court has jurisdiction to determine competency and then, there's some mention of it in some of the other statutes and so, again I think to get started, the mental health aspect may be not the first thing to take on because it such a complex issue and we'll sort of get you know, sidetracked there. So, again, I mean I keep coming back to it, but I think you know, do we want to divide into, or do we have some other criteria for the different groups? You know, regionally do we just volunteer, I mean do we do the elementary school thing, and I go down the list, and go one, two, three, four, and that's the group to look at that. Director Powers?

Director Powers: Thank you. I just want to go back to talking about the data piece for a minute and where we're going to get it. We all hope that you know, arrests are made and across the State everyone does things the same, there's boxes that are checked, and forms to be filled out, and right now I'm going to talk from a felony standpoint because that's where most of the data that we have prior, to this subcommittee you know, came from. You know, we have a lot of DOC data, but we have struggled to get data from arresting agencies from things like that. Had very long conversations with people, that people tend to not want to share at least somewhere where it's going to end up in a public forum because their data may be misconstrued, right? They want to be able to tell their story and so, I just want to throw out there that getting all of this data is going to be much more difficult than we wish, or that it seems, or that this discussion makes me feel like people think it's going to be. So, I'm just going to throw that out there and then, mental health I will say, it's going to be difficult with arrests and such, but I think when we first talked about that it

was regarding incarcerations, so in the jail populations and we can't say this is what their diagnosis is, but we can get data that says they have the mental health box checked, so.

Chair McCormick: All right. Judge Bishop?

Judge Bishop: I think probably breaking it up by practice area is a good idea. I've looked at the judges here, we've got Vegas, we've got Washoe, we've got rural, and I imagine we could probably come to a pretty decent consensus of the five to ten that we think should go. And the public defenders are going to have similar plus jurisdictional cross geographical concerns and that might be the way to do it, we bring them all together and then, like the DA can tell us why we're not trying to want to get rid of that one and the public defenders can tell us why this one's really important to go, but I don't see any other way of breaking it up. And getting the data, yeah, I mean we all have that [unintelligible] as soon as you guys get the numbers, but if we don't get control of the data, it could make us look really bad by using statistics. So, I get the concern that you're getting there in the pushback, we maybe need to use this with some that low hanging fruit to kind of build some credibility, so we're not going to screw people that way.

Chair McCormick: Appreciate that Judge. Jenna, I think you had your hand up.

Deputy Director Jenna Buonacorsi: Hi. Yes, I did. Just jumping off of what Jorja was talking about with data and like she said, we've spent a lot of time working with felony data because that's what you know, with AB 236 and a lot of those things, that's where a lot of it came from and the other point we have to consider, and I know this was kind of mentioned earlier, is that Nevada has struggled to be data driven due to the infrastructure of the systems collecting data. These offender tracking systems, or jail tracking systems, or whatever it might be, they were designed and a lot of the ones in play are 20+ years old, they were designed for the purpose of tracking information at that point in time. Where the challenge arises, is pulling historical data now, when the systems weren't necessarily designed to do that and so, yes, some of this information – I think we need to keep in mind – is this something we need to make sure we start tracking further on and then, narrowing down who is tracking it, and off of Jorja's point, are they going to be willing to share it in the first place. But that's been one of the biggest struggles, some of these agencies are willing to share this information with us, they just don't have the actual technical ability to extract data in the way that is needed, especially when you're trying to create a historical baseline or show a trend in what has been happening in the history. And so, that's just one challenge when we narrow down what points we want to look at, those will be a couple things that we'll have to take into consideration once we start collecting the data. I guess just because it's tracked doesn't mean it's extractable.

Chair McCormick: I think we got Professor Hanan next, and then, Ms. Grosenick.

Professor Hanan: Yeah, thank you. So, thinking about the working groups and whether it's by practice area or not. I don't have much of an opinion on that, but I think it could be helpful to have a few criteria, like just to flag things for, like it looks like it might be a constitutional issue, or three question marks in a row, I can't believe this is a crime, or this is a standard misdemeanor, but it's saying that the fees or – I'm sorry – the fines can be over a thousand, or the punishment has a mandatory day on it. And then, once we have things sort of chunked out like that, like these are the odd balls where it could be \$5,000-\$10,000 fine, that's weird as you pointed out Chair McCormick. You know, this over here had very vague language, you know and it's maybe even been the subject of Supreme Court, Nevada Supreme Court litigation, we could kind of have areas that would be easier to deal with, and some of those areas would need data, and others, you know might be something that's more of an, I guess more analytic than needing data to get rid of or think about whether it needs to be modified. So, I don't know if that's doing something more like dividing up the pages, and each group looking through them or if you'd rather have volunteers to volunteer to do certain things, and then, see if others would join those people. I know we're all busy, right? As an academic in the summer, I'm a little less busy, which is why I am coming out strong here. I'm saying I can do a few things here, if needed, but I don't know if that helps.

Chair McCormick: I certainly appreciate it and I think that's very valuable. What I was just – and I'll get to you in just a sec Evie – I was just writing down works groups, like do we have them, do their, what are your

top five criteria for considering, you know why are you considering this, why is this in your top misdemeanor, is it because you think it's overcharged is it that, do we need data, you know what are the you know, and then, the top ten misdos from the list? So, does every group go through and identify that stuff to start with to give us a starting point? Evie?

Ms. Grosenick: Thanks, and I saw James trying to jump in. So, I just wanted to let him know it's that button that says reactions down at the bottom, that's where you raise your hand button is. I had two thoughts, one is maybe one of our first recommendations to the Nevada Sentencing Commission would be to either encourage or suggest mandatory data reporting requirements, and I think we can also probably look – and I'm sorry this comment is a little bit late, it's just hard, the conversation kind of goes in pieces – we can potentially get some of this information from other sources, right? Like, most counties track how much money they're owed by court order – I would imagine – they keep track of what should be coming in, they keep track monetarily of what has come in. I know DIDS collects money on what is spent indigent defense. So, if you want to know, you know proportionately how much money is coming in from indigent clients, you could look at rates of like public defender appointments, you know public defenders were appointed in 89% of cases say, and then, look at how much money is actually collected from fines and fees, and get a better idea of maybe how much is being you know, charged to indigent defendants. You can kind of go around if certain places aren't collecting some kind of data, we might be able to get it from other places.

Chair McCormick: Appreciate it. Thank you.

Mr. Conway: That's the problem, I don't have the reaction button. I don't know why, I think I might be in as a guest rather than a member for some reason. So, if I keep budding in, I apologize, but I can't find my reactions button.

Judge Bishop: It's in the more, James, on mine.

Chair McCormick: And please feel free, I'm just trying to watch everybody's screen, so if I am missing people and going out of order, that is entirely a function of my humanity.

Mr. Conway: I found it; see I just gave a thumbs up. Thank you, Judge Bishop.

Judge Bishop: We're kind of going to be butting up against time here if we're going to, I mean we've got what was it you said Judge Higgins? August?

Judge Higgins: Well, if it involves a BDR, yes, August.

Chair McCormick: Well, and that depends on 218 D, and who's doing the BDR, and all that sort of stuff. So, it's not say, as hard and fast as say the AG's office or the judicial branch that gets allotted a specific number, that must be pre-filed on or before September 1st of the year immediately proceeding a session.

Judge Higgins: Wow. Maybe September then? But we've got less than six months.

Chair McCormick: Right.

Judge Higgins: If we're going to do a bill draft of any sort.

Judge Bishop: I think we should break up into practice areas, and then, we come back with our five, and then, if we explain we didn't like this because it's a constitutional issue, or we can't even read it without kind of snickering because it's silliness, or whatever factors they are, and then, when the DA's, and the PD's, and the other groups come back, and they have the same reasons then, we'll have a pretty good idea of what criteria we should be looking at, and they give us a way to kind of start even harder. But we got to kind of come up with some of them, and sitting here, and discussing them, I don't know that's going to be that productive.

Chair McCormick: Right. I certainly agree Judge and I think, as Leisa suggested, and you've suggested, maybe that is the starting place is practice work groups go through list, and pick your top ten that you want data on, and then, if you can articulate you know, your criteria for either picking those for data or why you would recommend something else be removed, whether it's facially you know, potentially facially unconstitutional or any of that. And then, does that get our diverse sort of stakeholder groups comparing apples to apples because you know. And again, I feel somewhat responsible you know, but this is a lot of theoretical sorts of discussion because the issue is so big or the body of information, maybe not the issue, but the body of information to look at is pretty huge.

Judge Higgins: Are we just talking the three-page list here or are we talking giant list of all misdemeanors?

Chair McCormick: If we're going to talk about data, I think we have to talk about the giant list because on the more abbreviated list that I created, I mean I'm fairly confident a lot of those ain't been charged in 100 years. So, there's not going to be any data to collect if we want it. Mr. Piro?

Mr. Piro: I think we found a pretty good place to start. I think, yes, the big list, I think breaking up into groups and that'll at least give us something. And then, kind of we regroup, then we're going to have probably more robust discussion, but I think I agree with kind of the consensus of the group that we should move forward in groups, and look at that big list, and start breaking it down in teams.

Chair McCormick: All right. Well, so I mean that does sound like a path forward. I don't know if we need a motion to do that or if we just because it's not necessarily an official action to break into subcommittees to look at things, but again, hopefully somebody can help me out on that one. Jack?

Mr. Jack Eslinger: I'm a big fan of the direction we're going, I think we need to go that way, but I really think each group needs to just kind of know exactly where we're going through the list, what exactly are we doing with the list because otherwise we're all going to go different directions, and it'll take us, if we can define it now, it'll save a lot of time in the future.

Chair McCormick: So, if I can and please feel free to jump in here, I'm going to try to recap. I mean is it we go through the list and each subject matter expert group picks, these are the ten misdemeanors we want data on, these are the ten, and it doesn't have to be a specified number. I mean I think the data one would be better if could confine it to a reasonable these are the top ten we want to really start looking at data on, these are the 27 we think are you know, facially silly, you know and then, what each group maybe because we talked about the criteria for moving forward and making our assessment. And maybe that's how we really start to develop that, just not from my notes, but each group come up with these are our top five criteria that we think we should be using to evaluate misdemeanors or evaluate the work of the committee to move forward. So, then you know we can get everybody on one page. So, you know, is that a reasonable charge, to pick the top ten misdoses you want data on – royally, you obviously – you know, and then whatever number of misdemeanors you think are just facially inappropriate at this juncture, you know, and do we limit that. And then, have each group develop you know, sort of the criteria that they would like to look at after we get the data and examine stuff for examining the whole thing -- I see Mr. Piro shaking his head -- I mean if the group's comfortable with that and Professor like, I think you know, certainly involved in that. But also, if you have the capacity to start looking at some of that outside stuff like what other states do, you know I mean I would be interested in you know, like the classifications and then, what other maximum penalties are and then, I think going back to Marcy's question like, you know misdemeanor probation systems, you know like, how does that vary from state to state because Nevada, it's all over the board, you know we've got some jurisdictions that have a Department of Alternative Sentencing or that's engaged even on the pre-trial end, and then, we have other jurisdictions where they don't have that, and there's numerous status checks on the back end of the case. So, if we could you know, if you wouldn't mind looking at that, I mean and now, Mr. Piro are you hand up again or just never took it down? Okay.

Mr. Piro: Never took it down. Sorry, John.

Chair McCormick: All right, no worries. So, like among the group and Leisa is certainly asking for your thoughts, what if we identify our top ten that we want to data pull on and then, identify the criteria with which we want to examine misdemeanors from the perspective of each group, so we can marry that up and come up with a master list. And then, you know, however many numbers I think this is probably the least important or not least important, but easier category, how many facially we think, you know the offenses you think facially should not be an offense. You know, if those are the three tasks for the group, and then go through you know, we all go through the full list, then I think we can come back together, and hopefully, I mean fingers crossed here, we see that we're not that far apart on some of this, and that'll really give us a starting place. And again, just for me and taking amount of privilege, I really appreciate this conversation because I've had such a hard time figuring out how to start, you know? Professor?

Professor Hanan: Yes, thank you. Yeah, this is a huge task, so it does help to sort it out in this way. Could we get a reminder either on this call or by email about when you would need any material that could be anything, if this results in anybody making a list on paper that would need to be submitted in time under the public meeting laws, so that it can be included. I need a due date, or it doesn't get done.

Chair McCormick: Of course. I get it and it's what the agenda has to be posted three days and material posted three days before the date of the meeting. So, whenever the next meeting is, so that would be June 14th and I don't know, you know if that's not enough time, then we do it at the July 24th meeting, where we bring all the stuff back. Leisa?

Ms. Mosely-Sayles: Regarding the working groups, I think I am in an agreement with you, but maybe just in a different order. I'm thinking that when we get established, the working groups and we break this out by chapter, we go through and look at the ones that are antiquated first and just get rid of those, or make the recommendation, and then, look at the ones that as you say, are facially – I forgot what the terminology was that you used.

Chair McCormick: I think something like, I said like facially problematic or some nebulous term.

Ms. Mosley-Sayles: Yep. So, we look at the ones that are antiquated and then, go through and look at those ones that you suggested. And then from there, we can look through and see which ones we want to need data on. I think that'll just eliminate a lot of these that we'll have to ask to get data on or find the ones that we don't have data on. I think that's going to be important for us also and when we make our recommendations – I think someone mentioned it a little while ago -- that'd be one of our recommendations that we need some more solid systems in place to be able to collect data and we've tried – John you know – we've tried to do that before and – both Johns – we've tried to do that before.

Chair McCormick: Oh yeah.

Ms. Mosely-Sayles: Yeah, and so, maybe that's one our recommendations that come out, but I think we start there, working groups, break this out by chapter, go through and see which ones are antiquated, which ones have never -- because your notes on the side are good -- which ones have never been used, never been charged, never been amended, and then, look at the ones that kind of just facially, like yeah, that probably shouldn't be there, and eliminate those, and then go and make the data requests from there. That will eliminate us having to get these huge data requests.

Chair McCormick: Yeah. I really like that, I appreciate it Leisa, because that's a good way to do it. So, if we charge each group with coming up their list of antiquated, facially problematic, ones that we need data on, and then, some sort of their consensus criteria for examining it going forward. Does that sound like a fair charge? And yeah, June 14th seems pretty quick for that, if we're giving everybody a giant homework assignment, so if that works for July 24th and then, Director Powers?

Director Powers: We were talking about open meeting. Can we close agenda item five, and then, I think we're basically tabling six at this point, open seven, and I think everything we are talking about fits right there.

Chair McCormick: All right. Appreciate that, Director Powers. We will close agenda item number five, regarding data requests.

6. Public Safety Misdemeanors

Chair McCormick: We will table number six based upon the discussion.

7. Subcommittee Focus

Chair McCormick: And then we will be on number seven, which is the Subcommittee focus and I think that's what we're talking about now with breaking apart into practice work groups and each group coming up with it's antiquated, facially problematic, really want the data on these, and then, the criteria for considering things going forward as the charge, and then, however the group wants to present that. Is that fair to say?

Ms. Mosely-Sayles: Chair, I have a question regarding open meetings laws. If we are breaking up – first of all let me say, when I was thinking about working groups, I was thinking about establishing the working groups as it is outlined with the bill and in the statute, which would mean appointing other people that are not part of the Subcommittee as a working group --the second question I have is if we do it this way, where we're breaking out as a subcommittee into groups, would that be violating any open meeting laws?

Chair McCormick: My understanding of SB 103 is that any working groups we make are not subject to open meeting law and they may include.

Ms. Mosely-Sayles: Okay.

Chair McCormick: So, I believe it's a permissive inclusion of other folks, but if it's just made up with groups here, that those individual meetings don't have to be open meeting law.

Ms. Mosely-Sayles: Got it, got it.

Chair McCormick: So, we've been talking for an hour and a half, and I would assume people are kind of getting tired of hearing us, collectively.

Judge Higgins: I have a question, John. Did you send out the great big giant list of misdemeanors at one point?

Chair McCormick: I think we did.

Judge Higgins: But is it from the Sentencing Commission or from you?

Chair McCormick: It's actually should've come from NDSP.

Judge Higgins: Okay. I'll look for it under that. Ms. Power's is nodding her head, so I will look for it under that.

Chair McCormick: Research division. So, my proposal at this point would be to, I will develop sort of you know, sort of the ask for the working groups and we'll send that out with this, and then, I don't know if you want NDSP and I to assign the working groups, or if we want to kind of break up to those organically, or how we want to do that. That the last I think outstanding question, if we've got our charge, and our timeline, and the information to send out. And Director Powers?

Director Powers: Sorry. I just wanted one caveat with the working groups and the open meeting law, I think because there are going to be so many working groups, we'll be fine, but the working groups could not include more than half of our members in one working group.

Chair McCormick: Sounds good and hopefully, we put the committee together in a way that we wouldn't have more than half of anybody in any one group because you know, I think we have pretty decent representation. So, I don't know if we want to talk about breaking the groups, if you want me and NDSP to take a run at that, and send it out, if you want organically do it, that's only thing left. I mean like, the judge working group is pretty easy to figure out who's on that one, but again, you know. So, I think that's the remaining question.

Mr. Piro: I think you know, keep it the judges, keeping it the district attorneys and the city attorneys, and then, keeping it the public defenders with Leisa and Professor Eve works for me.

Chair McCormick: I'm comfortable with that. We'll also have court administrators and I think the question there is, do court administrators join the judges or do we have two different groups because -- I mean this me having worked in the judicial branch for a while -- I'm sure that court administrators and judges don't always see eye to eye and there may be different focus for those groups from you know, an administrative standpoint versus that. So, if we do court administrators, public defenders, prosecutorial, and judicial, I think that would cover everybody. And then, you know, like we do have staff support from NDSP, but again, if we are breaking into all of these groups and you know, we can kind of work on logistics on that on the back end, but if everyone is comfortable with that. I will crank out something with sort of what we have talked about, and what we are desirous of, provide the list, and then, provide what I perceive to be the group roster. We'll send that out to everybody, try to turn that around pretty quickly, and then, come back and then, get started. And then, you know we can talk about the July 24th meeting, and I think as a group if we determine that this is the substantive work, you know maybe we don't meet that June 14th meeting and in lieu of that, we do the nitty-gritty with the individualized groups. All right, I got a thumbs up from Judge Cruz. Cool, that sounds great. Director Powers, do we need a motion on that or can that kind of be a consensus moving forward?

Director Powers: Let's go ahead and do a motion of having the working groups and that they will be broken out as we have discussed.

Chair McCormick: All right. I will entertain such a motion.

JUDGE STEPHEN BISHOP MOVES A MOTION TO HAVE WORKING GROUPS AND WILL BE BROKEN OUT AS DISCUSSED

JACK ESLINGER SECONDS THE MOTION\

MOTION PASSES

Chair McCormick: Cool, alright. I will endeavor to get that done here as soon as possible and get it out, so, we can all start working. You know, and again, this is a big task, and it's kind of complicated, and nebulous, and I really appreciate everyone's engagement, and you know, I think the importance of this and the fact that it's time to start dealing with it, so. Again, nothing more on that. We'll close agenda item which, is you know, not nebulous at all, but Subcommittee focus.

8. Discussion of Potential Topics and Dates for Future Meetings

Chair McCormick: And move onto eight, "Potential Topics and Dates for Future Meetings". I think we've sort of handled that together with that last motion, and I think as we get closer to that proposed June 14th, and enough time to give NDSP a chance to do stuff, we can kind of make that determination depending on how the Subcommittee feels like they're doing. And then, certainly shoot for that July 24th meeting for the due date for the Subcommittee work. I think that should give everybody a pretty good amount of time to do it, and not rushed, and I promise those judges who are at the, you know, I mean we can do that, get limited jurisdiction seminar. It'll be fun. So, with that, unless anybody has anything else on those.

9. Public Comment

Chair McCormick: I will move to agenda item number nine, which was our second period of public comment. As I indicated previously, you know there are two ways for people to submit public comment. First one is, via writing to the Nevada Department of Sentencing Policy, second is to provide testimony via phone and so, that public comment on the phone is limited to two minutes. And I will ask Ms. Jones if we have anybody on the line.

Ms. Jones: We do not have anyone on the line right now.

Chair McCormick: All right. Excellent. Hearing no public comment.

10. Adjournment

Chair McCormick: We'll move onto agenda item ten, which is adjournment, and we will be sending out you're not inconsequential homework assignment here shortly. So, again, really appreciate everyone's time, and attention on this, and helping us figure out where we're going, and what we're doing. So, thank you.