

**MINUTES OF THE MEETING OF THE
ASSEMBLY SELECT COMMITTEE ON
CORRECTIONS, PAROLE, AND PROBATION**

**Seventy-Fourth Session
February 27, 2007**

The Committee on the Select Committee on Corrections, Parole, and Probation was called to order by Chair David R. Parks at 3:50 p.m., on Tuesday, February 27, 2007, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835)

COMMITTEE MEMBERS PRESENT:

Assemblyman David R. Parks, Chair
Assemblyman Bernie Anderson, Vice Chair
Assemblyman John C. Carpenter
Assemblyman William Horne
Assemblywoman Kathy McClain
Assemblywoman Valerie E. Weber

STAFF MEMBERS PRESENT:

Craig V. Hoffecker, Committee Policy Analyst
Deanna Duncan, Committee Manager
Gayle Miles, Committee Secretary
Olivia Lloyd, Committee Assistant
Sylvia Brown, Interim Committee Assistant

OTHERS PRESENT:

Jeremy Bosler, Washoe County Public Defender, Washoe County, Nevada
Philip J. Kohn, Public Defender, Office of the Public Defender, Clark County, Nevada



Steven G. McGuire, State Public Defender, Office of the State Public Defender

John Lambrose, Chief of Non-Capital Habeas, Office of the Federal Public Defender for Nevada

Danice Johnson, Federal Public Defender, Office of the Federal Public Defender

Lori Teicher, Federal Public Defender, Office of the Federal Public Defender

Richard L. Siegel, Ph.D., President, American Civil Liberties Union of Nevada (ACLU)

Lee Rowland, Staff Attorney, American Civil Liberties Union of Nevada (ACLU)

Tonja Brown, Private Citizen, Carson City, Nevada

Roll was taken [3:50pm]

Chair Parks

We will proceed with some presentations and comments relative to our Committee's work.

Jeremy Bosler, Washoe County Public Defender, Washoe County:

We all realize the prison population is overflowing. I have some statistics which have already been given to the Committee. In Nevada, between 1986 and 1996, there was an 82 percent increase in the prison drug admissions and a 122 percent increase in the State's youth drug admissions. Nationally, there was a 300 percent increase in state corrections spending. The Nevada Department of Correction's (NDOC) prison population almost doubled from 1990 to 2001, and is projected to grow by 50 percent by the end of the decade. Nearly 81 percent of that population has drug abuse issues. The legacy of Nevada's stance on the war on drugs needs to be decided. Nevada is known as number one in lifetime methamphetamine use, use occurring in the last 12 months, and use in the last 3 days. Nevada's rate of methamphetamine use in high schools is 1.6 times the national average. At least from the perspective of the defense bar, the war on drugs has failed. We hear of the Governor's budget request for millions of dollars and that money will not be well spent trying to fight the war on drugs, unless alternative uses are identified. The money spent in the past has not delivered for the public or for the people involved in the criminal justice system.

A January 2007 study discusses diversion in Nevada. Diversion means drug offenders can work off their potential conviction by participating in drug treatment programs and staying out of trouble. Nevada statutes exclude trafficking from diversion, which often leads to misinterpretation. Most people

assume trafficking means hiding a large quantity of methamphetamine in a vehicle and driving it across state lines with the intent to distribute. In Nevada, Level One trafficking is defined as possession of four grams or more of a white powder substance. That amount is usually not for distribution; rather it is for personal use. Under the current Nevada statute, these offenders are given a mandatory prison sentence and charged with a felony. They are excluded from seeking long-term treatment and denied the ability to demonstrate a change in lifestyle, which would eventually lead to the removal of that felony from their record. Reducing the threshold is not the answer to the problem either. The system is sweeping up a lot of users and casual users and charging them with felonies and mandatory prison terms. This only decreases public safety. A lot of these people have children and when you place the adult family member in prison, it is five times more likely the children will follow the same path. Efforts to lessen the level of trafficking and guarantee public safety needs to be a main concern. In reality, reducing the amount of possession does not catch the traffickers; it catches the casual users and brands them as traffickers.

A more effective action would be the reduction of the penalties imposed on the casual users. Another study recommends Nevada reduce mandatory minimum sentences for drug offenses. Presently, Level One trafficking imposes a mandatory, minimum one-year sentence and a maximum six-year sentence. For drug offenses, participation in a drug treatment program should be required. Similar to misdemeanor driving under the influence (DUI), this law would mandate participation in a year of treatment supervised by Parole and Probation. Participants in the required treatment programs could possibly earn credits off their minimum prison sentence. Such programs will prepare these offenders for life in prison as well as for re-entry into society. These statutes make more sense for methamphetamine drug offenses when looking at casual drug use and the use of mandatory minimum sentences.

Reduction of overpopulated prisons is another important issue. A comment was made regarding an increase in technical violations within the Department of Parole and Probation. Technical violations are not based on new conduct or behavior, but rather on such issues as failing to maintain employment or an appropriate address, et cetera. In 2003, the Washoe County Public Defender's Office had 490 probation violations, and in 2006, that number increased to 980 violations. This year, 2007, will be the first time we will have over 1,000 probation violations in a single calendar year. Of those violations, 31 percent will be for technical issues. That percentage is based upon personnel issues at the Department of Parole and Probation and the required caseload of the deputies. There is a definite need for more personnel to supervise these cases, as well as a need for a departmental change in its institutional mentality.

The Department's antiquated, institutional mentality is more than ready for an overhaul. The "therapeutic milieu" of treating drug offenders and moving them toward sobriety and lawful conduct is not embraced as wholeheartedly as it should be.

Taking a look at the probation violations across the State, you will see that the people who are going to prison are going there for reasons other than criminal conduct. In most cases, these people are already on probation because they are not responsible. Expecting these individuals to suddenly change because they are on probation is unrealistic and the inclusion of technical violations as a basis to send people to prison is driving some of this prison population growth. Currently, we have almost 1,000 juveniles who need drug treatment and we have less than 100 spaces available. Similarly the same challenge exists for the adult population. What we can do is continue with the war on drugs by revising the penalty or the weights of a substance involved in a trafficking charge, by continuing to arrest these types of offenders, and by paying to house them in the NDOC for \$12,000 to \$15,000 a year. The chance these offenders are going to re-offend once released is greater than if they were put through treatment programs and drug court. The proportion of methamphetamine use in Nevada needs to be realized.

We talk about different treatment programs and encourage people to remain sober and maintain a healthy lifestyle, but unless we have room for them in treatment facilities, then it is all talk. We can identify the populations who need help and give many statistics to that effect, but unless there are available beds and money, these people will re-offend and end up back in the NDOC. Because of the State's inability to successfully treat them when the treatment is needed, we are only decreasing public safety. Incarceration for casual users has proven a failure. Using the provisions I mentioned, Nevada can utilize drug treatment for casual users and be successful.

Assemblywoman McClain:

We heard pre-sentencing recommendations for probation are generally ignored by the judges in about 40 percent of the cases. In your experience, were those pre-sentencing recommendations for probation warranted? And why are they not being followed in court?

Jeremy Bosler:

The grading instrument used by the Department of Parole and Probation is 20 or 30 years old. It does not take into account the effect of methamphetamine on the human brain and was created before drug and diversion courts were valid alternatives. Judges sometimes depart from those recommendations, but for good reasons.

Assemblywoman McClain:

I am surprised that they are using something so antiquated.

Jeremy Bosler:

They are in the process of updating the instrument to reflect current norms. We have plans to meet and discuss that issue soon.

Assemblywoman McClain:

Would you, or have you had to defend someone who was recommended for probation?

Jeremy Bosler:

We are assigned to the case regardless of what the recommendation is.

Assemblywoman McClain:

I wanted to get your opinion on whether they are being used or ignored.

Jeremy Bosler:

They are taken into account, but whether the judge follows them is an issue.

Assemblyman Anderson:

We went through this with the Department of Parole and Probation in 1995 when we examined, in great detail, their grading instrument and its weighted factor in court. Many of the statistics were not surprising. With respect to your statement that the war on drugs has failed, none of us would disagree with the interjection by the federal government to mandate and work on prevention, but there will always be another drug on the market. Nevada is unique in having a statewide drug court. There is concern that drug court is only available to those who can afford it. How then, without federal dollars, would we be able to do anything for treatment providers?

Jeremy Bosler:

I am a strong proponent of the drug, diversion, and mental health courts. Those programs seem to be more effective, but I don't necessarily associate those with the war on drugs. The NDOC dollars would be better spent on these treatment programs, versus short terms of incarceration.

Assemblyman Anderson:

Diversion often excludes a certain population even if the need for treatment has been recognized. Quantity is always an arguable number, but the higher we set the number, the smaller the population.

Jeremy Bosler:

The four-gram limit does not deter those who are trafficking, dealing, and essentially making money off methamphetamine.

Assemblyman Anderson:

The District Attorneys Association (DAA) has traditionally not been a major proponent of drug and diversion courts. Are you involved in selecting people to go into those diversion programs?

Jeremy Bosler:

Our attorneys always argue for diversion and drug courts. The policy of these courts is actually set in our County. The courts and the District Attorney (DA) decide who will be excluded. The *Nevada Revised Statutes* (NRS) 453.005 and the NRS 458.010 have statutory exclusions, but other exclusions exist. Trafficking is one of those exclusions.

Chair Parks:

In Clark County, receiving the Pre-sentence Investigation (PSI) reports in a timely manner has become a major issue. Has Washoe County had similar problems?

Jeremy Bosler:

Yes. We have contacted the Department of Parole and Probation and tracked when PSI reports are received in relation to court dates. Probation has tried to be receptive to our suggestions, but the problem lies in the lack of personnel.

Chair Parks:

Do you have a sense of the availability of treatment facilities, as well as the capability to staff them?

Jeremy Bosler:

Conservatively, we have about 100 people who need treatment for every single bed space available. I do not know why the rate of success of these programs is not higher. One factor is the lack of federal and state dollars, which is a public safety issue.

Chair Parks:

If those federal and state dollars were available, would the number of programs available be able to meet the community's need?

Jeremy Bosler:

Yes, we have interested professionals willing to help.

Philip J. Kohn, Public Defender, Office of the Public Defender, Clark County, Nevada:

My office with the Metropolitan Police Department, the detention center, and the booking desk conservatively estimate that 100,000 of the two million Clark County residents are abusing methamphetamine. The captain of the Narcotics Division estimates that number could be doubled or tripled. Among the treatment facilities located in Clark County, there are less than 250 beds available for drug abusers. We heard the Governor's pledge in the State of the State address, of \$300 million for prisons. At least half of that budget needs to go into drug treatment programs. Public defenders in Clark County are given six to ten beds per month, but there is still an eight to ten week waiting period that applies. Drug abuse is affecting all economic stratospheres of the State. "Just say no" is not working. Bill draft resolutions (BDRs) and other laws that want to get tough on crime are not the solutions either, appropriately applying our resources is.

We had a case where the defendant pleaded guilty to possession of a controlled substance, which is a Class E felony and carries a sentence of immediate imprisonment. This person completed drug court and then was put on probation. His probation officer was reassigned and the new officer scared him and he stopped reporting. No new crime was committed, nor did he have any prior felonies, yet his probation was revoked. He is now serving 12 to 18 months in the Nevada State Prison. We all want to be safe in our communities, but how are we safer because this guy is in prison? Inmates in NDOC believe this man is a snitch because his record was sealed upon completion of drug court and they have threatened his life. Harsh and stringent policies are costing the State of Nevada. The Department of Parole and Probation admitted they were behind on at least 20 percent of their reports due to lack of personnel. Therefore, probation reports on gross misdemeanors are no longer required. The philosophy of the Department of Parole and Probation has changed over the last two years. New legislation needs to get back to a treatment modality and not just simply a punishment modality. If the person re-offends then taking a tough stance is warranted, but incarceration is no longer affordable, and technical violations are wasting our tax dollars.

In Nevada, juvenile murder cases are automatically handled as adult cases, with no exceptions. We have a client who is 27 years old, but at the time of the crime was 16 years old. She did not physically commit the murder of her stepbrother, but she was part of the conspiracy. She is now serving a life sentence. A child of 15 or 16 years of age is not the adult of 27 years, in most cases. They do not have the maturity and/or cognitive awareness of an adult to rationalize cause and effect of their actions. This Committee needs to examine existing laws and consider an escape clause when sentencing juveniles to life.

Cases like this should be reviewed when the individual turns 25 years of age. The burden should fall on the defense, not the prosecution. The redemptive value of a child who has become a reformed adult is being wasted on a life in prison.

Assemblywoman McClain:

I submit the same question about pre-sentencing probation recommendations.

Philip Kohn:

The Department of Parole and Probation has an extremely outdated system and does not have staff to properly supervise the parolees in the community. They are recommending time in prison more often than in previous years. Judges use their own discretion due to inaccurate or incomplete information provided to them in the PSI reports and many times are unable to determine how a conclusion was arrived at. During the time I was doing investigations, there were at least 10 to 20 pages of detailed follow-up required. That is not true now. Therefore, judges are ignoring the PSI reports in many cases.

Assemblywoman McClain:

What about the offenders recommended for probation, but the judge gives them prison?

Philip Kohn:

That is why the Legislature should consider changing the way judges are selected. Judges who do not have an opponent need to be voted up or down based on their actions and reputation. Every judge has that fear that the person they put on probation today may offend tomorrow and be the "Willy Horton" in their next campaign. I am troubled by it, and I hope it is not a political decision.

Assemblyman Anderson:

I was under the impression that there have been some changes within the Department of Parole and Probation in terms of the internal operation; specifically, the numbers of officers sworn in who have direct contact with those on probation, as opposed to the officers who are doing the reports. Do you as a public defense counsel have an opportunity to argue or advocate your terms of a fair and meaningful sentence?

Philip Kohn:

Arguing sentencing is the most important thing that public defenders do. The Clark County Public Defender's Office has eight social workers who developed treatment programs as alternatives to prison. With availability of more facilities to treat those with drug and/or alcohol problems, current prison population would drop. There are three types of basic treatments: outpatient, inpatient,

and a locked facility. Presently, we do not have a locked facility where the judge knows the offender is going to receive 30, 60, or 90 days in a treatment program. The public defenders' main job is recommending sentencing, so alternatives other than prison are most likely going to be used. But we have no alternative. It is a lot cheaper to build a treatment center, though, than it is a prison.

Assemblyman Horne:

What is your experience in arguing discrepancies in the PSI reports?

Philip Kohn:

It depends on the courtroom. Some judges accept everything, and others allow some leeway in making their final judgment. We have access to scope, and to the social workers' alternative answers, which gives the public defender an advantage.

Assemblyman Horne:

You mentioned "access to scope"? Can you explain what scope is?

Philip Kohn:

Scope refers to the criminal histories of offenders. As public defenders, we have access to the scope of their criminal history in the State of Nevada. We do not have access to the National Crime Information Center (NCIC), like Parole and Probation and the District Attorney.

Assemblyman Horne:

Information to the Committee—private attorneys can view the offender's background, but are never given a hard copy. I have been asked in the past how many beds we have for drug offenders who need treatment. I have had to tell them, "zero," because I can never get a definitive answer or the acceptance of any of my clients into these programs.

Philip Kohn:

Clark County is lacking facilities of every kind; therefore, many facilities are not taking people outside of the public defender realm.

Chair Parks:

Steven McGuire, with regard to Nevada, can you tell us about the work you do and the areas you cover?

Steve McGuire, State Public Defender, Office of the State Public Defender:

Our office represents indigents in those counties with populations under 100,000 that do not make provisions for their public defenders' service. We are eligible to provide services in 15 counties and up until the present we have been providing services in 7 counties. Our main office is in Carson City, and this office serves Storey County. Regionally, we have an office in Winnemucca that serves Pershing and Humboldt Counties and an office in Ely that serves White Pine, Lincoln, and Eureka Counties. Effective June 2007, Humboldt County will no longer use our services and will make their own provisions and it is likely Pershing County will join them. This would greatly reduce our service area. Services lacking in areas such as the Seventh Judicial District in Ely are drug and alcohol treatment facilities, drug court and counseling, and program accessibility. Because we cover such a large geographical area, quite of lot of staff's time is spent traveling.

Chair Parks:

Does Parole and Probation provide you with PSI reports?

Steve McGuire:

Yes.

Chair Parks:

Can you speak about your experience in timely receiving PI reports?

Steve McGuire:

Sentencing is on Monday or Tuesday, and reports are received on Thursday or Friday of the prior week. When a report is received in our office on Friday for a Monday sentencing, this poses a problem because of the prison's constraints on visiting inmates.

Chair Parks:

Are these reports comprehensive?

Steve McGuire:

They are comprehensive and address what we need them to address. I find them to be fair and balanced, and sometimes generous. Many times I am impressed at the probation officer's consideration of humane solutions.

Assemblywoman McClain:

Are the Parole and Probation officers for the rural communities located in Carson City?

Steve McGuire:

No, officers are in the specific areas they serve.

Assemblywoman McClain:

We were previously told that about 40 percent of the PSI report recommendations that include probation were being ignored by judges. Have you seen that to be true?

Steve McGuire:

I have not kept any statistics on it, but that is not my impression. I find it rare for a judge to completely ignore a recommendation such as probation.

John Lambrose, Chief of Non-Capital Habeas, Office of the Federal Public Defender for Nevada:

I have been a lawyer for the past 26 years and have practiced criminal law in almost every county in the State of Nevada. For the last 17 years I have been doing federal habeas corpus and other federal work. The format of the PSI reports definitely needs to be revamped. I would suggest looking to other states, such as California, and even the federal system, that have already gone through this process. The PSI report provides improved and more compellingly accurate information to the sentencing court and involves the defense counsel in the process. There is a disparity in the way the reports are done and the recommendations given. The compassionate treatment of previous years is not shown in the Eighth Judicial District. These reports take too long to get to the defense counsel and result in post-conviction litigation in state or federal court. This has shown to be a waste of money. Reforming the way PSI reports are done can only improve the process.

Assemblywoman McClain:

Do you think Parole and Probation is the right place for the PSI reports to be done?

John Lambrose:

It is the most logical place. There tends to be a built-in institutional "cobweb" because of the cynicism that takes place—whether an officer with a huge caseload has the time and wherewithal to do a comprehensive and accurate report to assist the sentencing judge. Transferring PSI reports would leave the DA and the defense counsel responsible and that would not be fair. In order for the system to be an advantageous to everybody, PSI reports need to be part of the criminal justice process. The Department of Parole and Probation needs the means to improve on their product, statewide.

Assemblyman Anderson:

Did you work in another state before coming to the federal office in Nevada?

John Lambrose:

I came to Nevada in 1980 and worked for Judge Mike Fondi. Then from 1981 until 1988, I was in private practice in Carson City with my wife Laura Fitzsimmons, Tom Perkins, and Mike Powell. In 1988, I became the Chief Assistant with the State Public Defender's Office, under Terry Rosure, and worked there until 1990. I then moved to Las Vegas and became the Chief Assistant, Federal Public Defender, with Brandy Coresman. For the past 12 years, I have been doing nothing but appellate and federal habeas corpus work. The reason we are interested in the Department of Parole and Probation issue is many of our clients are litigating in federal court and going through the parole process at the same time. After doing federal habeas corpus work, I see a lot of post-1990 PSI reports due to our clients not only challenging their convictions but their sentences as well. The problem with the accuracy of these reports has been and continues to be the "chronic" problem, which is why I am pleased to see this issue beginning to "see the light of day."

Assemblyman Anderson:

Is it true the more information placed into the PSI report means more information available for appeal on the sentencing?

John Lambrose:

Accurate information is the key. If the information is accurate, it will not form the basis for any worthy appeal. If the information is inaccurate, for example whether or not prior convictions listed actually do exist in the way that they are characterized, then there would be basis for an appeal. Unfortunately, the advocacy process is not allowed to work the way it should work because of the quality of the information provided, and the reports are not available in a timely manner to make it a fair fight.

Danice Johnson, Federal Public Defender, Office of the Federal Public Defender for Nevada:

With regard to Assembly Bill 61, the Federal Public Defender's Office is in agreement with the provision that the Parole Board hearings comply with the open meeting laws. One concern that we have is with regard to the videoconferences of the hearings. Specifically, a client of mine received a pardon and when it was time for him to go before the Parole Board, I was faced with a tough decision. Do I go to the institution where my client was, to represent him, or do I go to the location where Parole Board members were so I could speak with them directly? My client has an Intelligence Quotient (IQ) of

74 and cannot read. I disagree with videoconferencing of the Parole Board hearings because it is unfair to the clients.

Another concern I have is in regard to the other provision of section 1, which states that an individual member of the Parole Board, or the Board as a whole, can decide to hold an open meeting, but have it closed. No detail is required as to the reasoning behind a member or the Board wanting the meeting closed. The inmate or his representative should receive notice of this closed hearing and should be given time to respond with questions as to why. Section 1 does not indicate what factors would be discussed in a closed meeting. Because of my client's marginal condition, fair representation is unlikely due to closed meeting practices and/or hearing processes. The videoconference of such a meeting would not be fair to the offender.

Assemblyman Anderson:

I agree and hope you will appear again when legislation is being considered for the open meeting practices.

Danice Johnson:

Absolutely, I will be there.

Lori Teicher, Assistant Federal Public Defender, Office of the Federal Public Defender for Nevada:

I would like to discuss Assembly Bill 96 and the addition of a section to the existing NRS 176.156 that determines to whom the Division of Parole and Probation shall disclose the PSI report. The wording is extremely broad and unnecessarily intrusive as to who gets those reports, be it a healthcare worker approved by the division, or someone else. What is the intent of having a healthcare worker and/or general practitioner receive that report? The Legislature needs to review the following statement which is contradictory, "...this report being provided with the limited purposes of performing its duty, including without limitation...."

Chair Parks:

Excuse me, Ms. Teicher, we did not post this bill for a hearing today. That bill is posted for Thursday of this week. Could you return and be a part of testimony at that time?

Lori Teicher:

Yes, I can do that. I do have two concerns about the preparation of the PSI reports and the length of time it takes to put them together.

I worked in the Eighth Judicial District for seven years before going to the federal system. When I went into the federal system, as an assistant for the public defender, one of my duties was to deal with federal defendants processed into the system, who were to be taken before a federal magistrate within the next day. The Office of Pretrial Services in the federal system prepares reports for the Federal Magistrate to determine whether or not the offender should be released, and then that person has a detention hearing, all within one day of the initial arrest. It takes 45 days or more to prepare PSI reports for defendants prior to sentencing, then time to review reports prepared by officers who are supervising people on pretrial release awaiting trial. I was astounded at the extensive verbiage of the PSI reports. I would suggest any future methodology of such time-consuming reports be reworked and/or have another system put in place.

On the subject of juveniles, we currently have four juvenile murder cases. Their heartbreaking stories prompt me to concur with earlier statements.

Chair Parks:

On Thursday, we are having hearings on A.B. 96 and A.B. 106 and would appreciate having further testimony at that time.

Richard L. Siegel, Ph.D., President, American Civil Liberties Union of Nevada:

Lawyers tend to focus on individual issues, and they burrow right into them. I am a professor of 42 years. I wrote you a seven-page report ([Exhibit C](#)) and an addendum to the report which I emailed to Chair Parks ([Exhibit D](#)) that synthesizes what I have learned from the Assembly Concurrent Resolution 17 Committee chaired by Assemblyman William Horne, in the last two years; from reading carefully the report of James Austin, Ph.D., President of JFA Associates, and the Council of State Governments (CSG), that was presented to us this week; and also from statements of the Honorable Robert E. Rose, former Chief Justice of the Nevada Supreme Court, and the Honorable James Hardesty, Associate Justice of the Nevada Supreme Court. I have been gathering testimony over the past two years from all across this spectrum. The specifics boil down to what we must do about prisons. Those prison beds cost more than \$20,000 a year. An entire prison costs \$175 million including the "business model" factors in the capital costs, as well as the operating costs. Holding someone in the Nevada State Prison for one year is more expensive than sending someone to Harvard University. Harvard charges \$50,000 a year for one student. If you factor in construction and everything else, we are talking about a Harvard price tag.

What is so important about what is going on right now? We are in what is called a "prison boom," similar to what happened from 1985 to 2000. We doubled our prison space from 1994 to 2001 alone.

Between 1985 and 2000, the prison system's share of the General Fund went up by 31 percent, which is hundreds of millions of dollars. Of that money, \$320 million was put into new beds, but we will see a 3 percent increase in operating costs over the next 10 years.

The most important information regarding this topic comes from James Austin's report. He was able to free up 4,500 beds in the Arizona system with four reforms, one of which includes changes in minimum sentences. Something he did not include, which Arizona does not have, is the doubling of prison time for weapons offenses by 100 percent. If Arizona did have that, another 1,000 to 1,500 beds would have been freed up.

After reading the report and the plan Dr. Austin offers, it is completely in conjunction with the Hardesty and Rose testimonies and the A.C.R. 17 Report. We have the plan. We know what we have to do. All we really need is the political will.

Lee Rowland, Staff Attorney, American Civil Liberties Union of Nevada:

There are cost-effective methods for new prison construction and building in a way that will reduce overcrowding without excessive construction of new prisons. The first topic is the argument that, "Unless we build more new prisons, we are looking at a federal take-over." I am not undervaluing the problem of prison overcrowding, but the reality is I have spent a lot of hours getting a glimpse of the protocol and life in prison. There are constitutional concerns that exist because of understaffing and Correction's inability to attract qualified pharmacists, medical technicians, and social workers. Creation of new prisons will not alleviate those problems. It is important to consider that as you spread thin the overtaxed resources of the professional prison staff and budget that is needed to appropriately and constitutionally fund and operate prisons, you may actually increase the likelihood of a constitutional and federal takeover. Those problems will clearly be exacerbated by building new prisons but failing to hire more staff. It is very important that the Legislature ignore the argument that we are all going to get sued if we do not build new prisons. That is simply not the case. Unfortunately, the prisons are in a dire state, but construction of new prisons involves constitutional responsibilities and operating costs that Nevada is not able to meet. The way to reduce overcrowding is the use of alternative sentencing methods. This will reduce the population of low-risk offenders, and therefore reduce the prison population as a whole.

The following are a few of the key reforms that could be made in a cost-effective manner. A critical one would be making sure parole arrangements for release actually meet the set-out timing for that release. In the past, statistical data shows that release policies are delayed by various technical issues which results in the unnecessary use of beds and provisions. Incarceration of low-risk or non-criminal offenders represents a good percentage of our current prison population. The ethos of the Department of Parole and Probation needs to change regarding enforcement of technical violations. Another departmental problem is the lack of communication between Nevada's Department of Corrections (NDOC) and Parole and Probation. In the PSI reports, the most persistent complaint is that Parole and Probation does not correctly calculate "goodtime credits" or the parole credits given to the offender by NDOC. Inaccurate information in the PSI reports or the Parole and Probation reports is potential for litigation. Parole and Probation, as a whole, needs an internal review, such as an independent audit. Finally, there is a great need for the use of compassionate release. We have one of the lowest uses of compassionate release. Some areas that would benefit from this type of release would be low-risk aging or elderly prisoners, and others who had been juvenile offenders and have been in the system for quite awhile. There are many other areas that would benefit from compassionate release and it is a great way to allow local entities to use discretion. The reduction of low-risk populations, without presenting a threat to public safety, will enable a level of cost-effective manageability. Once construction starts, operating costs do nothing but increase, and the 1979 spending cap is coming into effect. That means with every bit of that spending it is a "zero sum" fight for education and social services. Nevada needs to join the "national band wagon" and use alternate methods of treatment. Prioritizing the offender population and putting those low-risk prisoners into other programs will bring down prison populations.

Richard Siegel:

I have a cousin in Florida who is a highly-trained medical doctor and was offered a job in Carson City. He did not take the job because Nevada is 47th in the country in education support per student. It would not benefit him at all if we had more prison space. His main concern was what we were doing in health and education. We hope you will look at those issues also.

Assemblyman Horne:

It is a matter of record where I stand on reform and how we should proceed in the issues discussed. Is it your contention, if we put all of those proposed reforms into place, that the current prison system would be able to sustain the population, even if we were to extend that out to 20 years?

Lee Rowland:

The two indicators that are most important are: the decrease of absolute instances of violent crime in the last ten years and the increase in the percentage of the population with drug problems. This is a public health issue more than a felony issue. The statistic in Arizona that 4,500 beds were freed up is a staggering number. If Parole and Probation starts working efficiently, people will be getting out of the system when they should be, and transitional programs like drug court can expand. Our State will reduce the recidivism rates in a meaningful way for offenders, addicts, and those who have public health problems. We believe the Arizona model is indicative of success. A case in point would be New York, a state that began alternative sentencing programs eight years ago. They have just shut down three of their biggest state prisons. The *New York Times* published an article on how the state worked in unison with their Legislature to reduce punitive, zero tolerance rules and to accept a treatment mentality. They have very few drug offenders in their prisons now. Their success has prompted many articles in academic journals; for example, *Do Prisons Cause Crime?* We have evidence this mentality works, it is not a leap of faith. Making drug use a public health issue seems to be a viable long-term solution for dealing with reducing prison population.

Assemblyman Horne:

New York is not experiencing the population boom of Nevada. The reason I mentioned 20 years out is that if we continue to grow as we are now, you can estimate we will be around five million people. Looking at the percentage of violent crimes, category A to C felonies, would those numbers fit into our current prison structure if the aforementioned model was implemented?

Richard Siegel:

We cut our violent crime drastically from 1994 to 2001 and simultaneously doubled our prison population. All of us know what happened in 1995 at this Legislature. We were dealing with something very different than the level of criminal activity.

Lee Rowland:

At the least we need to get the prison population increase percentages down to a level that is commensurate with the population growth. We are on track to crawl up in the rankings in terms of the percentage of people incarcerated, and that growth has been set at 27 percent and is higher than our population growth.

Richard Siegel:

Russia is the historic leader in the world in the rate of incarceration, and the State of Nevada, along with ten other states, is incarcerating at a rate 50 percent higher than the rate of Russia.

Assemblyman Anderson:

I would remind Dr. Siegel, in 1995 we did two things, one of which was the creation of drug court. I would not want Judge Layman, Judge Breen, or Judge Griffin here in Carson City not to take the accolades for what happened. Nevada is leading the way, nationally, for diversion programs.

Assemblywoman Weber:

Is the Capital Improvement Project List subject to the cap?

Chair Parks:

No, it would not be. It would be outside the cap.

Assemblywoman Weber:

That is a lot of money, and I would agree the education dollars are a different pot of money.

Richard Siegel:

No. It is not a different pot of money in this sense. I have written and published an article on the Nevada Budget. If you spend \$300 million on capital construction, you automatically start increasing the operating cost for public safety by 1 percent. It is an automatic increase that starts two years later, as soon as those prisons are open.

Assemblywoman Weber:

I am surprised by your seven-page document. Can you elaborate on how you see reentry working? There is a lot covered in that one sentence, from housing to rehabilitation, training, and education. I agree it is a community effort that is needed when we make the shift from the prison mindset and getting people transitioned back into the community. The transitional housing program already has a stigma attached to it for the reason that neighborhoods are sometimes reluctant to have certain types of offenders living next to them. Professional positions that we opened in the last biennium have never been filled, and now we are shifting to the community setting. While parolees are making the entry back into society, those professionals need to be in the area and available to help in that transition.

Tonja Brown, Private Citizen, Carson City, Nevada:

There is a rule called "three go free," which is part of "Trinet," which has now become the SET team, or special enforcement task force. The "three go free" rule means an offender who is arrested for drugs can get out of it by turning in three other people dealing drugs. When that happens, the initial offender does not receive any kind of drug treatment.

In fact a young woman who was seven months pregnant was arrested for using heroin and then released without any kind of drug treatment. That is endangering an unborn child's life.

I gave you a copy of a letter ([Exhibit E](#)) which talks about an inmate who was out on parole and was carefully following policies for his release. As with many parolees, he was required to wear an ankle bracelet that tracked his location for his parole officer. There was a problem with his housemate and he wanted out of the situation, so he removed his ankle bracelet and turned himself in to his parole officer the next day. That decision cost him nine years in prison.

Also in the letter is a story about a young man, 21 years old, who had been clean and sober for nine months. He goes through a breakup with his girlfriend and ends up very depressed. A friend of his gets him some methadone, and he tries to kill himself. He did not die, but is on life support and not expected to live. If that young man dies, his friend will be charged with involuntary manslaughter. However, the woman who originally sold the methadone to the friend is not going to be charged.

With regard to an earlier statement about the Nevada Department of Corrections (NDOC) and Parole and Probation not correctly calculating credits, I know of a case where an inmate's prison time was miscalculated by the NDOC. The NDOC claimed this inmate was on his first life sentence when in fact he was serving his second life sentence. That inmate was never asked to appear at the required time before the Parole Board.

Chair Parks:

Thank you Ms. Brown. Are there any questions or comments from the Committee? Seeing none, we thank you all for coming here today and testifying before us. If there are no other items of business, this meeting is adjourned [at 5:41 p.m.]

RESPECTFULLY SUBMITTED:

Brooke Bishop
Transcribing Secretary

APPROVED BY:

Assemblyman David R. Parks, Chair

DATE: _____

EXHIBITS

Committee Name: Select Committee on Corrections, Parole, and Probation

Date: February 27, 2007

Time of Meeting: 3:50 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Richard L. Siegel, Ph.D., President of American Civil Liberties Union of Nevada	"Another Nevada Prison Boom: The ACLU Response" by Richard Siegel and Lee Rowland
	D	Richard L. Siegel, Ph.D., President of American Civil Liberties Union of Nevada	An addendum to Exhibit C, an email to David Parks, dated February 28, 2007
	E	Tonja Brown, Private Citizen	Letter to the Supreme Court of Nevada, Robert E. Rose, Chief Justice and Justice Rose's response, July 20, 2000