

## MEETING NOTES

### Statewide Substance Use Response Working Group Meeting

Monday December 14, 2022

9:00 a.m.

#### Meeting Locations:

Offices of the Attorney General

- Carson Mock Courtroom, 100 N. Carson St., Carson City
- 4500 Conference Room, Grant Sawyer Building, 555 E. Washington Blvd., Las Vegas

#### Zoom Webinar ID:

841 1615 6896

#### Members Present in Las Vegas

Dr. Leslie Dickson, Jessica Johnson

#### Members Present via Zoom or Telephone

Chelsi Cheatom, Assemblywoman Melissa Hardy, Shayla Holmes, Lisa Lee, Debi Nadler, Angela Nickels, Christine Payson, Erik Schoen, and Assemblywoman Claire Thomas

#### Members Absent

Senator Fabian Doñate, Attorney General Aaron Ford, Gina Flores O'Toole, Jeffrey Iverson, Senator Heidi Seevers-Gansert, Steve Shell, and Dr. Stephanie Woodard

#### Attorney General's Office Staff

Dr. Terry Kerns, Mark Krueger, Ashley Tackett, and Homa Woodrum

#### Social Entrepreneurs, Inc. Support Team

Crystal Duarte, Laura Hale, Madalyn Larson, Deanna Lyons, Kelly Marschall, and Emma Rodriguez

#### Members of the Public via Zoom and Las Vegas

Jennifer Atlas, Lori B, Trey Delap, Vanessa Dunn (Belz & Case Government Affairs), Rhonda Fairchild (BHG), Mary-Sarah Kinner (WCSO), Donna Laffey, Steve Messinger (NVPCA), Giuseppe Randall (TINHI), Rick Reich (Impact Exchange, Las Vegas), Alex Tanchek, Jill Tolles (former Vice Chair, SURG), Joan Waldock (DHHS), and Dawn Yohey (DHHS)

### 1. Call to Order and Roll Call to Establish Quorum

Acting Chair Jessica Johnson called the meeting to order at 9:04 a.m. Emma Rodriguez called the roll and announced that a quorum was established.

### 2. Public Comment

Giuseppe Randall representing There Is No Hero in Heroin (TINHI) and the Alternative Peer Group in Las Vegas, thanked members for allowing him to be there and to learn from them what's going on, and offered his support.

Mr. Schoen requested a link as a panelist, and said he was unable to locate an agenda, or possibly misplaced the email with that information. He expressed confusion about the purpose of the three committees: SURG, Advisory Committee for Resilient Nevada, and the Cross-Sector Task Force; and hoped for clarification. (Acting Chair Johnson advised Mr. Schoen that he was promoted to “panelist.”)

Jill Tolles said it was wonderful to see everyone’s faces and expressed her tremendous gratitude to this committee, and all the stakeholders providing input along the way. She added that the staff have been phenomenal, and she was excited to see a year’s worth of work come to fruition with voting on the recommendations, so she wanted to cheer members across the finish line and express her extreme gratitude.

Rick Reich, Executive Director, Impact Exchange introduced his program as the only harm reduction center in Las Vegas.

### **3. Review and Approve Minutes for October 3, 2022, SURG Meeting (*For Possible Action*)**

Acting Chair Johnson requested a motion to approve the minutes.

- Ms. Nadler made a motion to approve the minutes.
- Ms. Lee seconded the motion.
- The motion was approved unanimously among members present.

### **4. Introduction of Assemblywoman Melissa Hardy, appointed by the Assembly Minority Leader**

Dr. Kerns thanked former Assemblywoman and SURG Vice Chair Tolles for her service and for her earlier public comments. Assemblywoman Hardy introduced herself from Assembly District #22 which includes the Henderson area of Clark County. She is honored to serve on the SURG and knows this is important work. She looks forward to learning more about this and what can be done in the upcoming legislative session. She noted this will be her third term, having been elected in 2018.

### **5. Update on Opioid Litigation, Settlement Funds, and Distribution (*Information Only*)**

Chief Deputy Attorney General Mark Krueger, Consumer Protection Division, Office of the Attorney General added his congratulations and thanks to Ms. Tolles for her service on this committee. He also looks forward to working with Assemblywoman Hardy. He has previously provided charts on the status of several settlements, including with distributors, as well as Johnson and Johnson, or Janssen. There is now a relatively small settlement from a company with a small market share – American Drug Stores, for \$1,500,000 – that has come in. Mallinckrodt went through bankruptcy and the judge approved the plan. Nevada received \$1,849,733.70 of money that has now started to be distributed. The state is also joining the national settlement with Walmart, with funds anticipated in May for approximately \$32,231,037.14.

Chief Krueger will be adding this to his chart to create one contiguous chart for future reporting. He clarified for Ms. Nadler that recoveries received by the state from a bankruptcy or a settlement under the litigation come under the state allocation agreement with the counties and cities for fair and equitable allocation. Funds from the distributor settlement reflected in a chart he previously shared are paid out over a period of time. Some funds have been allocated to the resilient fund for Nevada that was created during the last session of the legislature.

Attorneys are reimbursed for their costs before any allocations are made to the state, counties or cities that are part of the allocation agreement, to be spent in conjunction with the State Plan published in December. The expenditures will be managed by the Department of Health and Human Services (DHHS), as required by state law.

There are other funding sources for programs and services in operation that may also receive additional support from the settlement funds.

Ms. Lee referenced unintended consequences of the litigation funds with shortages for Adderall and other medications, antibiotics, etc., cited in an article from the Los Angeles Times.<sup>1</sup> She is worried that opioid litigation could prompt another mass casualty set of events.

**6. Review Amended Bylaws with Updated Member Appointments and Terms. (For Possible Action)**

This item was tabled for the January meeting for additional updates.

**7. Update on Cross-Sector Task Force to Address Overdoses. (Information Only)**

Dr. Kerns took this opportunity to address Mr. Schoen's question during public comment, regarding the purposes of the three different committees. The Advisory Committee for a Resilient Nevada (ACRN) is focused on opiate policy and funding, with the development of a State Plan for how the Fund for a Resilient Nevada (FRN) will be used. They can also make policy recommendations regarding opiates. The SURG has a larger scope to look at all substances for policy and funding recommendations, most of which are mid to long-term recommendations. The intent of the Cross-Sector Task Force is to bring the two groups (ACRN and SURG) together to focus on shorter term goals with a six-month timeline, leveraging existing programs. Mr. Schoen said this addressed his questions.

Dr. Kerns went on to describe the December 13, 2022, meeting of the Cross-Sector Task Force. Discussion included the following goals:

- determine necessary actions to reduce the risk of overdoses in our communities;
- prepare responses for the state and local jurisdictions in the event of an increase in overdoses that occur;
- provide technical assistance, guidance, and resources to rapidly implement best practices; and
- reduce the risk for overdoses and enhance capacity to respond to events and recover should such overdose events occur.

There was also a presentation from Jamie Ross with the Statewide Partnership for the Coalitions, including emergent needs of training and awareness on naloxone and test strip availability, additional law enforcement, training and equipment, and awareness of amphetamines mixed with opiates. There was also a community request to support the growth of existing programs and support for secondary and tertiary prevention.

Ms. Ross also described opioid solutions for schools and youth that would increase support for ACES (Adverse Childhood Events) with PACES (Prevention of Adverse Childhood Events). They would support evidence-based programs in schools, collaborating with prevention specialists and school-to-school behavioral health pipelines. Mindfulness is already featured in Churchill County schools.

Another presentation from a tribal partner included potential funding and staffing needs, such as data development. Education on opiates and medication-assisted treatment (MAT) is also needed. They don't have the capacity to generate a team approach, and training on CPR and Narcan is also needed. These could potentially be coordinated with the PACE Coalition's work on alcohol use. Supplies needed include Fentanyl test strips.

Increased communication with EMS and/or the coroner is needed for data tracking, in addition to coordination for school prevention and training activities.

Sections of the State Plan and Needs Assessment were also reviewed. A budget request will go to the Interim Finance Committee in January to move funds out of reserves. Then a request for proposals will go through state purchasing. They continue to map opiate funding and projects throughout the state.

The Cross-Sector Task Force will use a consensus model for decision-making, with an action plan to leverage existing resources, including federal funds. Activities must be evidence-based and demonstrate effectiveness. This includes messaging and a focus on health equities and addressing disparities. The need for urgent action needs to be balanced with planning and situational awareness based on data and current activities.

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<sup>1</sup> [Op-Ed: Don't let Adderall scarcity trigger a repeat of the opioid epidemic - Los Angeles Times \(latimes.com\)](https://www.latimes.com/local/lanow/story/2021-03-11/op-ed-dont-let-adderall-scarcity-trigger-a-repeat-of-the-opioid-epidemic)

The action plan discussed includes three areas: development of communications, access to care, and harm reduction. A poll will be sent to all members and subject matter experts (SMEs) will be assigned to help develop plans to be presented at the next meeting in January or February.

Ms. Cheatom asked for clarification about where harm reduction recommendations would be made.

Dr. Kerns explained that distribution of Fentanyl strips through existing programs could move forward under the Cross-Sector Task Force in the short-term, while other harm reduction methods are included in the SURG recommendations.

Ms. Lee expressed confusion about where harm reduction sits within the SURG, and rapid changes in the landscape with people moving from injection drug use to smoking, which reduces risk for HIV, and hepatitis C transmission. Programs could offer safe-smoking supplies as people transition off injections drug use. She felt that the process has been very paternalistic with things being handed to members, and not knowing where to put harm reduction priorities that arise from on-the-ground work.

Dr. Kerns explained that harm reduction was placed in the Prevention Subcommittee, as tertiary prevention. There was discussion about whether there should be a special meeting on harm reduction, and that will be considered in the new year. Dr. Kerns emphasized that members are being heard and their work is appreciated.

Ms. Lee emphasized that people are dying every day and she feels a sense of urgency and it can't be put off any longer. Ms. Nadler agreed with Ms. Lee, and she recounted her personal experience with the loss of her son ten years ago, and there is still only one place to detox in Las Vegas, which is turning people away. Although she is focused on education prevention, she said there is an emergency for harm reduction.

Mr. Schoen wished members would not apologize for their passion, as it helps communicate the importance of this message. He reported progress on harm reduction in rural Nevada as cost-effective and impactful in these communities, by addressing stigma and helping to keep people alive. He also asked for context regarding funding discussed at the Cross-Sector Task Force meeting, where \$140,000 was allocated to harm reduction for years one, two, and three, which is woefully short. He added that a funding map would be helpful.

Dawn Yohey, DHHS, explained that fund-mapping will be shared with everyone. Allocations under the FRN are just a very small portion of what's happening in the entire state, with a lot of money going towards harm reduction, and it's just the start. Ms. Yohey will provide that information after this meeting. They need to make sure that the state has the capacity to implement projects with evidence-based programming that is sustainable.

Mr. Schoen thanked Ms. Yohey for the information. He agreed with Ms. Lee's concern about a paternalistic process. He doesn't know the impact of decisions made at the budget level or how much member contributions through the SURG or Cross-Sector Task Force are factored into that.

Dr. Kerns noted that reports from the SURG and the Cross-Sector Task Force go to DHHS and are factored in. Policy recommendations also go to the legislators.

Ms. Yohey said all the input is considered by the DHHS Director's Office. They are trying to implement everything they can, with \$6-8 million allocated over 18 years, and to develop sustainability. They also get input from other SMEs, public comment, and other government entities. They are doing the fund-mapping and project mapping to help determine expenditure of the funds.

## **8. Review draft Annual Report of the SURG (*For Possible Action*)**

Dr. Kerns noted the requirement for an annual report, that includes recommendations this year, and she reviewed the table of contents: Executive Summary, Introduction and Background, Methodology, Recommendations, Future Considerations, Conclusions, and Appendix.

Ms. Hale provided an overview of the draft Annual Report. The Executive Summary is limited to recommendations, in order by subcommittee, and will be updated based on this meeting. She specifically referenced harm reduction recommendations that were included under the Prevention Subcommittee. The Introduction includes testimony under [AB374](#) which created the SURG, with some updated data on drug overdose, and the structure of the SURG. The Overview and Update on Nevada's Opioid Litigation summarizes presentations to the SURG, and the section will be updated with Chief Krueger's presentation from this meeting.

Ms. Hale highlighted the section on Methodology which describes the process creating the subcommittees, noting this was a manageable forum for all members to bring their issues, concerns, and recommendations to the table, with the opportunity to discuss them at that level and then raise them to the broader SURG at the quarterly meetings. There was also the opportunity to hear from other SMEs. A summary of how legislative requirements were mapped to the subcommittees, along with cross-cutting requirements is also included. The weighting process was implemented to identify the top 5-10 shared priorities for subcommittee members to advance to the SURG. The Recommendations section will also be updated based on member input from this meeting. This section includes Justification, Action Steps and Research Links for each recommendation. Themes were identified that further align with legislative requirements from AB374 Section 10, Subsection 1, paragraphs a-q. Ms. Hale directed members to items 12-13 and 16-17 that required attention to reconcile overlapping or cross-cutting recommendations, as would be discussed in the next agenda item.

Items for Future Consideration include resolving the conflict between the good Samaritan Drug Overdose Act and the Drug Induced Homicide Law, as well as a policy change to cover non-pharmacological or complementary treatments for pain.

The Conclusion acknowledges the tremendous work and expertise of members and the extraordinary litigation from the Attorney General's Office to bring in more funds to the state. It also states the need for commitment from state agencies to support implementation.

The Appendix includes a listing of the SURG members, the Bylaws (to be updated), and more detail on the settlement litigation (to be updated).

Acting Chair Johnson thanked Dr. Kerns, Ms. Hale, and the SEI team for the report. Dr. Kerns confirmed that the report would be submitted to legislators and others at the end of January 2023.

Ms. Nadler asked about terms for SURG members and expressed concern about ending terms for members in 2023. Dr. Kerns explained that the terms were updated to reflect legislative requirements with about half of the member terms to expire after one year, and the other half to expire in two years. She has reached out to legislative leaders and other appointing authorities to get reappointments for those seats under their purview. Some of those appointments have changed, but many will likely remain the same.

Ms. Holmes suggested adding language to specify that recommendations are not listed in order of priority. Acting Chair Johnson agreed and suggested adding this language at the beginning of the section on recommendations.

Ms. Marschall explained that because the recommendations would be discussed in more detail in the next agenda item, the action for this item would be for the structure and layout of the report, or the identified themes.

Deputy Attorney General Homa Woodrum concurred with Ms. Marschall and described this as a modular approach where they are lifting one section out. There could be a motion to approve the structure and thematic of this document, including some clarifying language, followed by a second, possible discussion, and a vote. Then they would move on to agenda item nine on the recommendations. This will keep motions clear for the purpose of the minutes. If something came to light while reviewing the recommendations, they could reopen this agenda item for any modifications.

Ms. Holmes suggested listing recommendations in the same order between the Executive Summary and the Recommendations Section. Ms. Marschall explained the two listings were to provide options to the members for

how they want them to appear. Ms. Holmes stated her preference for the breakdown by subject or themes that go across the different subcommittees.

Mr. Schoen said it may be more intuitive to keep the recommendations in order by subcommittee. On the other hand, he thought the listing by themes may provide a little bit more direct guidance on how they affect the overall picture.

Ms. Lee expressed concern about dates in the bylaws that need to be amended.<sup>2</sup> She also suggested tabling this agenda item until they review the recommendations. Ms. Nadler agreed with this.

Assemblywoman Thomas stated her support for moving forward with action on this agenda item, which is just approving the format and structure of the report, and then they could proceed with the recommendations.

Acting Chair Johnson asked for a motion on the structure and thematics of the report, including an amended sentence on the recommendations page, and a review of the bylaws and term limits, excluding the order of the recommendations, with that section to be discussed under agenda item nine.

- Assemblywoman Thomas made the motion.
- Dr. Dickson seconded the motion.
- The motion was approved unanimously, among members present.

Acting Chair Johnson called for a break at 10:27 a.m. and called the meeting back to order at 10:36 a.m.

## 9. Approval of Recommendations for the Annual Report

Ms. Marschall recalled that preliminary recommendations were presented by then Vice Chair Tolles at the October SURG meeting, with some ideas for consolidation, which went back to subcommittees and in some cases were incorporated or expanded. A worksheet with those resulting recommendations was drafted for this review, with items 11, 12, 16, and 17 called out specifically with cross-cutting or duplicative elements.

Members were asked to identify any additional items for further discussion, before voting on the remaining recommendations.

Ms. Nadler asked if something new could be brought in at this point, called *Operation Engage*.

Ms. Woodrum referenced agenda item ten for identifying items for future meetings. If the suggestion was to fold it into this report, she explained that a goal of the open meeting law is to be transparent and disclose to the public, or anyone interested in a particular subject, that it was going to come up that day. You wouldn't want to add new recommendations for discussion that same day because there might be other people who would have input or seek information. Her recommendation was that it could be agendized for a future meeting with public notice.

Ms. Marschall shared the recommendations worksheet on screen with the cross-cutting items 11 and 12, referenced previously.

### Service Coordination

These recommendations correspond to AB374, Section 10, Subsection 1, Paragraphs (e) and (f)

**Recommendation 11. Expand access to MAT and recovery support for SUD, limit barriers to individuals seeking treatment regardless of the ability to pay, and encourage the use of hub and spoke systems, as well as recovery support, including use and promotion of telehealth, considering the modifications that have been made under the emergency policies, and pursuing innovative programs such as establishing bridge MAT programs in emergency departments. (Treatment and Recovery #1)**

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<sup>2</sup> The bylaws will be updated based on pending appointments.

**Recommendation 12. Support Harm Reduction through: (Prevention #8c) Promote telehealth for MAT, considering the modifications that have been made under the emergency policies. Expand access to MAT and recovery support for SUD, limit barriers to individuals seeking treatment regardless of the ability to pay, and encourage the use of hub and spoke systems, as well as recovery support, including use and promotion of telehealth, considering the modifications that have been made under the emergency policies, and pursuing innovative programs such as establishing bridge MAT programs in emergency departments. (Prevention #8c)**

Ms. Lee said that medication assisted treatment (MAT) is often thought about as treatment or recovery, so she is confused about how that aligns with harm reduction.

Dr. Dickson said she considers MAT as harm reduction because providers are taking care of people who are using opioids and putting them into a safer situation by using safer medications.

Ms. Lee said that as a recovery advocate and a harm reduction advocate, she does think of this as medication assisted recovery, which is different from syringe services or wound care outreach to address harms associated with substance use disorder (SUD) or opioid use disorder (OUD). Literature Ms. Lee has read also supports two distinct strategies.

Acting Chair Johnson came back to the issue of duplication. Based on Ms. Lee's comments, Ms. Johnson recommended using Recommendation 11, as it stands alone in that category and then move to strike #12 but linking the language "Support Harm Reduction through" to recommendations that were categorized under other themes.

Ms. Marschall explained that the original Harm Reduction recommendation from the Prevention Subcommittee included 8a, 8b, and 8c. It was only 8c that was presented as Recommendation 12; items 8a and 8b were presented as Recommendations 7 and 9, respectively.

Ms. Nadler agreed with Dr. Dickson's perspective on MAT being a harm reduction strategy because it does prevent people from further harming themselves, just like Narcan does. She suggested that if they get rid of Recommendation #12, they should add the telehealth services into #11. Ms. Marschall clarified that telehealth is already referenced in the middle of recommendation #11.

Ms. Lee referenced the Action Step under #12 to *Investigate whether MAT can be delivered via telehealth per the public emergency*. She noted that SAMHSA had just published new guidelines, as part of the changing terrain. She suggested they adopt #11 with the justifications and action steps to proceed forward, and the research links which support the emergency department buprenorphine induction.

Ms. Holmes noted the importance of MAT and these critical pieces. She felt that #11 fits much better within the *Service Coordination* piece, so she would support #11 over #12.

Ms. Marschall noted that the preliminary rules from SAMHSA were released after these recommendations were drafted, but they have not yet been adopted. Based on Ms. Lee's comments, members may want to pull the parenthetical reference under #11 (*needs more investigation on public health emergency*).

Acting Chair Johnson asked for a motion to retain Recommendation #11, omitting Action Step bullet point #1, and the section in parentheses that says (*needs more investigation on public health emergency*), and remove recommendation #12.

- Ms. Lee made the motion.
- Mr. Schoen seconded the motion.
- The motion was approved unanimously among the members present.

Ms. Marschall moved on to the next slide with recommendations #16 and #17.

#### Workforce Development

These recommendations correspond to AB374, Section 10, Subsection 1, Paragraph (q)

**Recommendation #17: *Implement changes to recruitment, retention, and compensation of health and behavioral health care workers and enhance compensation in alignment with the Commission on Behavioral Health Board's letter to the Governor of June 22nd. Additionally, continue to sustain and expand investment in Community Health Workers, Peer Recovery Specialists, and Certified Prevention Specialists by implementing changes to recruitment, retention, and compensation. (Treatment and Recovery #4)***

**Recommendation #16: *Continue to sustain and expand investment in Community Health Workers, Peer Recovery Specialists, and Certified Prevention Specialists throughout Nevada. (Prevention #1)***

Mr. Schoen referenced his membership on the Prevention Subcommittee and the importance of this recommendation. He also really likes the additional specification in Recommendation 17. He suggested keeping #17 and including a parenthetical reference that this was the #1 recommendation for the Prevention Subcommittee. He emphasized the need to get in front of both mental health and substance use disorders, by developing these professionals throughout the entire state.

Ms. Lee pointed out that #17 is more fleshed out with Justifications, Action Steps, and Research Links, adding that these Action Steps are really paramount to moving this initiative forward.

#### o Justifications:

- Efficient, effective, cost savings, quick to stand up eager workforce
- Address ongoing shortage areas in Nevada and promote greater access to care.

#### o Action Step:

- Change in Medicaid Reimbursement to allow for reimbursement of CHWs and CPSs affiliated with BH/SUD.
- Medicaid reimbursements for behavioral health, including paraprofessionals, must be evaluated and increased to recruit and retain qualified behavioral health professionals.
- Funding: Expenditure of settlement funds through grant dollars.
- Direct DHHS to create grant opportunities for organizations to employ CHWs and other behavioral health providers affiliated with BH/SUD and be reimbursed for services provided to underinsured and uninsured individuals.

#### o Research/Links:

- Nevada Community Health Worker Association PowerPoint
- Medicaid Reimbursement Rates Are a Racial Justice Issue Nevada Community Health Worker Association 2022 Updates and Overview

Acting Chair Johnson asked for a motion to retain Recommendation #17 adding Mr. Schoen's request to include Prevention #1 in the parenthetical reference.

- Mr. Schoen made the motion.
- Ms. Nadler seconded the motion.
- The motion passed unanimously among members present.

Ms. Marschall explained that the next step would be for members to identify any other items that they want to raise for discussion before approving the balance of Recommendations.

Ms. Lee requested that Recommendation #1 be pulled for discussion.



1. Revise penalties based on the quantity of Fentanyl, analogs, or other synthetic drugs of high potency that are trafficked. (NRS 453.3385, NRS 453.336, 453.339, 453.3395). (Response #2)

o Research/Links:

- [State Laws Are Treating Fentanyl Like the New Crack—And Making the Same Mistakes of the 80s and 90s \(yahoo.com\)](#)
- [Fentanyl Accountability And Prevention | Colorado General Assembly](#)
- [Synopsis of "The Future of Fentanyl and other Synthetic Opioids," a Report by the RAND Corporation \(legislativeanalysis.org\)](#)

Ms. Lee further noted that the research links under this recommendation “say that this is a bad idea.” She read from the first research link, as follows:

*Evidence abounds that such policies are ineffective: For instance, one 2018 analysis from Pew found harsher penalties for drug possession did not reduce use or overdoses, and a 2014 National Research Council report found that increases in successfully prosecuted drug crimes did not clearly drive down drug use and had a disparate impact on Black and Hispanic communities.*

Additionally, Ms. Lee suggested the ineffectiveness of using a hammer to solve a hope crisis. She said the criminal justice lever has been ineffective at reducing death and drug-related harms and has resulted in a disproportionate number of Black and Brown folks in mass incarceration. She also referenced suggestions in the third link, including reducing restrictions on Methadone and Buprenorphine. SAMHSA is also looking at revising those things, including the following: decriminalization of drug possession, implementing novel treatments, providing access to drug content, testing, improving supply disruption, and supervised consumption sites, among others.

Ms. Payson said that with all respect for Ms. Lee’s comments, at the end of the day there are people in the public that want to see people held accountable. Even if data shows it doesn’t reduce overdoses, they want the people who are profiting from peddling this poison that’s killing people held accountable.

Ms. Nadler reminded members that Nevada has a drug induced homicide law related to dealing with drugs. She wanted to know if Recommendation #1 would change laws already in place.

Acting Chair Johnson explained that could be part of the discussion of this recommendation, following identification of any other items for discussion. She asked for a motion for approval of the recommendations that were not highlighted for additional discussion.

- Ms. Cheatom made the motion.
- Assemblywoman Thomas seconded the motion.
- Ms. Payson opposed the motion.
- The motion was approved by remaining members.

Moving back to Recommendation #1, Acting Chair Johnson asked for discussion.

Ms. Nadler asked for clarification of this item, specifically if this recommendation would lower the number of times before dealers could be sentenced.

Ms. Payson said this recommendation would not lower penalties, but it would get it back to the previous penalties in place before penalties were lowered for all drugs. This is looking at Fentanyl specifically because of its deadly nature.

Ms. Nadler asked about the number of offenses this would impact.

Ms. Payson explained that how prosecutions go forward doesn't always match up with exactly the way the law is written; that's up to the prosecuting attorneys and plea deals that take place. She clarified that the numbers in the notes are what was first proposed, but when the law went through it now reads that everything from 100 grams to 400 grams is considered low-level trafficking, and from 400 grams and up is considered a high-level trafficking, so they did away with the mid-level. She added that one gram of difference can still kill an awful lot of folks.

Ms. Nadler said there is a fine line between people who are doing runs to get their drugs and have no clue that they're selling Fentanyl. They could be with another person, and that one person lives; the other person doesn't live. She lost her cousin to one dose of Fentanyl last year, and the guy had been let out many times prior. He was released out of jail three times for selling, and because he was released, her cousin was killed. When they're talking about Fentanyl only, she thinks all Fentanyl dealing is a crime.

Assemblywoman Thomas asked if there were any experts who looked at this recommendation regarding the specified number of penalty years. She asked if there was expert data to justify this, and who would present this to legislators to amend what they approved in 2019?

Ms. Payson explained that there are bill draft requests in process. Response subcommittee members wanted to state their agreement with these proposed changes, but they did not create the specific numbers.

Ms. Holmes was also on the Response subcommittee, and she explained that the specific numbers are what was presented to them as the prior law. Their recommendation was not to necessarily revert to those prior amounts, but that there needed to be increased penalties for Fentanyl analogs or other synthetic drugs. They have been seeing those drugs associated with higher death rates, or the possibility for deaths, within that group of drug classification. The subcommittee members did not specifically decide to go back to the earlier law, but they supported an increase in penalty for that group of drugs. It was highly supported by law enforcement that participated in those presentations.

Assemblywoman Thomas asked if it was just police who testified or whether there were judicial experts to support a foundation to testify to the legislature, because they are asking to change part of the legislation back to prior status.

Ms. Holmes recalled that Dr. Stephanie Woodard had mentioned getting legal advice. There were also pharmaceutical board members that were consulted, although they did not officially present to the subcommittee.

Ms. Lee said this is a well-researched topic and she had sent out a report previously that highlighted information that most drug sales are happening between people who use drugs. They don't want their friends to be dope sick again. There have been studies in public health and anthropology with longitudinal studies, regarding the moral economy of sharing. She added that Fentanyl test strips are pretty much useless for the current illicit supply, and they do little to modify behavior. Most illicit substances have come into contact with Fentanyl in the processing, packaging, or distribution process.

Ms. Lee referenced ample studies that identify mass spectrometry as a cost-effective drug-checking strategy that can be offered in harm-reduction organizations. The average person who uses drugs does not know what is in the drugs and they have no way to tell what is in the drugs. Law Enforcement has laboratories to see exactly what is in the substances. People are trying to stay alive. People are not trying to die -they are lacking the tools to know what is in the drugs. The average person that's probably furnishing small amounts of these drugs, which might be within

the parameters of what is being proposed here. She did three grams a day to stay functional. Based on her experience with people using substances, they are concerned that the supply of heroin will decline-similar to what happened with pain pills- and overdose rates will spike when there's only Fentanyl available. She suggested that most of the people who are going to end up in prison for these things, including life after prison reentry, won't have access to housing and these options to improve your life are closed. She asked whether this would really undo harm and meet their intention.

Assemblywoman Hardy noted the amazing work that members have done and her honor to be a part of this going forward. She referenced that both Senator Seevers-Gansert and Attorney General Ford have bill draft requests (BDRs) to address the penalties, so they will see evidence or reports from presenters in the legislative process that could address Assemblywoman Thomas's question. She pointed out that this group isn't recommending any penalties, but they will be able to follow proposals through the BDRs.

Dr. Dickson said the table didn't make sense to her because she thought it didn't specify what substances are being referenced. She suggested that it should be rewritten to make sense.<sup>3</sup>

1. Revise penalties based on the quantity of Fentanyl, analogs, or other synthetic drugs of high potency that are trafficked. (NRS 453.3385, NRS 453.336, 453.339, 453.3395). (Response #2)

o Justification:

- While the intent of criminal justice reform legislation passed in the 2019 session was to address Nevada's growing prison population and the expense of that growth to Nevada taxpayers, it did not anticipate the public safety threat stemming from increased weights involving deadlier drugs like Fentanyl being trafficked in the community and the impact to overdose victims and their families.

- The potential deaths when comparing 2 milligrams to grams of Fentanyl for the current penalty structure is as follows:

Less than 14g: deferral (potential to kill 6,995 people)

Prior law: less than 4g – low level trafficking

Greater than 14g less than 28g: 1-4 years (potential to kill 13,995 people)

Prior law: 4g-28g – mid level trafficking

Greater than 28g less than 42g: - 1-10 years (potential to kill 20,995 people)

Prior law: 28g or more – high level trafficking

Greater than 42g but less than 100g: 2-15 years (potential to kill 49,995 people)

o Action Step:

- Bill Draft Request in process from Attorney General's Office and Senator Seevers-Gansert

Ms. Payson explained that the table was created at the time revisions were being suggested for the penalty structure for Fentanyl and Fentanyl analogs, but the information is no longer accurate. Addressing Ms. Lee's concern wherein she referenced people using three grams a day, Ms. Payson explained that you can have up to 100 grams, and still not even be considered low-level trafficking, under the current law.

Dr. Kerns said that the bill drafted by the Attorney General's Office was dropped, based on her review in Nellis, the online legislative bill tracking system.

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<sup>3</sup> The table is directly referenced in the preceding bullet point which specifies Fentanyl, "The potential deaths when comparing 2 milligrams to grams of Fentanyl for the current penalty structure is as follows:"

Ms. Nadler said that our Attorney General signed on with at least 15 other attorneys general to declare Fentanyl a weapon of mass destruction. She referenced two grams of Fentanyl to make the point that small amounts are still weapons of mass destruction. She wanted to ensure that Fentanyl was specified in the recommendation. Ms. Nadler suggested that dealers on Snapchat target youth and she knows three people who lost their children due to dealers on Snapchat.

Acting Chair Johnson explained that the table in question was not the actual recommendation, but it was a justification to revise penalties based on the quantity of Fentanyl.

Ms. Woodrum clarified that [Senate Bill 35](#) (BDR 4423) sponsored by the Attorney General's Office does have language posted and establishes a crime of low-level trafficking in Fentanyl, as well as mid-level trafficking and high-level trafficking. The bill has been pre-filed, and it is available on the legislative website.

Assemblywoman Thomas said she would like to see the second bullet (with the table) under Justification removed, because she doesn't think it is necessary.

Mr. Schoen said he was deeply conflicted because we know historically how these laws have been unjustly applied and fairly applied, causing tremendous harm to people of color. He is also aware of the damage that Fentanyl can cause and the public safety approach they are trying to take with this particular drug and its analog, synthetics. He would like to see research that would support these laws, because intuitively, it doesn't always line up with the actual application. He cited Ms. Lee's reference that the research links provided did not actually support the recommendation.

Ms. Payson agreed with the previous comment that the table should be removed because it is no longer accurate. She suggested using the current bill to update the reference. She said there may not be data that support whether this will make a difference, but at the end of the day, it is about holding people accountable. The amounts of Fentanyl that are currently considered "low-level trafficking" are so high and these are people making big money; these are not just people who have substance use disorder. There are people making big money and they know exactly what they're doing, and they know exactly what the substance is, and there needs to be punitive action.

Ms. Nadler referenced Mr. Schoen's request for further evidence, and recalled a bill passed in Oregon which cited a spike in overdose rates based on changes to substance amounts and lower penalties. Substance users were given a choice to pay a fine or see a counselor to get into a treatment program, but there weren't enough beds or programs. Ms. Nadler was also in favor of removing the second bullet under Justification.

Assemblywoman Hardy agreed with removing the second bullet point, but moving forward with the recommendation, going through the legislative process, and then debating the penalties.

Dr. Kerns commented on the second research link regarding Fentanyl accountability and prevention. There is an omnibus bill that just passed in the Colorado General Assembly that includes weighting and sentencing for Fentanyl and Fentanyl analogs, but they don't yet know how successful it will be. It does also include things that Ms. Lee has mentioned, including the Good Samaritan law, and access to Narcan and Fentanyl test strips.

Ms. Lee agreed with Mr. Schoen's comment, in that she hates that Fentanyl is killing people that she cares about and it's now killing kids that grew up with her kids, which is just horrible. She said in conceiving of things that are punitive in nature, they should also be thinking about what mechanisms are in place to keep people alive who are taking these drugs without knowing they contain Fentanyl. She explained that Fentanyl test strips only test for presence or absence of the substance, but don't quantify that. She thought that Trac-B has mass-spectrometry to quantify the amount of substance, but that is only one for the entire state. People can mail drugs to North Carolina for analysis, but the technology is not really available to people who just want to live and keep their friends alive.

They should be thinking about how to get mass-spectrometry into the hands of people in the next year, given the evidence that when people see what is in their drugs, they may make different decisions, if they understand that there's enough Fentanyl to kill them.

Ms. Lee agreed with taking out the table and pushing for this recommendation, and reiterated the need to give people the tools to help keep them alive and make different decisions.

Acting Chair Johnson thanked everyone for their thoughtful comments, questions, and considerations on this recommendation. She asked for a motion to approve Recommendation #1 with revised penalties based on the quantity of Fentanyl analogs or other synthetic drugs of high potency that are trafficked, removing the second bullet under the Justification section.

- Ms. Payson made the motion.
- Assemblywoman Thomas seconded the motion.
- Ms. Lee and Ms. Cheatom voted against the motion.
- The motion was approved with the remaining members present.

#### 10. Review and Consider Items for January Meeting (For Possible Action)

Dr. Kerns said a meeting has been tentatively scheduled for January 11, 2023, at 2 p.m. This will include final approval of the Annual Report, and the amended Bylaws that were tabled from today's meeting. They will also have an update on the opioid litigation, settlement funds and distribution. They will have an overview of the role and purpose of the SURG, with announcement of new appointments or reappointments, and a sample meeting schedule for the SURG and SURG Subcommittees for 2023.

Dr. Kerns explained that they will need to elect a new Vice Chair because Senator SeEVERS-Gansert declined that role due to her role in the state legislature. She asked members to contact her if they are interested in this role or if they have questions about it. The responsibilities are included in the bylaws, and she is happy to go through those with interested members.

Ms. Rodriguez asked for feedback from members who may want to switch subcommittees or may be interested in serving as chair of a subcommittee. They could email her, or she could distribute a survey.

Ms. Lee asked whether members whose terms were expiring would be notified ahead of the January 11<sup>th</sup> meeting.

Dr. Kerns explained that she would be reaching out to Attorney General Ford for those appointments under his authority, but they are still waiting for some legislative appointments and will contact members as to their status.

Acting Chair Johnson suggested that members should plan to attend the January meeting. She recommended to Ms. Rodriguez that she administer the survey regarding subcommittee assignments and interest in serving as a chair. She also asked if it would be appropriate to include a discussion of harm reduction strategies on the agenda for January.

Ms. Cheatom thought it was a great idea to have an initial discussion about harm reduction on the agenda for the January meeting. She also wanted a presentation from someone currently working in harm reduction in Nevada, if possible. She suggested Rick Reich, who was participating in this meeting over the phone, as a member of the public, from Trac-B Exchange. Ms. Cheatom agreed to work with staff to arrange for a presentation.

#### 11. Public Comment

Giuseppe Randall with [TINHI](#) thanked members for all the work they do, adding that it has been very informative to be able to sit in and listen and learn from what they are doing. Regarding lowering the level (Recommendation #1), given Ms. Lee's experience, the goal overall, from what he is hearing, is to win the battles, because there's no winning the actual war. He thinks a good way to do that would be to increase the penalties, because that would

increase the price of Fentanyl on the streets. If the price goes up and some lower level [dealers] are not able to sell it anymore and are just doing it for use . . . He said he could be wrong on that, but he thinks it's not saying what the penalties are going to be; it's saying what they're going to be charged with. And then, if they're charged with low-level or high-level trafficking, then it goes up to the court system where they could qualify for drug court programs or different harm reduction programs. (If he is hearing that right and if that helps them at all from a street level).

Mr. Randall said that he understands low-level trafficking as far as supporting your habit, however, it is so cheap out there right now. It's selling for 25 cents a pill out there, and that's insane. Increasing penalties will increase the prices which will in turn take off your low-level traffickers that are using to support their habit. They're not able to do it as much anymore. And then, all the test-strips, he thinks, are a big portion. He does consider this harm reduction, because granted, some of your heroin users or Fentanyl users themselves may not test the drugs, however, cocaine dealers are going to test their supply before they distribute it because they don't want their clients dying. Recreational drug users may not go all the way to the depths he has done; they will test their drugs. He lost a brother to cocaine with trace amounts of Fentanyl in it.

He talks to a lot of recreational drug users, and they provide Fentanyl test training when they go to an EDC event. They caught a large amount of Fentanyl that was supposed to come into the state. Now a lot of those people have no interest in using Fentanyl; they only want to party for that weekend. However, if test strips are readily available at a concert, they may test their drugs before they party for the weekend. So, again, that's harm reduction. That's saving lives. Is it winning the war? No, but it's winning small battles that are in return saving lives.

Mr. Randall referenced a Black Monday event scheduled for February 13<sup>th</sup>, a large resource in the State of Nevada. He mentioned keynote speakers and encouraged members to come and see the results of what they do.

Ms. Nadler said she wished they could use some of the money to have some kind of memorial, such as a bench, statue, garden or some area to remember all those that we have lost to this horrific epidemic. She referenced a firefighter memorial, and she thought it would be a good thing for members to think about.

Ms. Tolles thanked members for their work and the discussion. It was not lost on her that this was the 15-year anniversary of losing their foster son to an overdose. She wanted to speak his name, and her comment was in honor of *David*. She believes the work the SURG members are doing will impact many lives. She also wanted to honor colleagues on this call who are losing people on a regular basis and also lost because of this epidemic. She also honored those who are going to continue doing this work and wanted them to know that she is there to support them and is grateful for all of them.

Rick Reich, Impact Exchange, Las Vegas, NV thanked members for their work and efforts in terms of dealing with this epidemic. Having spent a long time in public health and currently working in harm reduction, he appreciates their efforts and the efforts to take a look at data and actual working models, or those about to be implemented such as in Colorado. He appreciates their time and energy, and he knows that this is a very dear topic to every one of them. If he can be of any assistance in the future, he would be more than happy to assist them.

## 12. Adjournment

Acting Chair Johnson thanked everyone for their time and the robust discussion. She is really grateful to serve on this committee with all the members and looks forward to meeting again in January. She wished everyone Happy Holidays and thanked them for their work.

**The meeting was adjourned at 11:59 a.m.**