

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-second Session
February 13, 2023**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Monday, February 13, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Jan Brase, Committee Secretary

OTHERS PRESENT:

Victoria Gonzalez, Executive Director, Nevada Department of Sentencing Policy
Leisa Moseley Sayles, Fines and Fees Justice Center
Nick Shepack, Fines and Fees Justice Center
John J. Piro, Clark County Public Defender's Office
Erica Roth, Washoe County Public Defender's Office
Mark Jackson, Douglas County District Attorney's Office; President, Nevada
District Attorneys Association
Pamela Del Porto, Nevada Sheriffs' and Chiefs' Association
James Palombo, Nevada Prison Education Project

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Christopher Ries, Las Vegas Metropolitan Police Department
Matthew Skarlatos
Angela Campbell

CHAIR SCHEIBLE:

We will open the hearing on Senate Bill (S.B.) 103.

SENATE BILL 103: Revises provisions governing the Nevada Sentencing Commission within the Department of Sentencing Policy. (BDR 14-308)

VICTORIA GONZALEZ (Executive Director, Nevada Department of Sentencing Policy):

As you may be aware, the Nevada Department of Sentencing Policy (NDSP) administers the Nevada Sentencing Commission. With me to present S.B. 103 are representatives from the Fines and Fees Justice Center (FFJC). Our presentation will be in three parts. First, FFJC will explain the need for the bill. While S.B. 103 impacts our agency, the concept came from FFJC. Next, I will explain a bit about my agency, how changes in S.B. 103 will empower us to carry out the proposed study, and how the bill enables conduct of future studies. Finally, I will provide a walk-through of the bill.

LEISA MOSELEY SAYLES (Fines and Fees Justice Center):

I am the Nevada State Director for FFJC, which is a national organization that works to eliminate fees in the criminal legal system and ensure that fines are just and proportionate to an individual's ability to pay. We have put together an informative presentation ([Exhibit C](#)). The presentation will shed some light on some of the deficits in data collection relating to our misdemeanor system. We learned there were deficits while working on A.B. No. 116 of the 81st Session. We wanted to share those with you and ask for a review.

NICK SHEPACK (Fines and Fees Justice Center):

I am the Nevada State Deputy Director for FFJC, which deals with fines and fees and the criminal legal system. Following our work on traffic violations and civil penalties, we decided to take a deep dive into misdemeanors. One thing became clear immediately was that in this State we do not have available data for making informed recommendations. In Colorado, the Commission on Criminal and Juvenile Justice has recently completed a review of the state's misdemeanor system. We believe that such a review will provide

elected officials and other criminal justice stakeholders with the information necessary to make informed decisions in Nevada.

The total criminal filings in 2021, as reported in Nevada by the Administrative Office of the Courts and noted in [Exhibit C](#), indicate misdemeanors make up over 72,000 cases compared to approximately 38,000 felony cases. We have found the largest piece of the criminal justice system pie, misdemeanor data, is the least transparent. Missing from the reporting is everything from what is being charged to case outcomes. Reporting is piecemeal; information comes from different courts and a variety of sources. Information is not collected or housed in any usable form.

In looking at misdemeanor data in Nevada, [Exhibit C](#), we find the Administrative Office of the Courts does an amazing job. Every year, the office publishes data broken down by each court in the State. Misdemeanors are placed into 11 categories: crimes against person, domestic violence, older/vulnerable person abuse, protection order violations, crimes against property, drugs, weapons, public order, motor vehicle—DUI and motor vehicle—reckless driving. The final category is designated "other," which allows us to see from year to year whether there is a rise in property crime; however, it does not tell us exactly what that crime is. It allows us to know whether there is a rise in other crimes. We all have a hard time deciding how to address a rise in a category that is labeled "other." We have not had a full list of misdemeanors available until the Legislative Counsel Bureau Research Division recently produced a complete list of misdemeanors found in the *Nevada Revised Statutes* (NRS), a copy of which has been provided to you ([Exhibit D](#)).

More than 370 unique chapters and subchapters in NRS address misdemeanors. It is a large, complex system found in more than 80 pages. Misdemeanors are government regulation of personal behavior, much of which we all agree is necessary. I do not think anybody would say we need to reform DUI laws. However, there are many laws on the books that are probably outdated; we may agree many laws could be moved into the new civil category created by previous legislation. Nobody is taking a complete look at these misdemeanors. Issues from fish and game to healing arts include misdemeanor violations. Collecting this data and analyzing it and having the Sentencing Commission look at it will provide us with a much more robust understanding than we now have.

I asked Henderson Municipal Court, [Exhibit C](#), if it would share misdemeanor data with me so we could try to understand the system. What we received was 79,000 rows with 21 columns of information in each row. An expert can analyze this data, but I had a much more difficult time in doing so. The data would be good, robust and useful to the NDSP and the Sentencing Commission. The Colorado sentencing commission recently reviewed the state's misdemeanor system with the goals of maximizing public safety, providing restoration and healing for victims, and ensuring fair and consistent treatment. The legislature was able to pass a major bipartisan piece of legislation that had buy-in from everyone from district attorneys to public defenders. It streamlined the system in Colorado. We see this as an opportunity to create a similar model in Nevada with input from all stakeholders and apply it.

Why task the Sentencing Commission with the review? It will allow for data-driven decisions and policy making, [Exhibit C](#). It will help us streamline our code, which we have mentioned is over 80 pages long, and outdated laws that we have identified. The Sentencing Commission has a uniquely diverse group of stakeholders with people from all sides of the criminal justice system as well as Legislators from both parties. The product will be unbiased, factual and useful for everyone. The data analysis, as noted in [Exhibit C](#), will likely come from collection of raw data from courts, jails, law enforcement and public defenders' offices. This data can be presented in reports, presentations and online dashboards—such as the prison data tracker on the "Hub" pages on the Nevada Department of Sentencing Policies website. This data will become useful. We will be able to see year-to-year trends. We will be able to answer a lot of questions, and we will get a solid understanding of the whole system.

Ms. GONZALEZ:

The duties of our agency and what Legislators and the State can expect from this study and the ongoing evaluation of misdemeanors are included in my presentation ([Exhibit E](#)). I will also provide more explanation of proposed changes to the Commission. We receive aggregated and raw data from the Nevada Department of Corrections (NDOC). The next few slides are samples of what we can do with that data and what we have been able to do. The presentation demonstrates the total prison population from 2017 through 2022 organized by offense group.

The trends are also organized by percentage because it is important to see the composition of the prison population within these groups and how they have

compared over time, [Exhibit E](#). We can also organize, filter and sort the data by female population. The presentation includes a visualization of new offenses by group. We can view the data, dating from 2017, by different types of imprisonment status and different types of offenses and then determine and identify trends. We have also done a comparison of admissions and releases.

Looking at the trends here, [Exhibit E](#), we are keeping an eye on questions relating to the prison population, especially responses to events following COVID-19, the enactment of A.B. No. 236 of the 80th Session and new legislation enacted this Session. We are working to anticipate changes and will release monthly assessments known as data dispatches. If you subscribe to our Listserv or follow us on social media, these assessments will be available, including the most recent admissions and release trends. As we notice trends, we share highlights and will release a full report at the end of March. The Senate Committee on Judiciary will be notified as reports become available.

The NDSP website <<https://sentencing.nv.gov>> provides links to social media and video channels. Details are found on the link to the Hub, which includes data dashboards, data dispatches and data presentations. The dashboards feature NDOC reports of monthly trends and are updated as that data is received. The website provides information regarding prison population trends over time. The prison population trended downward beginning in 2017. Available information includes prison population by gender, in-house and total population, admissions and releases, and transit admissions. One issue we focus on is a determination of trends toward an increasing prison population. Everyone is encouraged to explore NDSP's website for further information.

Senate Bill 103 will provide a system for collecting raw case-level data from every district, justice and municipal court as well as law enforcement agencies, prosecutors, public defenders and jails in the State. As mentioned in FFJC testimony, we anticipate a large amount of data. Case-level data is necessary in order to properly conduct analyses and develop databases. Because this data comes from different places, we will be exploring data-coordination options. We anticipate that we will be able to build dashboards similar to those found on the NDSP website and provide relevant information. Our dashboards are still evolving, though we will provide you more information.

If we are going to build a database, we need to make sure it is continually updated and maintained; this cannot be a onetime data collection just for the purpose of a single study. We would use the database to provide ongoing measurements of outcomes. It is important that recommendations coming out of this study are designed to achieve intended outcomes. By adopting this approach, we anticipate breaking a decades-long pattern of inadequate analyses owing to data that is incomplete and difficult to collect.

Section 2 of S.B. 103 revises the membership of the Sentencing Commission. In collaboration with FFJC, NDSP proposed this change based on a need to include a wider variety of voices to not only represent what is necessary for this study but also possible future studies. We researched task forces and commissions in other states to determine which voices are missing from the Sentencing Commission with the aim of rounding out others' perspectives.

I want to reassure the Legislature and all stakeholders that our agency mission and core value commit NDSP to nonpartisanship. We plan to develop a process that will help all stakeholders in analyzing any policy. I have begun to develop a report that captures all the perspectives on the Sentencing Commission. As you know, our Commission is already diverse, and all members do not always agree. While we can anticipate some majority recommendations coming from the Commission, this will not always be the case. It is going to be important to capture all perspectives. The Senate Committee on Judiciary, hopefully, is going to see a bill from the Commission that we are working on in the Assembly. The Committee will see the report of a policy explored by the Commission. We have identified supporting, opposing and neutral views expressed during Commission meetings and conveyed during those discussions. Providing a report like this for any Commission recommendation is going to be the most useful to stakeholders and lawmakers. They can then determine a path forward based on policies data-driven by both qualitative and quantitative information.

Report findings have supported the mission that I have been trying to advance in our agency. The agency has only been in existence since 2019, and it has been important to capture everyone's perspectives. This report has been one way to advance that goal and will be important for the Commission and for the study, and anything that comes to the study, to be successful. This is a means of to getting to the best outcomes for analyzing State policy.

Section 4 of S.B. 103 requires the Sentencing Commission to conduct a misdemeanor study to submit to the Eighty-third Legislative Session.

Section 1 is a conforming change.

Section 2 revises membership of the Sentencing Commission and adds four new members varying in expertise. Subsection 1, paragraph (a) clarifies that the appointment from the Governor's office will be from the Governor's office staff. Subsection 1, paragraph (g) requires that the Nevada District Attorneys Association (NDAA) appoint two members, one from a larger county and one from a rural county. The NDAA only appoints one district attorney in existing statute, and it does not distinguish between larger or smaller counties. Subsection 1, paragraph (v) requires that one member who is a representative of the Central Repository for Nevada Records of Criminal History be appointed by the Director of the Department of Public Safety. Subsection 1, paragraph (w) adds a member who is experienced in misdemeanors and fines and fees. Finally, subsection 1, paragraph (x) adds a member who is a faculty member from the University of Nevada, Reno, or the University of Nevada, Las Vegas. In practice, this member has been appointed to our Commission under subsection 1, paragraph (a), but this specifies that this specific type of perspective will be appointed to the Commission. Additionally, section 2 authorizes the Commission to establish working groups.

Section 3 of S.B. 103 substantially revises duties providing that the Sentencing Commission study explores basically everything, and anything related to sentencing and corrections. The policies that should govern the Commission are provided in the legislative intent from NRS 176.0134.

Law provides that the Sentencing Commission may only make recommendations for felonies and gross misdemeanors and provide an extensive list of topics for the Commission to study. This change is similar to when the duties of the former Advisory Commission for the Administration of Justice (ACAJ) duties were streamlined to study anything related to criminal justice. These duties are outdated, many of them are holdovers from previous commissions and studies that went dormant or no longer exist. Specifically, most of these duties were created in 1995 when the ACAJ was created. The duties were carried over to ACAJ and then to the current iteration of the Sentencing Commission. The updated duties will empower the Sentencing Commission to take on subjects important to the Commission, Legislators and stakeholders. I do not anticipate

we would ever need to ask you for another change to our duties in order to take on another study.

SENATOR NGUYEN:

Half the people in this room have probably served on the Sentencing Commission at some point. It is an incredibly large group, and I see that you are looking to add four more individuals. Is that correct?

MS. GONZALEZ:

That is correct.

SENATOR NGUYEN:

Senate Bill 103 proposes naming the Governor's Chief of Staff or designee as a new member, plus one district attorney from a county whose population is 100,000 or more and one district attorney from a county whose population is less than 100,000 as two new members. Did those recommendations come from the Office of the Governor and the Nevada District Attorneys Association?

MS. GONZALEZ:

Those did not come from those offices or entities but from our study of task forces and commissions in other states. Once we saw those commissions were built and compared them to our Commission, we noticed gaps in some areas where perspectives were not addressed, specifically when it comes to misdemeanors. Anything we study should include perspectives of all counties.

SENATOR NGUYEN:

The representation should include our rural counties as well as our larger urban populations. Given we are looking to study misdemeanors, was there any thought to including people who work in municipal jurisdictions that only handle misdemeanors, like our city attorneys?

MS. GONZALEZ:

That was not generally considered, so we are open to that. That would be the most relevant jurisdiction.

SENATOR NGUYEN:

I am very much data-driven, and I know there are a lot of our law enforcement partners here who want to support policies that are evidence-based. You answered some of my questions regarding section 3 and deletions of specific

requirements. The way it stands now, the Sentencing Commission is not authorized to study those misdemeanors. Is that correct?

Ms. GONZALEZ:
That is correct.

SENATOR NGUYEN:
The deletions to section 3 would modernize and allow more flexibility for the Sentencing Commission to collect that data.

Ms. GONZALEZ:
That is correct. The legislative intent is stated in the preamble to this Commission and lays out some of those policies already. If the Commission used that as a guidepost, it does not need to be restated in the duties.

SENATOR NGUYEN:
As far as the collection of data, we do not have a unified court system, and everyone has different duties. Cities and counties have their own ordinances outside of the more than 300 misdemeanor statutes in NRS. Would the Commission seek to also collect data from the city ordinances, or just NRS?

Ms. GONZALEZ:
I will answer first and then turn to my partners. From a data collection perspective, it would be best to start with NRS. I would anticipate starting there because it is the most accessible data to collect and analyze. Once we have something substantial to recommend, that might be part of the Commission's report to the Eighty-third Session.

Ms. MOSELEY SAYLES:
We will start with the State statutes. However, we have students at William S. Boyd School of Law at the University of Nevada, Las Vegas, who are excited with the possibility of working with the Sentencing Commission on this report. The students particularly want to study city and county ordinances, but we are going to start with State statutes.

SENATOR KRASNER:
The City of Sparks has a harsher penalty for particular crimes than the State has for the same crimes. How will you interpret that kind of data? Is that even

legal? Does the State have some type of supremacy clause that supersedes all city or municipal law?

KARLY O'KRENT (Counsel):

I will research the question and provide information to the Committee.

MS. MOSELEY SAYLES:

The FFJC is researching the question of discrepancies between city ordinance and State statute. This is data we hope to collect.

SENATOR HANSEN:

Committees with a sizeable membership sometimes find it challenging to complete their work. Has there been consideration of an executive board? Senate Bill 103 proposes increasing membership of the Sentencing Commission from 24 to 28. The size of the Commission may be unwieldy.

MS. GONZALEZ:

As Director of the Nevada Department of Sentencing Policy, I am tasked with supporting the Sentencing Commission. I have four staff members. I would not advocate a recommendation that would cause the Commission to be unwieldy. I have my work cut out for me and appreciate the support of the Commission. We work well together as far as navigating all the issues. A membership number that I would be uncomfortable with is in the low thirties. The proposed membership is manageable. Sentencing commissions across the Country vary in size from 8 to 35. I understand the concerns but am excited to include additional voices on the Commission.

SENATOR HANSEN:

I appreciate the goal of increasing the spectrum of voices and information on the Commission. Senate Bill 103 addresses the expansion of misdemeanor offenses and NRS but does not discuss *Nevada Administrative Code* (NAC). The regulatory boards across the State have, basically, the same authority as the Legislature once criminal laws are enacted. Will the Commission also consider NAC?

MS. GONZALEZ:

The Commission is to open to expanding its focus. Once we start this exploration, we are going to find that to be truly data-driven we will need to examine all contributing layers. I have encouraged the ongoing maintenance

and building of this database because we will be better able to recognize and analyze trends.

MR. SHEPACK:

Regarding the size and possibly unmanageable nature of the Commission, the bill includes the ability to create working groups, which is something we learned from Colorado. The Colorado Commission on Criminal and Juvenile Justice broke into smaller groups with experts from specific areas and reported findings to the larger group. Establishing working groups should alleviate concerns relating to the size of Commission membership.

SENATOR HANSEN:

That was my concern. The other is public safety. I noticed one graph outlines the growth in prison populations. Do you have data regarding the correlation between crime rates and prison populations? As prison populations decline, do crime rates increase? There was a good deal of criticism of Three Strikes sentencing laws, but when bad actors were taken off the streets, crime rates declined.

MS. GONZALEZ:

The Commission will study and analyze issues such as increases in violent crime and prison admissions and issue a formal report. We observe that the raising crime rate is reflected in the prison population and plan to incorporate crime rates into the NDSP dashboard. The Commission is interested in tracking these issues and trends in the coming months.

SENATOR HANSEN:

Does the Commission anticipate making recommendations to the Legislature? There are many misdemeanors in NRS and NAC that have not been enforced in decades. The data the Commission can provide will be useful in organizing and updating misdemeanor laws. It is important not to remove laws that may in fact protect public safety.

MR. SHEPACK:

The FFJC agrees. There are many sections in NRS that can probably be removed because they are not being charged or are duplicative. The goal is to identify these sections and work to clean up the codes. It is important to be able to understand NRS misdemeanor law collectively.

JOHN J. PIRO (Clark County Public Defender's Office):

The Clark County Public Defender's Office is thankful for the evidence-based direction the Sentencing Committee is taking in the State and supports S.B. 103.

ERICA ROTH (Washoe County Public Defender's Office):

We support S.B. 103 and agree that it is important to make data-driven decisions in this State.

MARK JACKSON (Douglas County District Attorney's Office; President, Nevada District Attorneys Association):

We support S.B. 103. I hope this is not one of those rare moments where we have public defenders and the Nevada District Attorneys Association sitting together at this table, both offering testimony and supporting a bill. Having worked on the Nevada Advisory Commission for the Administration of Justice for 12 years, including with members of the Senate Committee on Judiciary, we have been talking about data-driven policies for a long time. We appreciate FFJC for working with Executive Director Gonzalez and bringing this bill forward. We also appreciate the potential for the voice of a rural representative. On behalf of the 15 rural district attorneys in the State, I thank you for that.

PAMELA DEL PORTO (Nevada Sheriffs' and Chiefs' Association):

We support S.B. 103. The Nevada Sheriffs' and Chiefs' Association has a representative on the Sentencing Commission, and we look forward to working with Ms. Gonzalez and her organization to enact S.B. 103.

JAMES PALOMBO (Nevada Prison Education Project):

The Nevada Prison Education Project addresses postsecondary education in the Nevada Department of Corrections. We also focus on several ex-offender issues. I support this bill, but I would like to suggest that an ex-offender be included as a member of the Sentencing Commission. Given my experience with other commissions of this sort, it would be a valuable addition. I would appreciate the opportunity to assist the Committee in writing additional language.

CHRISTOPHER RIES (Las Vegas Metropolitan Police Department):

We support S.B. 103.

MATTHEW SKARLATOS:

I am a probate and family court reform advocate calling regarding an important case that requires attention. It involves two men, Roger Eugene Hillygus, case number CR19-1535A, and Stewart Evans Handte, case number CR19-1535B, under the guidance of the Second Judicial District Court in Nevada regarding their arrest which took place in August 2019. The case is based on a Silver Alert involving, now, three states and two extraditions over three and a half-years. A person has to go to trial and be convicted. Both defendants were charged with no prior criminal records or history, which has never been conveyed by either the Reno Justice Court or the Second Judicial District Court in these proceedings. Both individuals are in jail without cause.

The first extradition, that of Mr. Hillygus, took place in California. He was charged with multiple criminal felony counts of conspiracy to commit kidnapping and burglary of his mother, who was unlawfully made a ward of the State. The court usurped the family trust and placed him in charge with a probate guardianship. The court stripped him of those duties, and Mrs. Hillygus died shortly after her separation from her only son under questionable circumstances. The second extradition, that of Mr. Handte, took place earlier this year after he refused a court order issued seven months earlier when his arrest and extradition were in question.

Roger Hillygus has been held in Washoe County Jail since January 10, 2023. In violation of NRS 171.178, Mr. Hillygus was transported to Washoe County without an arraignment upon transfer. There was no bench warrant read to him in the Second Judicial District Court upon transfer. There was no bail amount determined after his being extradited from Missouri where he spent 93 days. The Governor of Missouri allegedly issued an extradition warrant, which Mr. Hillygus had not seen or had narrated in its entirety. Mr. Hillygus's only alleged crime was failing to appear in court for a psychiatric evaluation in February 2022 to determine his competence to represent himself, even though the Department A Court had held a hearing three months earlier declaring him worthy to stand trial without counsel. This is not only in contradiction to the court's previous action but a violation of the defendant's due process rights under the law.

ANGELA CAMPBELL:

I agree with the previous caller. These men had been held without any reason. The only crime was to take their mother to see her brother. There was no

warrant, and that was what would have been in this kind of situation. I mean, what person would not want their mother to go and see her brother? This is just not a warrant issue. I do not understand the type of law that would justify holding them in this situation. Mr. Handte and Mr. Hillygus are upstanding men. It is a wrongful conviction. They are trying to have Mr. Hillygus submit to a competency test. I am a psychologist, and I know that he is competent. I have talked to him. I have conversed with him, and he has a sound mind. This is a wrongful conviction, which is a tax on Mr. Hillygus's and Mr. Handte's time and a tax on the citizens. We the people do not want this kind of justice system. We would like to see that these men are set free so that it is not burdening a system that should focus on convicting people who are a true danger to the public. I appreciate it if you would investigate this.

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CHAIR SCHEIBLE:

This concludes the meeting. We are adjourned at 1:49 p.m.

RESPECTFULLY SUBMITTED:

Jan Brase,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
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	B	1		Attendance Roster
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S.B. 103	D	3	Nick Shepack / Fines and Fees Justice Center	List of NRS Misdemeanors Legislative Counsel Bureau
S.B. 103	E	4	Victoria Gonzalez / Nevada Department of Sentencing Policy	Presentation