

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
February 23, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:12 a.m., on Friday, February 23, 2007, in Room 3138 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 and 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 Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chair
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman John Ocegura
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman Marcus Conklin (Excused)
Assemblyman Harry Mortenson (Excused)

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst



Risa Lang, Committee Counsel
Danielle Mayabb, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

John Gonska, Chief, Division of Parole and Probation, Department of Public Safety, Nevada
Mark Woods, Captain, General Services Bureau, Division of Parole and Probation, Department of Public Safety, Carson City, Nevada
Dorla M. Salling, Chair, State Board of Parole Commissioners, Carson City, Nevada
David M. Smith, Management Analyst III, State Board of Parole Commissioners, Carson City, Nevada
Robert F. Joiner, AICP, Government Affairs Manager, City of Sparks, Nevada
Nicholas C. Anthony, Legislative Relations Program Manager, City of Reno, Nevada

Chairman Anderson:

[Meeting called to order. Roll called.] We will have a short presentation from Parole and Probation.

John Gonska, Chief, Division of Parole and Probation, Department of Public Safety, Nevada:

We have a PowerPoint handout ([Exhibit C](#)). Our mission statement is on slide 2 and our statutory mandate is on slide 3. We do many things and have many programs. One of the functions we perform is called pre-sentence investigations (PSI). We do this investigation for convicted felons and some gross misdemeanors. This report is submitted to the court to aid in sentencing of that defendant. It is used by the prisons for classification and program development and by the Parole Board to make decisions about paroling an inmate. It is also used in the supervision of the offender. We have supervised many types of individuals—parolees, probationers, lifetime sex offenders, interstate compact transfers, and inmates released to our community. The people we supervise are the known, dangerous, and violent individuals who reside in this State. We police these offenders. It is not the responsibility of any local, state, or federal law enforcement to supervise our offenders. We are doing an outstanding job in this area.

I have been doing this for nearly 30 years and have observed parole and probation agencies for about 40 years. You can divide and generalize the offender population into three groups. The first group is a small group of

offenders who do not really need supervision; if we left them alone, they would not violate again. A slightly larger group is the offenders who, no matter what we do, are going to violate; nothing we can do is going to stop them from violating. I want to make sure I get those individuals removed from the community and sent back to prison. The larger group is one where we can all make a difference. This is the population we want to target to provide the resources—which we are lacking in many ways—to provide them the opportunity to practice good citizenship. We are good at our enforcement strategies.

We are lacking treatment services in this State. It is causing problems. We would love to utilize treatment services more than we do. We sometimes need to decide whether to keep someone in the community or proceed with revocation because there is no place to put them. It is very frustrating. I had our staff do a polling of the drug courts and the mental health experts in Las Vegas. They estimate that we need 100 residential drug treatment beds and 100–150 residential mental health treatment beds. This is just for the offender population.

On slide 6, you will see a breakdown of our offender population in Nevada. On slide 7, it shows our two strategies in supervising offenders. There is traditional law enforcement where we hold the offender accountable, we sanction them, put surveillance on them, search their homes, arrest them, and proceed with revocation. We also have the community correction services, which is our treatment intervention. This is the area where we are lacking social services in the State to provide the opportunity for the offender to practice good citizenship. Sometimes we apply both strategies simultaneously. The person who decides which strategy is going to be used is the offender; their behavior will dictate how we carry out our mission.

On slide 8, there is a list of some of the significant events that we have been involved in. These are primarily on the enforcement end.

Chairman Anderson:

Is this in the last year?

John Gonska:

Yes, basically. I have emphasized taking resources and staffing and applying them to the high-risk offenders. The three groups I have targeted are sex offenders, methamphetamine users, and gang members. We have been very successful in that area in terms of enforcement. I have dictated that officers leave their office and go out into the community to supervise their offenders. The result of that is that we are finding more evidence of crime—primarily with

the meth users. We are finding tremendous amounts of drug paraphernalia, drugs, and weapons. In our last search of a meth user, who was high, we found that he had a live hand grenade. That is a bad combination. We have found other meth users with assault rifles and sawed-off shotguns. We are also finding evidence of identity theft. This confirms that a lot of our identity theft is being done by the meth users.

Chairman Anderson:

This is being committed by whom?

John Gonska:

The meth users. Most police will tell you that the majority of street crimes are committed by meth users. We have corroborated that in our searches. We have also targeted and investigated the hardcore gang members—which is very high risk—and have taken numerous weapons from them, including sawed-off shotguns and assault rifles. When we take an automatic weapon from a gang member, we have prevented them from killing people.

On slide 9, we talk about our anti-methamphetamine initiative. We began this in August. It uses both of our strategies. When the treatment intervention does not work, we go right to our enforcement strategy. Every offender on supervision knows that if they use meth, bad things will happen to them. We will probably search their home and their person. If they have children in the house, we will contact Child Protective Services. There is a good possibility they will be arrested. We will increase their drug treatment or enroll them in treatment if they do not have it. There is a good chance that, if they continue to use meth, they will be arrested and possibly revoked and sent back to prison. This has not stopped folks. This is what worries me. It is a testimony to the power of this drug.

On slide 10 are more of our positive accomplishments. We have partnered with a prison re-entry program initiative in Reno. We have partnered with the U.S. Probation Office, the National Institute of Corrections (NIC), and the Federal Bureau of Prisons (BOP). We have job placement for offenders. I am proud of Casa Grande. We can put parolees in there as an intermediate sanction instead of arresting them. We try to help them secure employment and get their lives together. Hopefully we can avoid the revocation process. We are going to run it for six months and if it looks good, we will probably add probationers to that. I have no data for you at this time; in six to twelve months I should have a good idea how this is working out.

On slide 11, there is a chart of who you are dealing with in the Division of Parole and Probation. Represented on slide 12 is what will hopefully be our

new Campos building. For those who have any question about whether we should have a new building, I invite you down to the Campos to look around and I know what decision you will make. It is a pathetic building. We are hoping this will come to fruition.

Slide 13 shows some of the factors that are causing growth in the probation, parole, and prison population. These are things that are out of our control and have a significant impact on how we are doing business.

Slide 14 is a conclusion and our goals. I believe it was in the Select Committee where Director Whorton made the comment that, in corrections, it is easy to say no and it is very difficult to say yes. I take this a step further. Every hundred years conditions come about where you have the perfect storm. Well, society and this community expect us and the Parole Board to make the perfect decision every day. Even though we try to do that, we cannot always make the perfect decision. When we do not make the perfect decision, we get castigated and become the scapegoat for the ills in the criminal justice system. That is unfair. We are dedicated and work hard to protect society and carry out our mission.

Whenever legislation is passed involving the criminal justice system, I would beg you to involve the district judges, the district attorneys, the public defenders, Nevada Sheriffs' and Chiefs' Association (NSCA), treatment vendors, the Parole Board, prisons, and the Division of Parole and Probation. A lot of things we do here affect everyone else.

Chairman Anderson:

When this Committee gave up its jurisdiction in order for the Speaker to create the Select Committee, it was recognizing a need to put a greater emphasis on this agency. We hope that you are going to make solid recommendations to us. This is not a new problem. What we want to try to do is protect the people in our society. We want to do that as effectively and efficiently as possible.

The law enforcement agencies have a responsibility in the beginning to collect those people they believe are doing wrong. The courts determine if they have done wrong. They rely upon you to make some recommendations relative to how bad these people are. They set the sentence according to the guidelines we give. They put them in the correctional facility and when they come out, they are your problem again. Society hopes that, while they are in prison, they are being punished by revoking their freedom, and that they will change their behavior. Changing their behavior is not necessarily part of your job description.

You made reference to the fact that, in the southern command area, there are drug court programs, opportunities to put people in treatment programs, and to monitor them. Unfortunately, both in the central and northern command areas, there have been diminishing opportunities. What is parole and probation doing to try to ensure that element is there? Are the opportunities and resources similarly offered in the central and northern command areas as they are in southern command?

John Gonska:

It is a major problem throughout the State. It is more pronounced in the rural areas—the central command area—where distance would prohibit us from providing proper treatment. Captain Woods will talk about Reno.

Mark Woods, Captain, General Services Bureau, Division of Parole and Probation, Department of Public Safety, Carson City, Nevada:

We have developed good working relationships with all of the treatment providers throughout the State. We have stretched their limits. They understand our particular need—these people have a special condition and if they do not comply with everything, they could lose their freedom. There is no room anymore. All of the providers out there are being utilized. They make adjustments for our people. Most of them have sliding scales for people to use.

In the Reno area, one of the biggest problems we are having is the amount of bed space. If you get into the sex offender caseload, it is even worse. There are very few beds in the State of Nevada for sex offenders.

Chairman Anderson:

How do you balance the number of your staff available to do pre-sentencing versus other tasks? Geography plays such a critical role. There are five major mountain chains out there that have to be traversed.

Mark Woods:

Our Division has several groups of people. The officers are responsible for the supervision of the offenders. Our PSIs are done by parole and probation specialists who are non-sworn. We have been doing this since 2000. They have their own caseloads. In the rural areas, they travel as much as our officers do. The numbers out there do not dictate staff, but the distance does. Our specialists out of Pahrump handle Beatty and Goldfield. We have one specialist who lives in Tonopah and she handles the Hawthorne area. Austin is handled out of Winnemucca. Eureka is handled out of Ely.

Chairman Anderson:

More courts, more judges, and more police officers, mean more arrests. Do you have sufficient staff to meet that demand?

Mark Woods:

If you look at our Division for an average of a year and you only looked at the numbers—how many PSIs a writer can do—it looks like we have enough. The numbers are not the whole story. A PSI, by law, has to be done within 45 days. The PSIs continue to show up every day even if someone is not around. It has been determined through a study that one writer can do 16 PSIs per month. We do not believe that is true. We believe, to get a quality report, a writer can only do around 10–12 reports per month. Just in these last six months—and I will use the southern command as an example—we did not need as many writers as we had in three out of those six months. If you have a slow month, it does not mean you can do work to get ahead. During the slow months, the Division trains or we encourage the writers to take annual leave. In the heavy months, there is no relief. We try to stay away from doing continuances because the whole system comes to a stop without that PSI.

Assemblyman Horne:

Do you have that kind of problem in Washoe County, as well?

Mark Woods:

We are getting close to the same problem in Washoe County. Up until the time we used specialists to write PSIs, whenever there was an overload, we could give the additional PSIs to officer staff. We have a handful of individuals who used to write PSIs in Washoe County who were demoted and are now in our headquarters handling different caseloads. When Washoe County starts to hit those peak periods, we are able to farm some of those PSIs out to our headquarters. There is no place to farm them out in the southern command. It was suggested to have some officers go back to writing PSIs, but that would be robbing Peter to pay Paul. We have decided not to take that route.

Assemblyman Horne:

Could you explain to the Committee some of the charges you mention on slide 10? You have people on paper who only owe restitution. Could you elaborate on that to let the Committee know where you have suggestions to move those collections? Possibly, the Controller's office?

Mark Woods:

We have a number of people who still owe restitution to the victims. This is the only reason they are still on paper with us or under our supervision. Historically, we have been the collection agency. There are many individuals who will be paying for many years to come, even when they are off probation. They see us once every three months, but continue to make the monthly payment.

If we can get these individuals off our caseload, it will make room for those we really need to watch. At present, there is a law, where anyone who is discharged and still has an outstanding debt, it is turned over to the State Controller's office. This office is contracted with outside collection agencies to collect the money. The victim will still receive some money. We are looking at the possibility of moving these cases out prior to their normal discharge in order to open up more room for other cases.

Assemblyman Carpenter:

In most of the rural areas, we now have drug courts. Your officers are an integral part of those drug courts. The judges heavily depend upon your people to make these courts run. It is important that we try to make sure the drug courts, especially in the rural areas, have the proper personnel from your office to enable them to succeed.

John Gonska:

You are right. Sometimes the rural areas get neglected and we have to make a special emphasis to properly staff and resource them.

Assemblyman Ohrenschall:

Could you tell us a little bit about the Global Positioning Satellite (GPS) sex offender study you have on slide 8 and the sex offenders on lifetime supervision?

Mark Woods:

One misunderstanding people have is that the Division of Parole and Probation is responsible for all registered sex offenders in the State. Currently, in the State of Nevada, there are 6,048 registered sex offenders. Of those, we are only responsible for 1,000. They are tier one, two, and three sex offenders. We also have 306 lifetime supervision cases.

Chairman Anderson:

Does that number reflect lifetime supervised sex offenders or other people?

Mark Woods:

They are part of the lifetime sex offenders. The majority are down in the Las Vegas area.

John Gonska:

We are looking now at possibly applying GPS technology to the tier three sex offenders we have under our current supervision. There are some positive things with GPS. We can track people and that is a good deterrent. We can make sure they stay out of certain areas. But GPS does not stop a crime from being committed. People think that GPS is the ultimate solution to the problem. You need the offender's cooperation. The technology can be faulty. If you are using cellular technology, you will lose the offender going from Carson City to Reno. If you are using satellite, you need the offender to make contact with that satellite, and you lose contact in warehouses and large buildings. There are active and passive types of GPS. Active GPS entails manning a command post around the clock and responding to possible alarms. There are many false alarms with GPS, electronic monitoring, and things of this nature. It costs a lot of money. Also, the liability is horrendous. It is a complex subject that we could spend hours discussing. We may begin to supervise the tier three sex offenders; if that works out, we may expand it to the tier two offenders. This costs money, and it will take time to implement the program and make it work.

Assemblyman Ohrenschall:

I was wondering if you could tell us about the 90-day trial program? Did anyone fall off the screen? Was it a success?

John Gonska:

Overall, it was a success. We dealt with low-risk sex offenders. We ended up citing three of them with violations because of drug use, not because of a violation involving the GPS. We had a couple of them who tested the system and they found out that Big Brother was watching them.

Chairman Anderson:

In slide 10, you talk about a 57 percent increase in the use of house arrest and electronic monitoring. For a while, electronic monitoring was a telephone system that they used to call in. Is that what you are referring to when you are talking about electronic monitoring? Or are you only talking about the GPS system?

Mark Woods:

The current system we are using is the radio system. The only GPS we have ever used was in that trial. Currently, we do not have anyone on GPS.

Chairman Anderson:

If there is something else you want to get in the record, I want to leave it open for you, so you can get back to Las Vegas. I do want to get one clarification before you leave, though, relative to collections. Would there be a dollar loss if the agency picks up a restitution of \$100,000, the offender gets out, and he can only pay \$100 a month? Obviously, the likelihood of his lifetime expiring is going to be more likely than him paying the bill. Will that bill roll to his estate?

Mark Woods:

I do not have that answer.

Chairman Anderson:

I would like to hear how that operates and what the ramifications are. It could become a burden for the family members if it is treated as a bill in the estate. The burden is supposed to be on the offender. There is already a heavy price that the offender's family will have paid.

Are there any other questions? [There were none.]

Dorla M. Salling, Chair, State Board of Parole Commissioners, Carson City, Nevada:

We have a PowerPoint presentation ([Exhibit D](#)). Parole is the early release and supervision of offenders who have served time in prison. It is different from probation in that an offender on probation has not served time in prison on that sentence. Initial parole eligibility is set by the court based on the sentence imposed. The Nevada Legislature has declared that parole is not a right, and no inmate should expect to be released on parole.

The Parole Board is an independent body which carefully reviews eligible inmates for possible release prior to the end of a period of incarceration mandated by the court. The Board carefully plans the safe return to the community and returns the offenders to prison whenever community safety is threatened.

Parole is careful, controlled supervision of offenders after they have earned a release from prison and while they demonstrate their worthiness to remain in the community. Supervision may include: careful monitoring of the offender's home, job, activities, and associates; drug testing; electronic monitoring; treatment; no contact with victims; and the requirement to pay restitution. As

you have just heard, parolees are supervised by officers of the Division of Parole and Probation.

Parole is the legal framework that empowers judges, prison officials, and parole boards to work together to administer a flexible system for punishing offenders and protecting the public.

Next is a general flowchart that describes how an offender might end up on parole. The court sentences the offender to prison and establishes the minimum sentence for parole eligibility. The Department of Corrections (NDOC) then notifies the Board when an inmate is eligible for consideration. The Board considers the offender for release and grants or denies parole. If parole is granted, the Division of Parole and Probation supervises the parolee.

The next slide shows you who the members of the Board are. We have six members and one chairman—all appointed by the Governor for four year terms. The next slide is the Parole Board's organizational chart.

The next slides involve our statistics. During Fiscal Year (FY) 2006, the Board made 8,427 decisions. These include discretionary and mandatory parole release hearings as well as parole violation hearings. It is noteworthy that there were only seven of us who made those 8,427 decisions. Since each decision requires four votes, these hearings totaled over 33,000 votes cast to grant or deny parole. This also breaks down to an average of over 4,800 cases that each commissioner reviewed and considered during FY 2006. What is not reflected in the caseload, are letters written by inmates that the commissioners respond to, conferences with victims and other interested persons regarding parole, sex offender tier panel reconsideration hearings, and regular administrative matters.

The next slide is going to show you a sample of one of our monthly calendars. The institutions are abbreviated, and the number of inmates considered for that institution on that day is listed in parentheses. The small "v.c." indicates those hearings that were videoconferenced. The small "i.a." indicates hearings that were held in absentia. As you can see, we do not have any down time.

The next chart represents the Parole Board's caseload history for FY 2004-2006. The red bar indicates the number of decisions made by the Parole Board. The yellow bar indicates the number of favorable decisions that are granted and reinstated. The blue bar indicates the number released from the NDOC and parole. The difference between the number of favorable decisions and the number released from prison is the result of paroles granted to

consecutive sentences, inmates who were subsequently denied due to disciplinary actions, or refused release and parole after it was granted.

The next chart depicts the number of inmates who expired their sentence in prison and were discharged, as well as the number of inmates who were released on parole and the average prison population for calendar years 2002–2006. This chart shows that, while the inmate population has been growing, the number of inmates released on parole is also growing. The number of inmates discharging their sentence in prison has remained relatively constant.

The next chart show the change in the type of offenders who were considered from FY 2002–2006. We thought this might be of particular interest to you as you can see that population has changed. The drug court and upfront diversions caused the decrease in drug offenders. The other categories list approximately 100 other offenses and attempted offenses that include things like habitual criminal, gambling offenses, prisoner escapes, and the victim over 65 years of age enhancement.

The next slide shows the changes in the types of offenders considered from FY 2005–2006. The next one is the Parole Board caseload. This chart shows the actual parole caseloads from FY 2005 and FY 2006.

Chairman Anderson:

You are going pretty fast. I want to be sure we understand this slide, so if you could mark it, we will come back to it.

Dorla Salling:

This is our caseload and our projected caseloads. They are broken down by discretionary parole, how many we granted, how many were mandatory paroles, how many were mandatory grants, parole decisions, how many we considered, the percentage, how many violation hearings we did, and how many paroles we revoked. On the far side there, we are looking at the projections of our caseload.

The next slide is the caseload over the past ten years. It goes from FY 1997 through FY 2009. This chart provides a look at the growth in the Board's caseload since 1997, with future projections. Caseloads include the release and revocation hearings. It shows where we have been and where we expect to go.

The next slide shows the Board's accomplishments. The Board has requested and received technical assistance from the NIC. Some of our most recent assistance included parole orientation and continuing education. We are also involved with an NIC grant to look at adopting intermediate sanctions for parole

violators, such as the Casa Grande project. We are involved in an NIC grant to validate and weight our parole guidelines, as well as to develop a matrix for parole violation hearings.

As far as our budget goes, it is limited. We are requesting funds for programming that would allow us to interface with the new computer notice system at the prison.

There is litigation pending that would require the Board to adhere to all the aspects of the Open Meeting Law. As it stands now, parole hearings are open to the public. In the past, we have received Attorney General's opinions that state it does not apply to us. If we are made to follow the Open Meeting Law, we are looking at about \$3.05 million to come into compliance with that.

You wanted me to go back to a slide?

Chairman Anderson:

I want to be sure we understand slide 16. Are the numbers that are reflected real numbers through 2005 or are they the projected numbers?

Dorla Salling:

Yes. After that, these are the numbers that we get from the prison. Dr. Austin is the one who projects the future numbers.

Chairman Anderson:

I should view those numbers as being actual, while the numbers from 2007 through 2009 are speculated by Dr. Austin?

Dorla Salling:

Yes. The numbers in black are actual numbers, while the numbers in blue are projected. I will let Mr. Smith speak to the numbers.

**David M. Smith, Management Analyst III, State Board of Parole Commissioners,
Carson City, Nevada:**

For FY 2006, that 8,427 is correct. For FY 2007–2009, those are projected caseload numbers. You had asked about the increase from 1997 to 1999, and I would attribute that to Senate Bill No. 416 of the 68th Session. Following the implementation of the mandatory minimum sentences, there was a slight decline. As those minimums came into play, the Board had an increase in hearings until it leveled out in 1999 and 2000.

Chairman Anderson:

Those hearings include those being paroled from their first sentence to their second or other subsequent sentences, but not necessarily walking out the door. Is that correct?

David Smith:

That is correct. This is the gross number of actual decisions made. This could include multiple hearings on the same inmate and parole violation hearings.

Chairman Anderson:

Are there any other questions?

Assemblyman Segerblom:

Do you feel any pressure either to give probation to people because the prisons are overcrowded or to not give probation because the Parole and Probation Department is overcrowded?

Dorla Salling:

I cannot say that it does not come into our thoughts. It is a difficult job that we have because we are trying to balance public safety with what the inmate's family would like to have happen. We do not get pressure from NDOC or from Parole and Probation, but there is public pressure. There are insinuations that the Parole Board is the reason we are going to have to build new prisons. Then we read that someone got out who should not have, and we are blamed for that, as well. All we can do is try to take each case as it comes, be fair, consider everything, and just let it be.

Assemblywoman Allen:

The thing that piques my interest is the significant reduction in DUI considerations. Can you speak to why it has dramatically reduced over the past four to five years?

David Smith:

I do not have any specific reason why the DUI numbers may have decreased. During the last session, when some of the DUI penalties were changed, we expected to see that increase. We have not seen that yet because those people have not come through the system.

Chairman Anderson:

When we changed the limit at which you reach DUI, one of the observations made at the time was that it was not going to statistically change the number of people being arrested because the majority of those people were substantially over the legal limit anyway.

Dr. Austin has noted in some of his observations that Nevada has a larger problem with alcohol than any other kind of drug.

Assemblyman Mabey:

Is there a large turnover among Parole Board members? Also, are most of your findings objective or subjective?

Dorla Salling:

We have quite a bit of turnover. We are appointed and serve for four years. It is typical for people to only stay for two terms. It has high burnout and stress factors. The number and type of decisions that we make weigh heavily on our minds. We get calls from inmate family members and they want them home. I pray that someone we have let out does not hurt someone, not because I worry about my job, but because we have consciences. The hearings are heated and take place in a small room.

In terms of how we make the decisions, the Legislature requires us to use a guideline. Dr. Austin developed a second risk instrument a few years ago. We have a guideline and a risk instrument. We are not bound by either one. The law allows us to consider many other factors and use our discretion. Because the Board is made up of seven people from different backgrounds—the *Nevada Revised Statutes* (NRS) say what those backgrounds will be—we all bring a balance to the Board. We are thoughtful about the process.

Chairman Anderson:

It may be helpful for the members of the Committee to have the guidelines and risk assessment documents that you use.

Dorla Salling:

We will provide that to you.

Chairman Anderson:

Is it possible to move someone who might be in minimum custody to a more secure facility because that is where there is a bed available? What if they need the minimum security bed for somebody else who is coming in the door who they feel is less of a threat? When you look at which facility they are placed in, do you take into consideration how long they have been there, or why they were placed there?

Dorla Salling:

Yes and no. That is taken into consideration more when they are at a camp. When they are at the camps, or minimum security facilities, they are almost in

the community already. They could walk away if they wanted. That says a lot to us; this is someone who has one foot in the community anyway. Whether they are at medium or maximum security facilities is not a factor on our scale, and does not play into it. What does come into consideration is if they have sustained disciplinary actions while they are in prison, as well as the type of disciplinary action; that is a factor in the scale.

Chairman Anderson:

I was under the impression that there was a two-point difference between medium and maximum security in your assessment.

Dorla Salling:

In terms of disciplinary actions and programming, there is a difference, but there is not a factor in there that speaks to whether you are in maximum security or minimum security.

Chairman Anderson:

I thought one of the factors was current custodial level?

Dorla Salling:

You are talking about the risk instrument, but I am talking about the guidelines.

Assemblyman Carpenter:

I would like to call your attention to slide 9, where it states that each case requires four votes. Do you meet as panels of three or four? How do you work that?

Dorla Salling:

Yes, we do. The type of case that requires at least two commissioners is set in statute. Any of the A category crimes, like murder, require three. It is voted on and it then goes around to the rest of the Board until a majority of the Board has voted on it.

Assemblyman Carpenter:

Do you ever meet as a panel of four?

Dorla Salling:

We do occasionally. Because of the workload, we have to meet as panels. At any given time, we have two or three panels taking place.

Assemblyman Segerblom:

There has been testimony that you deny probation, but you will not give reasons. Are you addressing that problem, or is it something that would be too difficult to address?

Dorla Salling:

We do the best we can. Every decision requires the majority of the Board. Because of the various backgrounds that make up the Board, sometimes it does not agree. It goes around, and all seven of us vote. The mental health expert's answer as to why they voted no would be different than the law enforcement person's. Every inmate gets a letter. We tailor it as specifically as we can. There is no law that requires us to respond to them, but we feel a professional and ethical responsibility to do so. We understand that this is important to these folks because their freedom is at stake, and we are sensitive to that. We tell them as much as we can—that we are concerned about the crime itself, the violence of the crime, they have not done any programming, or they recently had a major disciplinary action. In that way, we generalize. There is a point where they are going to have to trust the seven of us, or four of us. We try to give them as much guidance as we can. Very often, they are sincere and they want to know. We take it very seriously when we turn down someone's opportunity for freedom. We do not send them back a form letter even though they sometimes sound like form letters. Sometimes you have to use the same wording.

Chairman Anderson:

The question of the Open Meeting Law concerns me. In an earlier presentation from you I heard the possibility of moving into the judicial area and away from the executive area. That had some unusual implications to it. I think we have to legislatively be very careful on that issue because we all feel very strongly, both about the victims rights to be informed of what is going on and the possibility that somebody who has harmed society will be let go. I know how that affected my own family, therefore I am very sensitive to that issue. At the same time, the person who is incarcerated also has a family who is very concerned about what is happening in the system. The people who are incarcerated want to know what hoop they are supposed to jump through. The Open Meeting Law allows for the hoop to be placed in front of them.

Assemblyman Horne:

I am looking at slides 11 and 15. Your case history in FY 2006 shows the total number of decisions—favorable and released. Favorable are those who are serving consecutive sentences and received a favorable decision for parole, but that just means they begin serving their next sentence. Is that correct? So, 3,884 received a favorable decision, but only 2,741 were released. The

remaining 1,143 remained incarcerated because they are serving a consecutive sentence?

David Smith:

That is part of the reason. There are many other reasons. The Board may grant parole to an inmate and he refuses to go out, they either expire their sentence, or the Board subsequently denies them. As far as the number of inmates who are serving consecutive sentences, I can gather that information going back approximately six years. I can get that to the Committee if you are interested in it.

Assemblyman Horne:

If you take the 8,427 decisions made in relation to the actual release, that number comes to 32 percent. There were 46 percent who received favorable decisions, but on slide 15 it shows your percent granted—I am assuming that percent granted is the same thing as favorable—as 49 percent, so there is a 3 percent discrepancy in that number. Also, on slide 15 the percentage of mandatory paroles granted, and the discretionary grant, is 42 percent. Just over 68 percent of the mandatory granted...are some of those serving consecutive sentences?

David Smith:

With regard to the percent granted on slide 15, the percent granted is that percent of the combined discretionary and mandatory. It does not include violation hearings. On slide 11, that total number of decisions includes all of the violation hearings. Although the number of people being brought back has decreased, they are being brought back with more serious violations, so the odds of being revoked are higher. When you add those numbers in, it appears to lower the grant rate. There are several different ways that the grant rate can be referred to. The way that we have historically calculated the grant rate is to take the number of people who were granted and the number of people we saw, and divide those numbers. If we saw ten people and granted five, the grant rate would be 50 percent. Other statistics on grant rates have to do with total releases from prison as a percent of the releases. There has been other testimony about the Bureau of Justice statistics and how they do not seem to match the State's numbers or our numbers. When they talk about parole grant rates, they are saying that there were 10,000 people released from prison, 3,000 were on parole, so it was a 30 percent grant rate. They are looking at total releases from prison. I did a comparison of our releases on mandatory and discretionary parole, and it is about 55 percent. We have a higher discretionary grant rate when you compare that to the national figures. We have a lower mandatory grant rate. That is because there are states like California where everybody goes out on mandatory parole at the end of their sentence.

Basically, that gives them a 100 percent grant rate except for the lifers. That skews the national grant rate. That is referring strictly to the releases from prison as a percentage of the released, not how many you see and how many people are granted.

Chairman Anderson:

Are there any other questions or observations? [There were none.] Today is the last day a committee can request bill drafts. I have asked Ms. Chisel to present you with this document ([Exhibit E](#)). These are the BDRs that I am going to recommend to the Committee.

Recommendation one is regarding the issue of child support enforcement. It is a piece of legislation which would revise certain provisions governing paternity and child support. This includes one of the concerns raised by Mr. Teuton relative to extending explicit authority for drug courts and changing some specific recommendations in NRS 425.382. This recommendation would also provide authority to make limited appearances in Nevada domestic cases regarding paternity and child support, as well as provide for administrative review prior to court hearing and establish a conclusive presumption of paternity. What we are hoping to accomplish is for the custodial parent get as much money as possible and to increase the agency's ability to locate the so-called deadbeat dad, which is not necessarily a male. We felt those recommendations fell into one category.

The second recommendation establishes an administrative hearing process for child support cases. It allows for an administrative hearing officer to hear and decide child support cases. It provides that recommendations by the hearing master are effective immediately. There are some questions concerning the constitutionality of this recommendation.

The third recommendation would provide for incremental restructuring of the child support enforcement program. By 2011, each county district attorney will relinquish control of the child support enforcement program to the State. That is based on the recommendations of MAXIMUS to create three regional offices and eventually establish State control over the program. It would require the Clark County District Attorney to report the status of the implementation of the 2004 Policy Studies, Inc. (PSI) audit and the 2006 MAXIMUS audit to the 2009 Legislature. We are going to continue to monitor this. The first part would be put in place over time; it is not going to happen in 2007.

In addition, we are hoping to create an interim study of Nevada Operations of Multi-Automated Data Systems (NOMADS), which has had problems from the first day. It is my understanding that the Speaker will be asking for this as a

separate bill draft, so we may be off the hook with this one. I would strongly support these recommendations—at least one, two, and three from this list.

Are there any questions? [There were none.]

ASSEMBLYMAN OCEGUERA MOVED THAT RECOMMENDATIONS ONE, TWO, THREE, AND FIVE BE SUBMITTED FOR BILL DRAFTS.

ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

MOTION PASSED UNANIMOUSLY.

I have rejected a recommendation from the office of the Washoe County Clerk that brings to our attention the judicial problems of appointing clerks in the various districts and whether that is a constitutional question. I have also rejected a recommendation regarding persons possessing the power of peace officers. It is not a question that is within the jurisdiction of this Committee. There was also one from Mr. Manendo relative to DUIs. When this issue comes before us—when making a recommendation to NRS 484.37943, as to who gets drug treatment—I think we might be able to take care of it in another area. There was an unnamed recommendation for an interim study on the advisory committee concerning alimony, child custody and support enforcement. We have a piece of legislation that is similar in nature.

Assemblyman Oceguera:

The Speaker will be requesting a BDR on NOMADS and child support.

Chairman Anderson:

We have one more BDR open. Does anyone have any other suggestions that they would like to make to the Committee? [There were none.] We will now turn to the work session document.

Jennifer M. Chisel, Committee Policy Analyst:

I have prepared a work session document today for us to utilize in discussing three bills ([Exhibit F](#)). The first bill is Assembly Bill 14.

Assembly Bill 14: Makes various changes to provisions concerning graffiti and other damage to property. (BDR 15-387)

This was submitted by Assemblyman Oceguera. We heard it on February 12, 2007. It regards changes in Nevada's graffiti laws. I will go through the bill as it was submitted. Section 2 would create a misdemeanor crime for unlawfully possessing graffiti implements in public places as defined

within the bill. Additionally, the bill would have ordered that restitution be paid to the owner of the property that was affected. Further, in that bill, the penalty for damage, vandalism, and graffiti to certain public places—churches, cemeteries, schools, and grounds next to a school—would be changed from a gross misdemeanor to a Category E felony. In the original bill, there was a change so that damages from \$250 to \$400 would have resulted in a misdemeanor. It eliminated the category of gross misdemeanor crime and caused the Category E felony to be at a level of \$400. Also, when we heard the bill, there was a compromise amendment that was proposed which included A.B. 23, the bill that made the suspension of a driver's license mandatory.

When we heard the bill on February 12, 2007, the compromise amendment was brought forward by Assemblyman Ocegüera and the City of Reno, and possibly some other parties. The amendment changed a few of the provisions that we had in the original bills.

Chairman Anderson:

Which page of the document are we looking at?

Jennifer Chisel:

We are looking at the first page behind the tab for A.B. 14. The amendment I will be discussing is the first amendment and it starts on page 3. The amendment consists of five pages.

The first amendment was in section 2. We still have the creation of a new misdemeanor crime for the possession of graffiti implements. The language was changed a bit to add an intent component. It changed the definition of "graffiti implement" or "graffiti tool" and described it as "any item used to propel or apply fluid that is not soluble in water under certain circumstances evincing the intent to vandalize, place graffiti on or otherwise damage public or private property."

In section 3, there was a change in subsection 2. Originally, it talked about placing graffiti on any public property or property facing or bordering any highway, street, road, or alleyway. Those specific designations were removed, so it is just any public property.

Section 4 added "any mode of public transportation" to one of the public places where placing graffiti is a gross misdemeanor. It adds to the "church, cemetery, and school." In the original bill, they proposed to make it a Category E felony to place graffiti on any of these places. They have changed it back to the gross misdemeanor, which is existing statute. The amendment adds a level of mandatory fines and community service. The fine for the first offense is

\$400, but not more than \$1,000. The community service level is 100 hours. For a second offense, the fine is between \$750 and not more than \$1,000 with 200 hours of community service. For the third and each subsequent offense, there is a fine of \$1,000 and 200 hours of community service.

Chairman Anderson:

Which is currently statute.

Jennifer Chisel:

It is current in NRS 206. 330, but in this particular separate section—which is NRS 206.125—it is not there.

Chairman Anderson:

Any questions? [There were none.]

Jennifer Chisel:

Section 5 is where existing statute places the level of loss for a misdemeanor at \$250. This would increase that level to \$1,000. This amendment puts back the level of gross misdemeanor at \$1,000 to \$5,000 damage. For the Category E felony, the level of loss is \$5,000 as it is in current statute. This also adds a mandatory ten days in the county jail. Additionally, current statute allows for the aggregation of separate offenses to come up with the level of loss of value. This would make that a mandatory aggregation. Further into section 5 is where current statute deals with the level of community service. This would change it to a mandatory fine as well as community service. The fine structure is as I discussed in the previous section.

Assemblyman Carpenter:

Do we have a description of the value of the losses, and what that entails? Does that entail the cost of repainting or repairing?

Jennifer Chisel:

There is not a definition of what that value is. During the hearings, we heard testimony that the value is one of the issues that is litigated in the cases. The prosecutor will argue for one value and the defense attorney may argue for a different value. The standards are not set currently in statute.

Assemblyman Carpenter:

It seems to me that if this statute is going to cut down on this crime that the values need to be within the statute. They should include the cost to repair, replace, or repaint.

Chairman Anderson:

Mr. Ocegüera, in the discussions with the various groups, was that question broached?

Assemblyman Ocegüera:

That was mostly in our discussion on the bill during Committee. I would lean towards what Mr. Carpenter said. That was not discussed as an amendment, but after hearing that comment, I would lean that way.

Assemblywoman Gerhardt:

My concern is along the same line, since the amount dictates the level we are prosecuting. We need to decide if we are talking about the materials to do the repair or if it is the time and materials. When we heard the bill, we discussed that we would reach those thresholds quickly if we are talking about something on the highway where you would need a whole crew to handle this. I have some concern.

Assemblyman Manendo:

My concern is not so much the level, but the ten days mandatory jail time. I do not have a problem with that, but...

Chairman Anderson:

We are not talking about that right now. We are talking about the question of value. I want to be sure that, if we are going to move with the bill, we try to settle this issue.

Ms. Lang, would it be possible to add some language relative to determining the dollar value in section 5, so that there is something other than the price of the half-gallon of paint used to paint it over?

Robert F. Joiner, AICP, Government Affairs Manager, City of Sparks, Nevada:

In our testimony and in the materials we submitted, we indicated the cost to immediately repair the damage, which is not an aesthetically complete job. That was over \$300,000 in our community. We also indicated that the total damage that a property owner would pay to put it back to a pristine condition is well over \$1 million. That is something that is litigated at the time someone goes to court, but we were looking at total value in coming to those tiers.

Nicholas C. Anthony, Legislative Relations Program Manager, City of Reno, Nevada:

I would echo Mr. Joiner's comments and add that in our materials, the dollar figure was \$188 in terms of man hours for each call to do graffiti abatement.

Assemblyman Cobb:

During testimony, the district attorneys mentioned that, when they prosecute these cases, they do show the cost of abatement in terms of cleaning up, fixing, and bringing it back the original standard. Mr. Carpenter's amendment is appropriate because it tells the judge that this is not discretionary, but should be considered among other things. It needs to be reiterated that these are not made-up costs, but are actual costs to the citizens and the localities. It is a very serious issue. It is costing \$15 billion a year nationwide. We should not fall on the side of coddling the graffiti taggers.

Chairman Anderson:

We know this is a big thing. What are we going to do here? Do you think we should include it, or not?

Assemblyman Cobb:

I thought there was an argument that we should not do it because it might not be a tangible enough figure. It is tangible enough and should be included with language that suggests there are other factors that can be involved as well.

Chairman Anderson:

Let us ask Ms. Lang if we can craft something, if we are to amend the bill, in this section in order to reflect the fact that the Committee is concerned about the actual dollar amount needed to do the job.

Risa Lang, Committee Counsel:

We can certainly include that if you want the value of the loss to reflect the amount of money for abatement, or something along those lines. Right now it is not specified, so it is something that is being litigated—how much is included in the loss. We could specify it, if that is where the Committee wants to go.

Chairman Anderson:

Let me do an informal poll of the Committee to see if it is its desire to move with the amended language to address this issue, in addition to the amendments that are being suggested now.

Assemblyman Segerblom:

Based on what I heard, the cost of sending out a crew meant that, in most cases, it would be a felony based on this \$5,000 definition, if you included the total cost of repair.

Chairman Anderson:

It could. According to Mr. Anthony, we had a different number.

Nicholas C. Anthony:

The number we have used is \$188 to do abatement. That is based on a two-hour time period.

Assemblyman Horne:

I do not think it makes sense not to use man hours in arriving at the damages. That number varies from repairing something, for example, in Clark County on the I-95 soundwall. It is going to be much greater. In my assessment, once we do that—include aggregate and man hours—we hit the felony threshold rather quickly. Once we hit that, we are including a greater number of people being charged with a felony. Even though it is a Category E felony, it does not take another tagging incident to be violated and get one to four years in prison. Maybe include the aggregate, and I cannot see how we do not include the man hours, but if we are going to make it a felony, we bump that number up. It is not going to make any sense if everyone is getting a felony. We have heard testimony about the county jails overflowing and we are going to add taggers in there.

Assemblyman Carpenter:

We may have to raise the level of the felony. If we are going to do something about this, we need to have strong measures. Some of these people doing this need to have a felony against them.

Chairman Anderson:

I do not think that any of us disagree with the idea that people who are doing damage repeatedly need to be made aware of the fact that they are now moving into the felony category. We need to recognize that, if this bill moves, we are eliminating the question of gross misdemeanors. We are only going to have misdemeanors and felonies.

Jennifer Chisel:

In the compromise amendment, the gross misdemeanor category was put back in.

Chairman Anderson:

That makes my comfort level go up a little bit.

Assemblyman Ohrenschall:

I was thinking that it would be more prudent that the Category E felony be reached only after a second or third offense. That way we do not make the dumb kid who gave into peer pressure and graffitied the soundwall on I-95 a felon right out of the gate. Maybe we could make it similar to the scheme in section 4, where there are first, second, and third offenses. We could have the aggregate of \$5,000 with the second offense, so that we are not casting the net so broadly.

Assemblywoman Allen:

My concern with that is that the Category E felony is statute for damages over \$5,000. If we actually make it a first or second offense, we are weakening the current law rather than strengthening it. Is that correct?

Nicholas C. Anthony:

That is correct—it is currently in law. When the bill originally came out, they wanted to set the category E felony at \$400. Through negotiation, we came up with the amount we have in the amended bill. This is a consensus from our side of the table.

Assemblyman Ocegüera:

How about if we—in Section 5—continued at the \$1,000 level on the misdemeanor, went from \$1,000 to \$5,000 on the gross misdemeanor, and then \$10,000 with the aggregate for the felony?

Chairman Anderson:

Is this in the mock-up or the original bill?

Assemblyman Ocegüera:

That would be in the mock-up.

Risa Lang:

If you are going to raise paragraph (c), the threshold for establishing a felony to \$10,000, then you would also need to change the gross misdemeanor. Otherwise you would not end up covering between \$1,000 and \$10,000. That is a technical correction.

Assemblywoman Allen:

If we change it as Mr. Ocegüera is recommending, then we negate Mr. Carpenter's concerns about the costs to the local governments and businesses.

Assemblyman Ocegüera:

I was thinking of \$1,000 at the misdemeanor level, \$1,000 covering the area in the middle for the gross misdemeanor, and \$10,000 for the felony with aggregate and with the cost of repair.

Chairman Anderson:

In looking at the mock-up of the bill, we are dealing with the total dollar value. When the value is in the range of \$1,000 to \$10,000, they are guilty of a gross misdemeanor. Where the value is greater than \$10,000, they shall serve a mandatory ten days in county jail and be charged with an E felony.

Assemblyman Mabey:

If you paid someone \$100 per hour, that would be 50 man hours. I do not know the cost of paint, but to get to the \$5,000 threshold is still going to take a considerable amount of graffiti. Raising it to \$10,000 is too high.

Chairman Anderson:

I do not think it is the cost of paint that we are concerned about. I think it is the damage to the personal property, the amount of time involved for the personnel to do this, and the equipment that may be necessary.

Assemblyman Mabey:

Did we get any testimony on what the typical cost is for something like that?

Chairman Anderson:

Mr. Anthony has indicated what the average cost is in the City of Reno on a per hour basis, with it usually taking two hours. We do not have the prison capacity to do felony here. If we want the bill to pass, we want to make sure that we make it clear. There are parts of the bill more important—taking away their driver's license and other things. The felony should be set high enough so that it does not continue to cost the public money. That needs to be our concern in this Committee, as well.

Assemblyman Horne:

This felony level that we are looking at includes the bad guys—the ones who carry the books and have their designs ready. They do not just tag once and are done. They go everywhere. We have the aggregate language in here. If that is the group we are really targeting to get that felony, that aggregate is cumulative.

Assemblyman Manendo:

Graffiti is not just paint. They etch into glass and elevators. The replacement of a mirror in the bathroom involves more time than just going in with a bucket

of paint. In the Spaghetti Bowl, there was a tortoise and it cost \$30,000 to fix; there was not that much graffiti on it. They had to replace it.

Chairman Anderson:

I would hope that none of us are thinking that we are only talking about paint. While we have focused on paint—because that is the more common occurrence—the broader definition that we will add includes almost anything that can be used.

Assemblyman Ohrenschall:

I think we could keep the \$5,000 amount in section (c), but we should make it at least a second offense so that we are getting the repeat tagger—the person who has the sketchbook and is putting their initials all over town. I think that would be a good compromise so that we do not make everyone a felon.

Assemblyman Cobb:

I hope we are not losing focus here. A lot of these other property-related crimes create a felony at much lower levels of damage. Third degree arson is reached with \$25 of damage. In some other crimes, it is \$250 for a felony. Right now, graffiti is 20 to 200 times that level. If you commit a crime where you are creating \$30,000 worth of damage, why is that not going to be punished? If you commit an arson that damages \$50 worth of property, you have a felony. A category E felony also carries no jail time. These worries about crowding our jails are part of a specious argument. As long as they keep their nose clean after they have committed this felony, they are not going to be in our jail system. It encourages people not to commit and reoffend. If we move the current level from \$5,000 to \$10,000, it is a more lenient standard for a single crime than we have on the books right now. I do not think we need to be moving backwards.

Chairman Anderson:

You should come to more of the Select Committee meetings dealing with prison overcrowding and hear Dr. Austin's projections to see if those arguments really are specious. Prison overcrowding is going to be a real question that we are all going to be dealing with.

Assemblyman Ocegueda:

In some regard, I would have to agree with Mr. Cobb. The current law is \$5,000. I was trying to offer that as a compromise to get people on board with the aggregate. We are adding the aggregate and the cost of repair. That is why I went to the \$10,000, not to dilute the current law. Even though we are going up to a higher number, we now have the aggregate and the cost of repairs included.

Chairman Anderson:

We are clearly looking at what could be done here. Mr. Ocegüera, this is your piece of legislation. If it would be acceptable to you, we would ask that it would be put through another work session document. We ask Ms. Lang and Ms. Chisel to work together to come up with some suggestions for us.

Is there any other issue that needs to be raised? [There was none.]

We are adjourned [at 10:58 a.m.].

[Supplemental information dated March 12, 2007, submitted by Dorla Salling ([Exhibit G](#)).]

RESPECTFULLY SUBMITTED:

Danielle Mayabb
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 23, 2007

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	*****	Agenda
	B	*****	Attendance Roster
	C	John Gonska, Division of Parole and Probation	PowerPoint
	D	Dorla Salling, Board of Parole Commissioners	PowerPoint
	E	Jennifer Chisel, Committee Policy Analyst	Proposed BDRs
	F	Jennifer Chisel, Committee Policy Analyst	Work Session Document
	G	Dorla Salling, Board of Parole Commissioners	Information requested by Mr. Horne, submitted March 12, 2007.