



STATE OF NEVADA
DEPARTMENT OF SENTENCING POLICY

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NSC Misdemeanor Subcommittee
MINUTES DRAFT

Date and Time: September 11, 2024

Location: VIRTUAL ONLY

MEMBERS PRESENT

John Arrascada
Christine Jones-Brady
James Conway
Chief Judge Cynthia Cruz
Wes Duncan
Jack Eslinger
Eve Hanan
Kristina Mortenson
John Piro
Alisa Shoults
Chair John McCormick

MEMBERS EXCUSED

Judge Steve Bishop
Nick Graham
Evelyn Grosenick
Chief Judge Kevin Higgins
Dr. Jennifer Lanterman
Lt. Michael O'Brian
Marcie Ryba
Leisa Moseley Sayles
Executive Director Holly Welborn

STAFF

Executive Director, Jorja Powers
Deputy Director, Jenna Buonacorsi
Management Analyst III, Marie Bledsoe
Management Analyst II, Erasmo Cosio
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 John McCormick: I will now call the September 11, 2024, meeting of the Nevada Sentencing Commission's Misdemeanor Subcommittee to order. Good afternoon. Nice to see all of you and welcome to those who are viewing by the Department of Sentencing Policy's YouTube channel. This is our fourth meeting of the 23-25 meeting cycle. I will now ask Director Powers to take the roll, please.

Executive Director Jorja Powers: Thank you, Chair.

(ROLL CALL IS CONDUCTED BY DIRECTOR POWERS; QUORUM IS NOT MET)

Chair McCormick: All right. Thank you, Director Powers.

2. Public Comment

Chair McCormick: We will now move onto agenda item two, which 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 of the meeting. Members of the public have two options for submitting public comment. First, members of the public may do so in writing by emailing the Nevada Department of Sentencing Policy at sentencingpolicy@ndsp.nv.gov. Public comment received in writing will be provided to the Commission and may be included by reference in the meeting materials. Or in the minutes of the meeting rather. 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 that exceeds the two-minute limit may submit your comments in writing to the Department of Sentencing Policy. Callers, as a reminder, please mute the device on which you are watching the meeting. All the sound will come through your phone. At this time, I will ask staff to manage and direct those who wish to testify by telephone. 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, press star six to unmute, then, please slowly state and spell your first and last name. And we do not have anyone who would like to participate in public comment.

Chair McCormick: Thank you, Ms. Jones. With that, I will close the first period of public comment.

3. Approval of the Minutes of the Meeting of the NSC Misdemeanor Subcommittee held on July 24, 2024.

Chair McCormick: The next agenda item is the approval of minutes and being that we don't have a quorum, we will table that agenda item until we get a quorum or until a subsequent meeting.

4. Review Public Defender/Advocacy/Academic Memo on Classification

Chair McCormick: Which then brings us to item number four on the agenda, which is review of the public defender, advocacy, academic group's memo on classification, and that was provided to you in the meeting materials by NDSP. And if you don't mind, Professor, I would ask you to run us through that?

Professor Eve Hanan: Sure. But as just as point of – Hi, how is everyone? Good afternoon. – Does it make sense to do it without a quorum and without the full group? I'm happy to talk about it, but I assume we're going to have to talk about it again when we have a quorum at some point. So, let me pull it up here. The main idea, of course, is from our group was interesting, it's twofold, really, one is, increasing some gradations of the type of offense including some offenses which don't carry any jail time and some which carry less jail time. One benefit of this is that it creates a situation where, I guess the public as well, has some confidence in the fact that there's a difference between a battery, which can, a six-month sentence and some sort of offense which is more regulatory, much less serious in the public's mind. So, I think it's a little bit more intuitive for people. I've often found, especially in the misdemeanor clinic representing people

who had let's say, contracted without a license or something like that at a very low level. A handyman who accidentally went over a \$1,000, they thought it would be less extensive job and it ended up being \$1,200 or something like that, right? So, that person is very surprised to learn that it's considered a crime, carrying a six-month jail sentence. It also creates more flexibility both for charging decisions, and for bargaining, and reflects the direction that some states are going too. So, we went back and forth on different ways in which this could be graded, if there were different buckets from the six months down. Looking at other states and ultimately, set on this, but I think there was flexibility within our group on what and how many categories there would be. So, I guess I would say that first and then, I'm happy to go through some of the details here. I'm actually pulling up a draft, but I want to pull up the one that was circulated because I'm a little worried that the draft I'm looking at right now was not the final one. So, while I pull that up if there are any questions about it or if Chair, you'd like to say anything about, it that'd be great.

Chair McCormick: No, I think pursuant to the discussion we had at the last meeting there was some level of consensus that we wanted to look at that classification or the classifying misdemeanors as you indicated in terms of you know, petty offenses, civil infractions, how we want to do that. And I mean I certainly do appreciate the memo, it's very clear on that. And I think some of the questions that were raised in here, and one would be is, do we want to work on doing a 50-state survey? Are we comfortable as a group potentially moving forward and working on developing our own classification system without doing that 50-state survey? So, -- sorry, again, trying to read about four things at once -- so, again, I think that again is for the group's discussion, but you know, do we want to as a group now, say, yeah, I think obviously we do want to classify, have some sort of system classification potentially, but you know, do we want to have a working group to work on doing that classification or are we comfortable with you know, splitting it into regular misdemeanors, petty offenses, you know, that sort of approach here. I mean, I know Colorado recently did it you know, so they've got petty and then, misdemeanors.

Professor Hanan: Chair, if you don't mind me interrupting for just a second. I guess I don't have to say my name for record now that we're on Zoom these days. Colorado had more categories actually and reduced the number of categories, but also moved more things to the lower levels of civil infractions. Which is a little bit what we did with traffic, although, we did it only in part and I know that there's controversy around it as well.

Chair McCormick: Yeah, there's still some growing pains shall we say, with civil traffic initiative. So, again, like, I don't think I know what the right thing to do is and I am looking for other people's input on how we want to go about setting up that classification. I mean, do we want to work based off this memo? Do we want to you know, kind of set up a separate working group to do that? You know, what are people comfortable with in terms of level of offenses, jail maxes, all that kind of stuff. I think we have to get some sort of framework, at least be talking or thinking about some sort of framework before we can sort of proceed on this. And then, you know, obviously, we'll also have other issues to work on as well, I mean I think sentencing discrepancies within the range across the state are another issue that the group highlighted in their memo. You know, and then, I guess my difficulty as the Chair, is attempting to move on this a little bit, is like, what does the group want to do, what is the group comfortable with? Jack, I see you have your hand up. Sorry.

Mr. Jack Eslinger: I was just going to say, I think this just seems right to me to have a committee work on it and just kind of you know, put something forward for everybody to consider.

Chair McCormick: Okay. So, we've got one thought as far as having that working group you know, and again, we are getting a few more people here, we may be getting sort of closer to a quorum, I'm not sure though.

Ms. Christine Jones Brady: Chair, I don't see a raised hand for me. One thing though that we may want to do with the working group is, in addition to a survey though, we have a number of stakeholders that our office, the AG's office, works with. For example, the Contractor's Board and from a consumer protection issue, there are a lot of people in Nevada who are suffering large damage you know, amounts of money stolen, money theft, as a result of people working without a contractor's license. So, there are a number of

stakeholders that we'd want to consult, I think on many numbers of matters that give me pause to just say that we would recommend this without getting their input.

Chair McCormick: Thank you, Ms. Jones Brady. And I certainly agree, I mean there are a ton of stakeholders in this like you said, the Contractor's Board and you know, the regulatory and licensing boards, and everything, but I guess where I'm coming from is, do we need to have a concept for our stratification or our classification of misdemeanors before we go out to people or is this a – I see Mr. Piro nodding in the affirmative on that – before we go out and start asking people about this, because as we look at it, as we start coming up with the classification is, you know, is there a separate class for some of those consumer, for lack of a better term, consumer protection type of offenses, like, you know, is that kind of how we want to look at it? Again, this is such a wide open and sort of here's some misdemeanors, figure it out type of situation we're in, that you know, I don't want to get our cart in front of the horse nor do I want to go out and start engaging with the stakeholders -- which we're obviously going to need to do -- without sort of having a few ducks in a row. So, I would throw that out to the group as far as per comment. Professor, you have your hand up.

Professor Hanan: Yeah, thank you. As soon as Ms. Brady said that I was like, I did pick the worst example there because it involves a regulatory board and other interests, you know. And you could imagine something like that perhaps you know, having more to do with the amount like, maybe, the severity of the crime would be tied to the amount you know, was it a handyman, or was it a large contractor defrauding someone, or something like that, the amount of the work, or the amount of money. But to me it seems like without quorum here just a thought about this would be if we could get a sense in general without a vote about whether folks want more information about what other states are doing because that would be a different thing? Versus you know, this we'd be comfortable with something like this, and maybe we just wait until the next meeting to vote, and see if there's any more discussion of it with the folks who couldn't make it today. And I did hear from Ms. Moseley, who is not going to be able to attend today, but of course, is very invested in the conversation as well.

Chair McCormick: Right, obviously, and I share the same concerns. I don't want to exclude anyone from the conversation here certainly, but I also don't want to waste everybody's time and say, we had a meeting and didn't really do anything. So, that's what personally I'm struggling with. You know, I'd like to open up for discussion, does the group, are we comfortable putting together a work group to start working on a Nevada classification system or do we want to look to obtain more information, i.e. 50-state survey kind of thing to echo what the Professor said. Anybody?

Mr. John Arrascada: I'm comfortable and I know we can't do it today, we don't have a quorum, but to consider the next agenda, creating a committee that a subcommittee with multi-differing interests you know with the judges, defenders, prosecutors, etc. And then, just start shoe boxing various misdemeanors into different categories to try and figure it out, and then, bring in the other interests, as Ms. Jones Brady raised, as we get to that. But right now, what we did as a misdemeanor group or I should say, what Professor Hanan did as a misdemeanor group is really put together our thoughts or our suggestions. And if we're going to move forward, I think you need to have a more diverse subcommittee that then, begins shoe boxing all these different misdemeanors into the petty and the midlevel, or the higher level, etc.

Chair McCormick: Yeah, thank you, Mr. Arrascada. I can certainly see that, and I think, you know, I raise this even before we start putting misdemeanors in various categories, do we need to take the step back and develop what the categories are? Do we want to agree on that first? Like, regular misdemeanor, class B misdemeanor, petty offense, whatever those are, is that the first endeavor you know, to do that and then, we do that through a working group, or subcommittee, or whatever we want to call it? So, and again, without a quorum here, I don't know that anybody's really excited about pushing forward a lot of decisions without all the interests currently in the committee, you know being considered. So, again, like I don't want us to feel like we're just sitting here spinning our wheels or anything, but also at the same time, I don't want to be exclusionary or do a disservice to the group by moving forward without considering everybody's input, you know. So, I mean we could potentially call for volunteers to be on that working group and Director Powers,

maybe you can help me out here, do we need to vote to create a working group, or can we do that sort of consensus?

Executive Director Powers: You can do that consensus; you won't have to have a vote for the working group.

Chair McCormick: Okay. We could sort of create that say yes, we want a working group, and we want a diverse working group with various stakeholders and then, ask for volunteers and then, potentially, ask NDSP to follow up on that. Is that where we want to go here? I see a lot of yeses. You know, and then, also with that working group, pursuant to the senate bill that created this – that I am completely drawing a blank on right now – the working groups are not required to follow open meetings. So, we do have a little bit more flexibility there in terms of convening the group and doing the work. So, I think that you know, and then, we still have in addition to that, we still have some of the other recommendations here, such as, the data collection efforts and that kind of stuff. But are we at the point where we need to come up with the classification system or the theoretical proposed classification system, so we have something to show other people. And then, can start talking about what we think X is serious public safety issue, so it should be a regular misdemeanor and Y is less so, so it should be a petty offense or those kinds of things. You know, so and again, without a quorum and not wanting to necessarily be exclusionary, I would think that you know, are people comfortable volunteering to be on the work group now and then, we solicit additional participation? And I can't tell you how much I appreciate you John and Jack with your affirmative head nodding, it makes me feel like I'm not just talking into a vacuum. So, yeah, like, who wants to be on the working group to come up with that. So, we got Jack, Mr. Eslinger, Mr. Piro, and Mr. Arrascada. And so, there we've got court administration, public defense function.

Mr. Wes Duncan: I'll do it too, John.

Chair McCormick: Thank you, City Attorney Duncan. Appreciate that.

Mr. John Piro: You got Professor Hanan as well, John? She's kind of the lynch pin.

Chair McCormick: Yeah. Well, and I mean you got to have the smartest person in the room on the Committee.

Mr. Piro: Correct.

Professor Hanan: Let's take a big step back on that one, but I'm happy to help and I do think we could, if the Committee was interested, I've mentioned this before, but get a few student volunteers. You know, once we sort of know what the project is and it's something that they could work on.

Chair McCormick: All right. So, again, I think, so we've got just the volunteers here. I think we need probably judicial volunteers. So, Judge Cruz, I'm not going to pick on you, but I will follow with on you, and Judge Bishop, and Judge Higgins to see on that. Anyone else want to be on this working group?

Judge Cynthia Cruz: So, John. Hopefully you can hear me. Sorry, I have you guys going through my car as I'm trying to get from one location to another. I apologize for the lateness. Normally I would jump in on this, but I am just worried that with what is going on with me considering, there's this thing called a general election coming up that I would not be probably as productive as I normally would be on a working group. So, I think you're going to be better served with getting Judge Higgins possibly, maybe? I volunteer Judge Higgins as tribute.

Chair McCormick: And I appreciate the volunteering of Judge Higgins. It's one of my favorite activities as well, so. But I will follow up with him and Judge Bishop as well. Also, I think one the reason for our light attendance here today is, there's a giant wildfire just to the north of me currently and Ms. Jones Brady just let us know that she's assisting with the evacuation preparedness for large animals. So, she's got to bail. So, with that, I mean we've got volunteers for the Subcommittee. Jorja, NDSP, we can circle back and then,

kind of do that out and get the Subcommittee going to come up with sort of that basic structure. So, then, we have something to talk about because I think one of the struggles we are having and it you know, potentially is on me, but is that if this is all sort of still conceptual and I think without like doing a schedule, you know, maybe that's you know, as much as everyone likes to listen to me talk in circles. So, is that sort of where we want to go from there? Start working on that classification structure, so we have that and hopefully, have that for the next meeting, or at least an idea on it. Is that agreeable to all? All right. Excellent. So, we'll follow up on that. Professor, is there anything else you wanted to point out in the memo at this point? Or do we just kind of come up with a classification structure and start working it that way?

Professor Hanan: No, I think some of the general points at the end, are points for further discussion and I know, that's there's been, we haven't really as a Committee figured out what kind of data we are looking for, but hopefully, through this process we'll get closer to a wish list for data.

Chair McCormick: Right. And you know, I mean we do have some data, like I've, AOC, has all the aggregate on misdemeanors, etc. in this attractive publication. You know, any chance I have to show off the annual report. So, we do have some of that aggregated data, but I think as we develop the classification system, does that then inform the data we need to know what we need to classify because if everybody on the Committee thinks that, I don't know, walking on and damaging grass on State property, pursuant to NRS 331.200 subsection E, in case anyone cares, is perhaps the most egregious misdemeanor offense in the State, you know, so on that. But I don't believe it's probably been charged very often and I'm not making that up, it's an actual misdemeanor. So, again, I don't want to waste people's time this afternoon if we're going to proceed with the working group to come up with sort of the draft box to start putting the boxes in to follow on with Mr. Arrascada's box analogy. You know, is that sufficient for today? Yeah? All right. Cool. Well then, I will follow up with NDSP and then, everybody else on getting this sort of the working group going.

5. Data Work List Review/Development

Chair McCormick: So, I think with that, we can sort of move onto agenda item five, which is the data list. And again, that's sort of what we just talked about is that we don't know what we want to know, until we know what we want to do, so we know what we want to know about what we want to do. I don't know, that didn't make any sense.

6. Working Group Creation and Assignments

Chair McCormick: Anyways, and then, so that obviously, is kind of bleeding here into six, which is working group creation. And just go over it, I've got Mr. Eslinger, Mr. Piro, Mr. Arrascada, Mr. Duncan, Professor Hanan, and then, potentially, Judge Higgins. Anybody else we need on that group?

Mr. Piro: Ms. Leisa Moseley most likely.

Chair McCormick: That is excellent. Thank you, John. All right. Cool. Well, I will follow up there and then, get something set on that. And we've got about a month and seven days until the next meeting. So, I will reach out this week to try and get that going, if that works. And then, yeah, so anything else that the group thinks we need to discuss today? Or do we need to just actually push and get on. All right.

7. Discussion of Potential Topics and Dates for Future Meetings

Chair McCormick: With that, brings us to agenda item seven, potential topics for a future meeting. I think that's what we've been doing. Next meeting is October 18th, and then, subsequent is November 22nd. That's reflected on the agenda.

8. Public Comment

Chair McCormick: Which will then bring us agenda item eight, which is the second period of public comment. And people who wish to participate during the meeting may do so by providing the comment in writing or by telephone. To provide testimony during this period of public comment by phone, you can call anytime and so, I'll ask Ms. Jones if we have anybody who wants to comment?

Ms. Jones: There is no one who wishes to comment.

Chair McCormick: I appreciate that. Thank you for that.

9. Adjournment

Chair McCormick: We will move onto agenda item nine, which is adjournment. And I appreciate everybody showing up today and like I said, I will be reaching out this week and see about getting that meeting going, so we can start coming up with a structure. I would point out in your materials there is, sorry one more thing, I put together I think after our last meeting, there's just some high-level information on the current misdemeanor classification structure. As well as a listing of the traffic offenses that stayed criminal and then, also, a list of the enhance-able misdemeanors in terms of either you know, if you committed more than once within a certain period of time or commit the offense within the certain circumstances the penalty can be enhanced. So, just there is that as a resource if anybody wants to read that. And thank you, again, and we'll be in touch to get the Subcommittee going. Thank you.