MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
February 8, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:07 a.m., on Thursday, February 8, 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:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chair
Ms. Francis Allen
Mr. John Carpenter
Mr. Ty Cobb
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Ed Goedhart
Dr. Garn Mabey
Mr. Mark Manendo
Mr. John Oceguera
Mr. James Ohrenschall
Mr. Tick Segerblom

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst

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

OTHERS PRESENT:

Nancy Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
Gary Stagliano, Deputy Administrator for Program and Field Operations, Division of Welfare and Supportive Services, Department of Health and Human Services
Robert Teuton, Assistant District Attorney, Clark County
Jeffrey Ball, Vice President, Child Support Division, MAXIMUS
Ruth Hara, Project Manager, Child Support Division, MAXIMUS

Chairman Anderson:
[Meeting called to order. Roll called.] We are going to begin looking at the agenda item of the day—the Legislative Subcommittee to Study Sentencing and Pardons and Parole and Probation.

Assemblyman Horne:
[Provided Legislative Counsel Bureau Bulletin No. 07-9, (Exhibit C)]. During the interim, I had the privilege of chairing the Legislative Subcommittee to Study Sentencing and Pardons and Parole and Probation. The purpose of the study was to examine the sentencing of convicted persons and the pardons, parole, and probation services provided by the State. There were concerns about the system and the associated costs.

The members of the Committee included Senator Mike McGinness, Senator Dennis Nolan, Senator Valerie Wiener, Assemblyman Bernie Anderson, Assemblyman John Carpenter, and I served as the Chair. We held five meetings and one work session. The Committee adopted 14 recommendations, including eight concepts for bill drafts.

I will discuss major topics addressed by the Committee and highlight some of the testimony received, one of which was parole and pardons. There were concerns about bias against prisoners in the parole process, risk assessment conducted by the Parole Board, the Parole Board being in violation of the Open Meeting Law, and concern about the large workload of the parole officers. The Parole Board discussed some factors used to decide parole, such as the victims, substance abuse treatment needs, and vocational or other training needs.

Mandatory minimum/enhanced sentencing was an issue. There were judges who testified on a preference of greater discretion needed for sentencing. Victims' groups prefer a minimum/enhanced sentencing.

There was also discussion on "not guilty by reason of insanity" issues. The concern is about inadequate supervision when a defendant is not guilty by reason of insanity and then released from a mental health treatment facility. There was a recent case where a defendant petitioned for release from a mental care facility—Lake's Crossing—six months after a jury decided he was not guilty by reason of insanity. Statute requires consideration of the issue of insanity on a regular basis. This individual was not released, but there was some discussion about whether he continued to suffer from a mental illness as well as how to use the release statutes for a person who is held because of the insanity defense.

There were also issues concerning Nevada's Department of Corrections (NDOC). There was concern about the availability of programs such as education, vocation, and counseling and mental health, especially for females. A brief overview on that yesterday revealed a concern that inmates do not receive adequate medical care.

There were eight concepts for bill drafts approved by the Committee, and these were incorporated into five bill draft requests. One of these was regarding the authority to stay the execution of a death sentence (BDR 14-148). This does not have a bill number yet. This clarifies the Governor's authority under the *Nevada Constitution* to grant a reprieve for a period of 60 days following a conviction.

There were proposed changes concerning parole. This pre-filed bill is Assembly Bill 62 and has been assigned to the Select Committee on Pardons and Parole. For persons serving consecutive sentences, risk assessment is conducted by the Nevada Division of Parole and Probation when a person is eligible for parole for the last sentence being served. Let me explain. There are some instances where an individual can be convicted of two offenses and have two different sentences. The sentences can run concurrently, meaning they run at the same time. Let us say you receive a sentence of 2–5 years and 10-20 years; concurrent sentence means that the clock starts ticking on both of those sentences at the same time. You could also have consecutive sentences; you have to either be paroled on your first sentence or expire that first sentence before the time starts ticking on the next sentence you have to serve. One of the risk assessments in granting parole is the danger you pose to the community and/or yourself. You could receive some negative points for that assessment. If you are up for parole on your first sentence of a consecutive sentence and

they still say you are a danger to the community, you get negative points and are denied your parole; however, there is no risk of you being released because you still have a consecutive sentence you have to serve. The Committee thought it may be unfair to provide that determination in your parole when, in fact, you are not going to be released—you are going to have to serve your next sentence.

Current law provides for mandatory parole for certain prisoners 12 months before the end of the maximum prison term. This is current law for a person who is sentenced to at least three years. The bill proposed by the Committee requires parole to be granted after a person convicted of category D or E felony has served the minimum sentence, if he is not subject to any additional terms.

This bill also requires a parole board to inform a prisoner in writing of its reasons for denying parole if the board denies a parole based on the determination that the prisoner would be a danger to public safety while on parole. There was testimony that sometimes inmates receive a denial without any explanation or the explanation was that parole is an act of grace.

There were proposed changes to Parole Board meetings. This is pre-filed Assembly Bill 61. All Parole Board hearings are subject to the Open Meeting Law except to maintain the privacy of juveniles, witnesses, and victims. It would require three-day notice of hearing be given to the prisoner and victims. It allows the prisoner and representative to speak at the hearing. We heard testimony that, at a parole hearing, neither the inmate nor the representative was permitted an opportunity to speak, where perhaps victims or victims' rights groups were.

Also, there were proposed changes in penalties for crimes committed with a deadly weapon. This is pre-filed Assembly Bill 63, which had been assigned to this Committee. Where crime was committed with a deadly weapon, provide the court discretion to increase the penalty by one to ten years. Current law provides for a penalty equal to and in addition to the penalty imposed for the crime, which runs consecutively with the primary offense. The issue raised was the manner in which "deadly weapon" has been interpreted. In one case, it included a shoe string. This would limit the increase in the penalty for using a deadly weapon in the commission of a crime. Basically, in current statute, if you are convicted of an offense and it was found that you used a deadly weapon, you would receive an equal and consecutive sentence. If you received a ten-to-life for a crime—and let us use the shoe string as an example—the judge's hands are tied on also having to give you a consecutive ten-to-life for the use of the shoe string. There was testimony that there are different circumstances in different crimes, but we use the same penalty for all of them.

The Committee came up with a one-to-ten sentence discretion that the courts could use to enhance that second consecutive sentence. If a deadly weapon was determined to have been used, they can provide that consecutive sentence in the range of one to ten years. This will be fleshed out more when the bill is heard in committee.

There were proposed changes to pleas for defendants in criminal actions. This is BDR 14-152. There is no bill number yet. This would codify the use of the M'Naughten Rule—an insanity test to determine if the defendant knew right from wrong at the time of the crime—in determining whether a defendant was insane to the point where he is not found guilty by reason of insanity. This test is the most difficult test used among the various jurisdictions for proving insanity. It is the rule that the Nevada Supreme Court has applied through case law in Nevada, but is not set in statute. The M'Naughten Rule says that, to qualify as being legally insane, a defendant must be in a delusional state such that he cannot know or understand that nature and capacity of his act. In addition, according to the holdings of the Nevada Supreme Court, whatever the defendant believed that he was doing must also be an act, which, if true, would be a legal defense.

This bill would create an additional plea of "guilty, but mentally ill." In the case of *Finger v. State* [Finger v State, 117 Nev. 548, 27 P.3d 66 (2001)], the Nevada Supreme Court held that an insanity defense is required under the constitution. As a result of that case, the Judiciary Committee repealed the laws concerning "guilty, but mentally ill" and reenacted statutes that existed prior to that decision to allow an insanity defense. The interim committee decided to revive the "guilty, but mentally ill" plea, but as a separate plea rather than a replacement of the insanity defense.

What you heard in yesterday's testimony was that we had assessments of vocational training, educational programs, mental health and counseling programs, survey of programs that are successful in other states, availability and accessibility by males and females, and access to health care.

The Legislative Commission approved this on December 7, 2006. The Legislative Counsel Bureau's Audit Division has commenced this audit. The current program, Willing Inmates in Nevada Gaining Sobriety (WINGS), has been terminated. The program is currently financed by federal grants. An investigation by the Inspector General that showed the following problems: inmates being ordered to participate in religious activities, discrimination against minority inmates, and potential physical abuse of inmates in the program. I have asked for that Inspector General's report, so we have more detail on these violations. The NDOC Director Glen Wharton terminated the contract with

Vitality Unlimited. The NDOC has taken control of the program until May 2007 when the federal funding ends, and it will probably not be revived unless there is State funding provided.

There was a Nevada Supreme Court case, *Witherow v. Salling* [Witherow v. Salling, Docket No. 41832 C/W 42497/42498/42499/42500 (10/2/2006)] regarding Parole Board meetings and Open Meeting Law. Salling is the Director of the Parole Board. Mr. Witherow alleged that the Parole Board violated the Open Meeting Law by not providing him notice of his parole hearing. According the Nevada Supreme Court decision in October 2006, the Parole Board is subject to the Open Meeting Law, and it must comply when conducting hearings. Governor Kenny C. Guinn cancelled all inmate parole hearings in response to that court decision. The Parole Board appealed the decision. The Nevada Supreme Court issued a stay of its Open Meeting Law decision. The Parole Board resumed hearings in November 2006. The Open Meeting Law issue for the Parole Board is still pending; the Court decided that another Witherow case would be a better vehicle to decide the issue.

Chairman Anderson:
I want to thank you for your great diligence and service, making sure that we examined in some great detail the intricacies of the problem. If we do not solve some of the problems in the prison system, it will continue to be an impossible problem for the State and for the people who we are trying to serve and protect.

Assemblyman Mortenson:
Mr. Horne, I do not understand why parole is even being considered for someone who has just finished the first of two consecutive terms. If he is not going to be paroled, why have a parole hearing?

Assemblyman Horne:
Typically, when inmates are serving time for their crime, there is no statute providing that they cannot be paroled from that first sentence. They also receive credit, which takes time off the sentence they would have to serve. Credit can be for anything from their behavior to taking requisite classes on things like substance abuse, educational classes, et cetera. These all weigh in when you are going to say, "This person is making sufficient or significant progress in their rehabilitation, so we are going to grant him parole." This also serves the purpose of eventually freeing up space for other inmates who come. For instance, if you are serving a two-to-five year sentence and you are a model inmate, the powers that be can say, "Mr. Mortenson, you have been doing a great job. You are now paroled on your first sentence of two-to-five years and you have an opportunity to continue to do a good job and start serving your

next sentence." Now maybe you would get out earlier than what your maximum sentence would provide for.

Assemblyman Mortenson:
So, it is the Parole Board that can reduce sentences?

Assemblyman Horne:
It is not necessarily a reduction in a sentence. When the judge gives you a sentence, it has a range. They do not give you a definitive number; it is something like two-to-ten years. You are going to serve a minimum of two years, but you could serve the maximum of ten years. Somewhere in there, at two years, you are eligible for parole. The Parole Board is going to decide whether or not you have met that eligibility.

Assemblyman Mortenson:
I did not know that it was the Parole Board that made that decision. I have another question on the Open Meeting Law. I was a little confused on the Open Meeting Law. Someone has contested the parole hearings, saying they should conform to the Open Meeting Law, right?

Assemblyman Horne:
That is correct.

Assemblyman Mortenson:
Someone is contesting that the proceedings should not conform to the Open Meeting Law. What are the arguments that it should not?

Assemblyman Horne:
In my discussion with members of the Parole Board, one of the arguments was that they believe that if they had to comply with the Open Meeting Law, it would be prohibitive to the numbers of hearings they have a year. The meetings would take longer and, in turn, this would either increase their workload or limit the number of parole hearings they would be able to do in a year. Also, in the past, they have been defining themselves as quasi-judicial and judicial proceedings do not fall under the Open Meeting Law. There have been determinations in the courts and in this body that those meetings are not quasi-judicial.

Chairman Anderson:
I would point out, as Mr. Horne did, that the bill will probably come to this Committee. Open Meeting Law generally goes to Government Affairs. Do we get it?

Assemblyman Horne:
We are getting this one.

Chairman Anderson:
We will be coming to this in greater detail. Other questions?

Assemblywoman Allen:
On recommendation number ten, which gives the courts discretion to increase the sentence, did you indicate that the victims' groups do not want to see the courts have that discretion? They want a more fixed sentencing guideline?

Assemblyman Horne:
It is not that the courts are increasing the sentence. The law already provides for consecutive sentences. This is going to give those judges that discretion to give that consecutive sentence for that enhancement of one-to-ten years. Victims' groups have testified for more determinative minimum sentencing and enhanced sentences. Currently, if you use a dangerous weapon and you get a ten-to-life sentence, the courts have to give you a ten-to-life as well for the weapons charge enhancement on that. It would be my guess that victims' groups would like to maintain that status quo.

Assemblywoman Allen:
This makes it discretionary?

Assemblyman Horne:
This would make it so that the judges have the discretion to say, "Okay you have been convicted, sir, but you used a knife in you sexual assault, so I am going to give you a consecutive sentence of five-to-ten years." Or, "You used a shoelace in your attempted murder, so because it is a shoelace, I am going to sentence you to a one-to-three years consecutive sentence; after you finish serving your time for your attempted murder, you are also going to do another one-to-three for your weapon of a shoelace." They have that discretion. Right now, they do not have discretion. It does not matter what the facts are, it has to be the same across the board.

Chairman Anderson:
Also, it adds for the possibility of more than one enhancement to be piled on top. The judge would have the opportunity to give those, but he would not have to use all of them as he currently does.

Assemblyman Horne:
That is correct. You could absolutely have multiple enhancements, all of which could be served consecutively.

Assemblyman Cobb:
I think I heard you mention that the Subcommittee was studying what kind of explanations were given to potential parolees by parole boards, is that correct?

Assemblyman Horne:
That is correct.

Assemblyman Cobb:
What were the thoughts of the Subcommittee in terms of affecting how it is currently done by those parole boards? Are they trying to get more of a public record so that the public has an understanding of why the parole was denied? Or is the concern more for the parolee so that they know, for their own efficacy, why their parole was denied?

Assemblyman Horne:
Inmates were saying that they had done everything that had been asked of them and then got a denial and did not know why that denial was given; sometimes it was just a denial saying, "We do not believe you are suitable for release at this time," or "You still pose a danger to community." Then the inmates did not have anything to focus on at the next parole hearing or on what to correct. We believe that it is important to give an explanation on why the parole was denied. There was some subjectivity in some of the parole determinations. The inmates get a sheet of paper and there are all these categories in which they receive points or negative points for different things. It gets added up at the end. There is a scale of determinations that tells whether or not they are a good candidate, a moderate candidate, or a poor candidate for release. In some of these, even when you totaled it up at the end and it shows they were a good candidate for release, some inmates were still denied. They were not given a reason why. It did not make sense to them. We thought it was important to include that information instead of saying parole is, as testified, an act of grace.

Assemblyman Cobb:
I am not sure what the current standards are for a parole board meeting, if there are constitutional standards, set standards within the law they must follow, or if there is just a complete subjectivity rule in place. Are there any current standards in the law that they must follow to determine whether or not a parolee is eligible?

Assemblyman Horne:
Not that I know of. There are certain things on releasing them within a year of the termination of the maximum sentence, so we would still have them on paper for a while. As for an actual standard—if you hit this point, the Parole Board has to release you—that does not exist in statute.

Chairman Anderson:
The Select Committee will be looking at the parole and probation questions. In the past, we have asked the Parole Board for the criteria, and they have generally taken us through that. I think we would have heard that presentation yesterday. While we do not put it in statute, we have examined it and we know what criteria they are using. Mr. Horne correctly identified the fact that the inmates who have gone through different treatment programs now want to know why they failed and what they can do to improve so that the next time they come up they will pass.

Assemblyman Horne:
Also, I can tell you the number one mandate, and properly so, of the Parole Board is protection of the community. When they make the decision on granting someone parole, they have reached a decision that there is a level of comfort that this person is not going to be a danger to those of us in the community. I believe that that is their number one goal when doing the hearings.

Assemblyman Cobb:
Which would somewhat necessitate some subjectivity.

Assemblyman Horne:
It does necessitate some subjectivity, yes. I would agree, but because you have criteria on which you are going to give positive or negative points, that is objective. There is no point on doing this [giving points] if at the end of it you are going to say, "I do not care what the number says—I am not letting you out." It sends the wrong message in our facilities if all the inmates believe that it does not matter how well they do. There are going to be other issues fleshed out later.

Assemblyman Cobb:
You mentioned the funding of the WINGS program—was there a recommendation by the Subcommittee as to whether or not to fund that program throughout the State?

Assemblyman Horne:
Not at that time. Director Holmes testified to the WINGS program being a wonderful program with many successes. However, these findings came out after our Committee concluded its business. It just happened as of late. That is why I recently asked for the report from the Inspector General.

Assemblyman Cobb:
As far as you know, there is not going to be any type of recommendation or BDR related to your work on the Subcommittee, to fund the WINGS program?

Assemblyman Horne:
No. At that time, there was no request for it. Had this occurred prior, we might have done that. It does not mean it is not going to happen. I do not know of any BDRs that have been issued because of this incident.

Chairman Anderson:
The WINGS program's problems were not identified to the Subcommittee before it concluded its business. Whether it is the WINGS program or a similar program, the treatment element of the programs is an integral part of the correctional system. It is the subject of a BDR for the drug treatment programs and other kinds of programs both before and after sentencing.

We heard about programs like Casa Grande yesterday. It is only one of the modalities of a multi-faceted program—getting people back to work, getting people back into society without a threat to us. Rightly so, Parole and Probations is concerned about the safety of the public.

Assemblyman Segerblom:
Have you requested a fiscal impact report to show money we would save if we could change some of these sentences to reduce them, like the proposed enhancement for use of a weapon?

Assemblyman Horne:
No, we have not. We were looking for an overall reduction and how to better use our dollars spent in the correctional system. It was reported that corrections was somewhere between $600 and $700 million of our budget for the biennium. We wanted to look at ways of reducing that burden. One issue is the overcrowded prisons and who we have housed in those prisons. That is why you have in here, also, mandatory parole for the D and E felons; that is typically low-level property crimes that are non-violent. They are spending a moderate amount of time in prison. There is discussion about possibly a better and cheaper way to supervise these individuals and rehabilitate them without

the high cost of actually having them in prison. We can use those prison beds for more serious offenders. The other way was in the mandatory consecutive sentences for enhancements. Number one was where the justices talked about how their hands were tied and it did not seem fair that the same enhancement is given across the board to everybody—give them that discretion. At the same time, that would start to eliminate that burden on the corrections system and start moving people out and making those valuable beds available. Our State is growing, as well as our correctional facilities, at an alarming rate. Back to your question, there was no fiscal impact asked for directly on the sentencing changes.

Chairman Anderson:
Possibly, when the Select Committee is looking at this, it may be one of the issues we need to develop. Any member of this Committee with questions that they want to be sure the Select Committee addresses, direct those to Mr. Horne, Mr. Carpenter, and myself. We can make sure that those are specifically answered when we take up those issues.

Assemblyman Ohrenschall:
Are there many prisoners who have been convicted of the same crime, but who are serving drastically different sentences because of the concurrent versus consecutive sentencing option? Is that an issue that arises in terms of sentencing in Nevada?

Assemblyman Horne:
If I understand your question, you are wondering if inmate A and inmate B were convicted of the same offense but serving drastically different sentences. . .

Assemblyman Ohrenschall:
That happens because one sentencing judge decided to make the sentences run concurrently and a different sentencing judge decided to make them run consecutively.

Assemblyman Horne:
That is a possibility every day. The judges have that discretion in many instances to grant one defendant concurrent sentences for a crime and another defendant consecutive sentences. Many factors are involved, such as prior criminal history. The level of violence may be different. I had a sexual assault case in which I got a withdrawal plea; he was sentenced and he was a co-defendant. His co-defendant received an 8-20 year sentence, but my client received a 10-to-life. The judge saw different things in each defendant; it was the same conduct, the same incident. That is the nature of criminal proceedings.

Chairman Anderson:
This is indeed a crash course in criminal procedure that we are taking here. This is an important element of that. [Meeting in recess at 8:57 a.m., called back to order at 9:08 a.m.].

One of the issues we need to be aware of before we start our journey into looking at specific pieces of legislation and problems that exist for citizens in our State is the overall question of child support payments. The Division of Welfare has a difficult job that has not been made easier by recent federal legislation. Over the past 14 years, there have been dramatic changes in federal statute and, as a result, the State has had to change its methodology.

Nancy Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services:
You have my written testimony that you can review at your leisure (Exhibit D). The Child Support Enforcement Program enforces child support for millions of Americans, and it is critical to many millions of families to have reliable child support coming into their home because it is a source of their sustenance. In 1975, Congress passed the Title IV, Part D of the Social Security Act, which is the Child Support Enforcement Program. One of the conditions for getting a Block Grant for Temporary Assistance for Needy Families (TANF) is having a Child Support Enforcement Program. The federal agency holds the State accountable for the performance of the Child Support Enforcement Program. The federal office of the Child Support Enforcement, in the Administration of Children and Families, performs audits and reviews the State program to see whether or not we are complying. This program is operated in all states. Here in Nevada, it is state supervised and jointly operated with several participating district attorneys throughout the State. Some of the counties do not participate in the program, and either the State or another district attorney has assumed the responsibility.

If you turn to page 7 of the handout, that is where the first exhibit starts. This is how the structure of the Child Support Enforcement Program is set up at the State level: the director, the administrator, the deputy administrator, the chief, and under that are interlocal agreements with our district attorneys and the various programs.

Anyone can apply for child support enforcement. There is no income test or arrearage test; there are no tests at all. Anyone can apply for that service if they have legitimate custody of a child and there is a parent outside the home. If you turn to page 8, this shows you the different case types that we have.

When somebody applies for TANF, the right to child support is assigned to the State. Those cases are automatically referred to the Child Support Enforcement Program. Anyone else can apply for those services. Anyone can have their collections distributed through our State Collections and Disbursement Unit. The federal law requires us to distribute all income withholdings through our State Collections and Disbursement Unit. We manage all those income withholdings whether they are child support enforcement clients or not. There could be people who do not apply for child support who we also handle. Those are called Non-IV-D cases.

We provide five services through the child support program. We locate absent noncustodial parents, we establish paternity, we establish support orders, we enforce support orders, and we collect and disburse the monies. If you turn to page 9, you will see the different functional areas for Child Support and Enforcement and the types of cases we have. We have 64 percent of our cases in enforcement mode. We have 14 percent in locate mode, 11 percent in paternity establishment mode, and 11 percent in obligation establishment.

Funding of the program is generally at 66 percent federal funds and 34 percent State funds. On the county level—the district attorneys—the county provides the 34 percent match to bring in the 66 percent. On the state level, the child support program in Budget Account 3238—the child support budget—is funded through the State share of collections. The State share of collections is this: for every dollar of TANF that is collected, we have to share with the federal government; that is based on the federal medical and assistance percentage (FMAP). Right now it is about 54 cents on the dollar that goes back to the federal government and 46 cents on the dollar we get to retain. Our 34 percent is derived from that match. We do not have a general fund that funds this program; it is just that collection of TANF dollars. That is going to be an issue and you will see that as you look at the MAXIMUS audit.

In addition, incentives that are based on performance can be earned. If you turn to page 10, you will see our incentive performance data for the last three years. There are five different areas that we are evaluated on at the federal level for performance. Those are paternity establishment percentage, the support orders established, the collections on current support, the collections on arrears, and our cost effectiveness ratio. Looking at this chart, you can see our performance is improving. In some areas it is very slight, but we are improving. Our 2006 cost effectiveness ratio is still pending—we have not received that yet. You can see how the incentive mix works.

If you turn to page 11, the chart shows our cases. Currently, we have collected, for State Fiscal Year (FY) 2006, $151,430,193 in child support. That

is almost a 10 percent increase over State FY 2005. Our caseload for State FY 2006 is 111,258. That is about a three percent decrease from FY 2005. Our collections are up, and we are providing decent service to our clients. The caseload by office numbers are included at the bottom just so you can see approximately what caseload is handled by each county.

If you turn to page 12, you can see the year-over-year comparison for the last six years of our statewide retained collections and our gross collections. For FY 2006, you can see that $151 million figure. Since FY 2000, we have added almost $50 million in collections. This "total retained collections" is the total collections of TANF dollars that we have received before distribution to the federal government of their share. We get to keep the state share based on the FMAP. This last year was about 46 cents on the dollar. It changes year after year. However much money we get to retain to fund our program changes every year. So, we do not necessarily know what that is going to be in advance.

In the last year or so, we have made some foundational improvements to our program that I think you need to be aware of. Effective January 2005, we had new interlocal contracts in place with our district attorneys. Those contracts do emphasize the State's supervisory authority over the program and also provide for passing on any penalties that may be assessed against the program.

We also commenced a management evaluation process that was deployed in early 2006 in order to identify shortcomings, put in corrective action, and recognize efficiencies of offices in order to improve and maximize our abilities to get good outcomes.

If you turn to page 13, you will find what is called the Federal Self-Assessment. This is required by the federal agency, and we have to do it annually. It measures both our quality and our performance in various areas. As you can see in this chart, in federal FY 2006, we have shown improvements in every area over 2005. We are making progress and making strides. The next page shows you what each of those different terms means. We are improving and have been improving.

I cannot leave the subject of child support without talking about penalties.

Chairman Anderson:
Ms. Ford, I need to do a procedural thing. Let the record indicate that the Committee has been joined by the Speaker, Barbara Buckley. Madame Speaker, would you like the Chair?

Assemblywoman Buckley:
No. Thank you, Mr. Chairman.

Chairman Anderson:
Ms. Ford, the Speaker considers this issue—as we do—to be a paramount issue facing the State. Please continue.

Nancy Ford:
I concur. This is an important issue for the State. So, I cannot leave the subject without talking about penalties. The federal government will impose penalties on the State for two different reasons. You have to have shortcomings in two consecutive years. One is failure to meet your performance measures or show improvement as required by federal law. The second is the failure to pass an audit on data reliability. If you do those in two consecutive years, you are going to be assessed penalties. Those penalties are assessed against the TANF Block Grant; they are not assessed against the Child Support Enforcement Program. We face a reduction in our TANF program if there is a penalty to be assessed.

We failed data reliability in federal FYs 2000, 2002, 2003, and 2004. We faced three years of penalties. I am very pleased to report that we passed data reliability in FY 2005. We are now out of penalty status. The audit for FY 2006 has not yet been completed, but we are anticipating that we will pass again.

Page 15 in your packet shows you the different lines that are evaluated by the federal government in what is called the OCSE 157 Report. In the right column, you can see what the penalties were. They are incremental penalties, so, for each year you continue to fail, they reduce the Block Grant for each year.

We did appeal the first penalty to the Grant Appeals Board and then to the U.S. District Court here in Nevada. Unfortunately, the District Court denied our request, and there were not sufficient issues for us to take it up on appeal. All the penalties stand. They have all been paid and remedied. We can now move forward.

Mr. Chairman, you mentioned the changes that keep coming to this program. If you turn to page 5 of my testimony, I outline in detail some of those changes. One of the main things is the $25 fee that we are required to assess in every case that never receives public assistance. After we have collected $500 in child support, we have to assess that $25 fee annually. That is a new fee that is going to be imposed. That fee will be program income, which means 66 percent of it will go back to the federal agency, and we get to retain

34 percent. In conjunction with this fee, we do have a BDR out here to address this issue. We are going to be requesting that a $50 fee be assessed on cases that are not IV-D cases—that is, people who have not applied for child support enforcement, but whose child support payments we are managing through our State Collections and Disbursement Unit. We do not want people to have a disincentive from asking for our services, and we want to have an incentive for them to apply for our services, so that we can count those cases in our performance measures. We are still evaluating whether that fee will be counted as program income or whether we can keep 100 percent of that $50 fee.

There is going to be a reduction in the match for genetic testing; that took effect October 1, 2006. It went from 90 percent to 66 percent federal match. We are going to lose the ability to match our incentives with federal dollars. Effective October 1, 2007, we will no longer be allowed to match our 34 percent. We can now tax-intercept to collect arrears for adult children. There is a mandatory review and adjustment for child support for TANF families. There are also some other factors, and those are all in my testimony.

The last thing I want to talk about briefly is the MAXIMUS audit. We agree with most of the provisions in the audit. The only issue is that most of those recommendations require staff or resources, which means there are going to have to be some funding concerns. As I mentioned, our program is only funded with the State share of TANF collections. That revenue source is declining; our caseloads in TANF have declined. With the changes in the Deficit Reduction Act of 2005 to the TANF program, we anticipate this will mean less and less money available to collect. As that happens, we will have less money to fund this program. That is going to be a big issue for implementing the recommendations of the audit and for the future of this program. We are collecting some information from other states as to how they are dealing with these issues, and we would be able to provide that to you at a later date.

The only thing I objected to in the audit was an issue which is focusing on performance outcomes versus policy adherence. MAXIMUS knows we have gone through this several times. We agree performance outcomes are important and we agree that reports on outcomes are important. When you set a goal, you need a method to get to the end of that goal. You cannot say, "I am going to go to New York" without planning your trip. You have to have a method to get to New York. You do not just magically show up in New York. That is what our policy adherence does—it sets goals to get you through with the outcome resulting. MAXIMUS never defined what they meant by policy adherence in their audit. We define it as "the roadmap to achieve positive outcomes." If you look at pages 10 and 13 in my packet, you will see that in federal FY 2006, which is when we implemented this program, we have seen

improvements over FY 2005 in every area because of our policy adherence. I am concerned that MAXIMUS puts it anecdotally about how policy adherence could interfere with outcomes. I asked them to provide an actual example—where our policy actually results in a negative outcome—and no actual example was provided. I do not think we are saying different things, I think we are saying them in different ways.

Chairman Anderson:
Ms. Ford, I believe we are going to give you an opportunity for rebuttal at the end of the audit. I know you want to get your shots in early because we have other events after this Committee. I want the Committee to understand some of the ramifications of what you do. I would like you to focus on the testimony that allows the Committee to understand your functions. Then we will hear from MAXIMUS.

I do have one question about where dollars come from. When you are talking about collecting some of these fees, those are coming out of dollars that would otherwise go to recipients?

Nancy Ford:
In the BDR, we are recommending that it is deducted from the next child support payment that we receive.

Chairman Anderson:
So, that is a deduction for. . .

Nancy Ford:
The custodial parent would be paying the $25.

Chairman Anderson:
So, that is a reduction in the amount of funds that they receive? I just want to make sure I was drawing the right conclusion.

Nancy Ford:
Right. That is after the first $500 in child support are collected, and it is only in cases that never receive public assistance.

Chairman Anderson:
Does the fee come out of each monthly collection?

Nancy Ford:
No. It is an annual fee.

Assemblywoman Gerhardt:
Why is the caseload going down?

Nancy Ford:
I think part of it is that we are closing cases more quickly when they meet case closure requirements. The PSI audit was talking about cases that were not being closed. Now we are closing the cases when they meet criteria for closure. We also have a decrease in our TANF cases that are going over to the district attorney's office.

Assemblywoman Gerhardt:
I find it a little curious with the population going up that our caseloads are going down. That is why I am asking the question.

Nancy Ford:
To be honest, it may be that people are not aware that this program is available to them if they are not receiving public assistance. They can apply for this program without having to have any public assistance or any arrears or failure to pay. If somebody is getting routine payments, they can still apply for our services, and we can monitor the payments for them. I think many people may not realize that they can do that.

Assemblywoman Gerhardt:
Is there any effort to notify the public? Any outreach?

Nancy Ford:
We do have some outreach activities that go on; they are probably not as robust as they could be. We can make sure we increase those efforts, but I surmise that people may not be aware.

Assemblyman Carpenter:
On page 6 of your testimony, you refer to the federal income tax intercept program to collect arrears owed on behalf of adult children. How does that work?

Nancy Ford:
What that means is that there was a child support order that had arrears on it, the children became adults, and the arrears were never paid. This allows another mechanism to collect those arrears that were already owed. Previously, you could only collect on minor children.

Chairman Anderson:
Ms. Ford, I want to come back to Ms. Gerhardt's question. Are there some federal guidelines that you can only stay in this program for a certain time period? This is not one of those programs that has a time drop-off?

Nancy Ford:
No, there is no time drop-off except after the children attain the age of majority and all arrears have been collected. That would be the drop-off unless they voluntarily decide they no longer want our services, which also occurs.

Chairman Anderson:
And all the arrears have been collected?

Nancy Ford:
Correct.

Assemblyman Mabey:
Ms. Ford, what do we do to help increase paternity establishment?

Nancy Ford:
We have numerous things that we do, and we are continuing to improve what we are doing in that area. We have an investigation recovery unit that, when cases look like there should be an identifiable father, we refer it to them. They can go out and collect evidence to try and identify who the father is. Quite often people will apply and say they do not know who the father is. We have advanced our hospital paternity program, where we train hospital staff on how to get acknowledgements of paternity when people are in the hospital. That way we can get that information up front rather than waiting and trying to chase it later. We are implementing a program where we will do buccal swabs—the cheek swab—when we have the father in front of us. We will have trained staff who can do that, so that we can do the paternity testing in our offices rather than waiting for a court order. Mr. Stagliano, do you have some others?

Gary Stagliano, Deputy Administrator for Program and Field Operations, Division of Welfare and Supportive Services, Department of Health and Human Services:
We are working aggressively with Vital Statistics. We have developed an online interface with Vital Statistics where our case managers can access that system and look for undisclosed paternities, based on Nevada recordings. In working with the hospitals, we found that one of their concerns is that often parents are willing to sign the affidavit of paternity, but under the present form, it must be notarized. Oftentimes, the parents are there after hours when notaries are not available. Vital Statistics is engaged in conversation with us now about possibly changing that to certain categories of witnesses versus notaries. That will advance our opportunities.

We have recognized that we have probably been provided the best opportunities to advance that paternity establishment percentage.

Chairman Anderson:
Is there any additional information that you need to give us, Ms. Ford?

Nancy Ford:
No.

Assemblywoman Buckley:
Ms. Ford, on page 10, where the information is in regard to current collections—can you tell me what the decrease since FY 2004 means?

Gary Stagliano:
That relates to a federal measure. It is the amount of cases where current collection is owed versus the amount of cases where current collection is recovered.

Assemblywoman Buckley:
So, we are at under 50 percent and we have decreased since FY 2004?

Gary Stagliano:
That is correct.

Assemblywoman Buckley:
Forget all the charts—this is the lynch pin. We are collecting in half the cases. One of the criticisms or issues this Committee has dealt with for the past decade has been that the collection agencies go after the TANF related noncustodial parents to the detriment of people who are non-TANF. What that means is that in the TANF cases, if the noncustodial parent is a deadbeat—does

not work, cannot get blood from a turnip—the resources are spent dragging that person to court to the detriment of a custodial parent whose spouse or ex-spouse is employed, while these numbers continue to show a wrong emphasis or support the MAXIMUS conclusion that, "Forget the processes; if you are not collecting the money, you are not succeeding." That is what continues to worry me and that is why I sponsored this measure to have this audit done in the first place. Whatever it takes, we need to do better. What are we going to do to increase this number? What are we going to do to get more children the support they are legally entitled to?

Nancy Ford:
Thank you, Speaker Buckley. We share your concerns. One of the issues that is going to have to be addressed, as a result of this audit, is that the State has very little control over the processes that are used. Most of this program is done through our various district attorneys. We cannot tell them how to run their offices. We tell them what they need to accomplish. We do not have control over how they run their offices to achieve what we think needs to be achieved. One of the recommendations in the audit that we are in favor of is converting to administrative hearing masters. We believe that would be a more cost-effective way of collecting child support, and it would be more time efficient. That would go a long way towards a remedy.

As in my earlier chart, we said that 66 percent of our cases are in enforcement. There are many administrative remedies we can use for enforcement that are not being maximally used at this time. By going to administrative hearings, we will have much better opportunities to maximize that.

Chairman Anderson:
We will hear from Bob Teuton from the District Attorney's Office in Clark County.

Robert Teuton, Assistant District Attorney, Clark County:
You have copies of my prepared remarks (Exhibit E), as well as a supplemental document entitled "List of Exhibits" (Exhibit F). There are three areas I would like to address. First is an overview of the child support enforcement process. Second, things that have happened in Clark County since the Policy Studies, Inc. (PSI) report, which was somewhat responsible for our meeting today and the MAXIMUS audit in the interim. Finally, I have some brief comments on the MAXIMUS recommendations, as well as some proposed legislation.

The very first exhibit is a diagram synopsizing the child support enforcement process with the inputs into the system at the top of the page.

Chairman Anderson:
Please make the remarks from Ms. Ford (Exhibit D), the letter from Mr. Teuton (Exhibit E), and the memorandum from the District Attorney's Office (Exhibit F) part of today's record.

Bob Teuton:
The first exhibit shows the flow of a case through the child support enforcement process. There is the nonpublic assistance citizen. There is also the State Central Registry. Those are cases that come to us from other states that the noncustodial parent, assumed to be in our jurisdiction, has been located in. That other state sends it to us to commence enforcement actions. The third is the group of all the cases, as Ms. Ford indicated, whenever a person applies for public assistance; it automatically creates a child support enforcement case in our office. They come to us either through paper or through the Nevada Operations of Multi-Automated Data Systems (NOMADS).

The first thing we do is conduct an assessment to determine (a) does paternity need to be established, (b) does a child support order need to be established, and (c) is the person located and do they have an employer. If there are orders in place, the information goes into the system. If an employer is located, wages withholding is automatically generated and sent to the employer. If the person's location is not known or if an order, either paternity or obligation, needs to be established, then it is forwarded to our case managers. The system basically has a series of 12-15 locate functions that are constantly churning throughout the country looking for noncustodial parents when they go to work in our State or in another state, if they get a driver's license. It sends alerts to our staff to tell us that the person has been located, so that we can take the next step in establishing an order or collecting child support monies. Once the locate function is complete, it goes to the caseworkers to establish paternity, if that needs to be done. When we establish paternity through the courts, we simultaneously establish a child support obligation order based on whatever income information we have available to us.

Our goal is to make that income and that order mirror, as much as possible, the actual ability of the person to make wages. In the past, we have always defaulted to the Nevada average wage, which is one of the reason why, Speaker Buckley, the percent of monies that we are collecting is going down compared to the percent owed. Historically, we have established child support obligations that are completely beyond the majority of our customer's ability to pay. As the denominator gets higher and the numerator stays constant, the percentage appears to go down. We will get further into the actual collections in a minute.

The next part of my presentation—case responsibilities—was alluded to by Ms. Ford. Although it is a State-supervised system with different counties and district attorneys' offices having different responsibilities, Clark County is the only county in the State of Nevada that covers everything from locating the individual all the way through the end. At the other end of the spectrum, Douglas County, for example, only handles the nonpublic assistance caseload. It is only when the people obtain a divorce decree on their own and then seek enforcement, but there is no TANF involved whatsoever. Douglas County would handle that. State offices or other DA offices would handle those TANF cases and public assistance cases.

The next argument is the PSI recommendation. I bring this to you not with the intent of going through all 13 pages, but with the intent of showing you that we took the PSI study and recommendation seriously. We have completed implementation of that process. I think the two most critical aspects of PSI, which we had the power to implement, were (1) our staffing levels and (2) our organizational structure.

If we pass through the 13 pages of the result of the PSI study, you can see the next document is how our office worked prior to PSI. What I want to emphasize here is the bottom left section of that chart. It shows a management-to-staff ratio of 22-1. For every 22 workers, we had one manager supervising them, reviewing their work, responding to customer complaints, and whatnot. This ratio is out of line in terms of what needs to be done. Through Clark County, we were able to add sufficient staff, so that we now have a supervisor-to-caseworker ratio of approximately one to ten. This has contributed significantly to the improvements that our office has demonstrated since 1995.

The next chart, "Position Allocation," takes District Attorney Family Support (DAFS) and shows how from FY 2001–2007 we have received a fair share of resources in the county in terms of the expansion of the personnel that we have available to do business.

The next chart, "New Positions FY 2001–2007," breaks that down by number. It shows for family support since FY 2001 we have received 55 new positions from the County Commission, 30 of those since 2004 when the PSI recommendations came out.

Chairman Anderson:
Which page is that?

Bob Teuton:
The chart I am referring to now is a bar graph, "New Positions FY 2001–FY 2007." The pie actually demonstrates the distribution amongst various County departments. The next one was the "New Positions," the bar graph. It is because of the increased staff, as well as the organizational structure that we now have in place, that our performance has improved. I would like to come back to the comment about emphasizing performance versus process. The next page is the annual audit that the State of Nevada conducts on all child support offices. While we are not perfect, this demonstrates that we have shown substantial improvement in that two-year time period; we are quite proud of this.

Finally, as far as PSI and the performance of the office in Clark County, the next graph is a collections graph for the FY 2000, FY 2004, FY 2006, and the first seven months of FY 2007. The graph speaks for itself in terms of showing the tremendous amount of monies that we are collecting today versus what we were collecting five years ago. I would point out, for purposes of my oral testimony, the top right block where all the figures are shows the average-per-month collections. That started in FY 2000 at $4.8 million, and the first seven months of this year we are bringing in an average of $7.9 million. We have increased collections by about $3 million per month over that time period, which we are quite proud of.

The final chart I would like to point out to you is the "Clark County Open/Closed Chart." This buttresses the testimony of Ms. Ford—that the revenue stream flowing to the State child support program is in jeopardy. You can look at the purple trend line, which starts at the top left and goes into the negative at the bottom right. This shows the net decrease in all cases—both TANF and nonpublic assistance cases. If you look at the figures at the bottom, the number of nonpublic cases opening—that is, the people coming to us voluntarily and not as a result of receiving public assistance—has stayed fairly constant. There were a little over 8,000 in FY 2001–2002. It peaked in FY 2003–2004 at 11,900. It dropped to 11,700 in FY 2004–2005 and to 10,791 in FY 2005–2006. The number of nonpublic assistance cases stayed pretty much the same. What has changed dramatically is both the number of new cases coming into our system—a future revenue source for this State—as well as the number of current TANF cases that are being closed, which is the current revenue that is becoming no longer available to receive.

We, as the State, are quite concerned about the funding status of the State office as a result of looking at the trend lines. These figures are not unique to Clark County, although this is a Clark County graph. These figures are

representative of the State and, in fact, representative of trends nationally. The reasons for the decreased public assistance are fairly obvious in terms of changed federal requirements that make it more restrictive. The reasons for the decrease, or status, of the nonpublic assistance cases are unknown.

That is my testimony about the PSI and where we have come and where we are going. I would like to point out a couple things we can do in response to the funding, caseload, and personnel issues.

The number one priority, and I think it should be MAXIMUS' number one recommendation, is that we must have in place automated systems that work. We have to decrease the amount of labor intensity in doing child support cases and relying more on those automation programs. We have an IT department in Clark County that has done wonders in terms of dealing with automation issues, saving 20,000 hours of staff time in just the preparation of court orders. They have also saved 33,000 hours in the printing of those orders. We are currently implementing a new screen front-end system called Host Access Transformation Services (HATS), which is going to save the number of steps that a case manager has to take to successfully prosecute a child support case. For example, currently, if we get notice that a person's address has changed, it takes approximately seven different screens in the NOMADS system to go through in order to change that address and then clear the alert that is created as a result. With the HATS program, the case worker would be able to do one step and the automated system would do the other seven, saving time for that case worker to do other things. We would like to encourage and continue the development of that entry application process.

Whenever we get a nonassistance application, we go through 15 screens to enter that data into NOMADS before we can take any action. HATS will enable us to do it with one screen and save the cost of three personnel to do that. That is the future of second- and third-generation child support collection systems throughout this country. Nevada's system was built in 2000 and came online in 2001 or 2002, but we are getting further and further behind the curve nationally. That also results in a loss of income to the State of Nevada in incentives. As those other states increase their performance, we are lagging behind because we are driving a Model A as opposed to a space shuttle. We will see smaller and smaller percentages of federal incentive monies.

In terms of the MAXIMUS report, we, too, agree with the majority of their recommendations. We have some questions about the reorganization structure that they have recommended. We believe that the last thing the State should consider would be "statizing," as they refer to it, the child support enforcement process. We think the first thing that needs to be done is that NOMADS needs

to be evaluated, replaced, or enhanced so that we can more quickly process cases. Also, we need management reports that are currently unavailable. It would enable us to look at the performance of our individual employees to identify who needs help and who does not, so that we can work those cases more efficiently. Those are things that can be done without a drastic restructuring of the entire system.

We agree that there are areas that can be centralized at the State level as opposed to the county level. One of our recommendations, and we are currently engaged in discussions with the State about this, is that interstate component of the child support case that you saw. The biggest problem I have is when I have a custodian here and the noncustodian parent has left our State and gone to another one. Detroit, Michigan comes to mind as does Santa Fe, New Mexico. Other jurisdictions were working that case for us, and that case was perhaps not as important to them as it was to our custodian. That is the function that I believe should be moved to the State, so that the State of Nevada can deal with those jurisdictions rather than Clark County, Washoe County, or other local officials.

The rest of the recommendations we are all in agreement with. We would like to look at the issue of administrative hearing officers somewhat closely because I fear that that will create a momentary decrease in case processing. Most of our citizens want access to the courts and having an administrative process in place is not going to alter that perception.

I have set forth in my prepared testimony five specific legislative recommendations. Most of these are improving the efficiency and the timeliness of our actions. The first is making hearing-master recommendations into orders. Currently, we appear before a hearing master, they make a recommendation, and ten days later it goes to a district court judge. If there has been no objection filed, the judge then signs the order. Those are ten dead days in case processing. Actually, it is like 15–20 because we cannot process that order or start to take action on it until we receive a filed and stamped copy back from the court. There are a number of steps that we would like to eliminate. If the hearing master order becomes final or becomes the order at the time it is issued, we can immediately start collection activities at that date rather than 20–30 days later. We would still give the person an opportunity to object and stop that process until it is resolved by a district court judge. Currently, all the administrative sanctions available to us require us to file a notice and finding to start a new court case. This means we have got to prepare the pleadings, locate the noncustodial parent, serve the parties, and schedule a court date. What we would like to do is have the ability to make a limited appearance in all those non-assistance cases whether it is already a

divorce decree on file in our courts. We would like to be able to step in to that court proceeding, eliminate the process issues and delays, and bring those enforcement remedies immediately available to that existing case. That would improve efficiencies and collections.

We would like to allow the IV-D program to initiate a case with notice of a proposed order. The state of Washington has adopted this. The current process is to give them 21 days to request a court hearing. If they have not requested a court hearing, we then process a default. The default goes to a hearing master who enters a recommendation. We then send notice of the recommendation to the noncustodial parent. We have to wait ten days. If the person has not objected, we go before the district court judge. Then we get the order signed. The Washington model, which we would like to see brought to Nevada, enables you to serve the noncustodial parent with a notice and finding—that is the initial pleading in the civil case—and notice that failure to request a hearing will result in an order being immediately issued. We can take 30–45 days out of the process, as well as the intended time, effort, and resources expended.

The next recommendation is on drug court. We have had a drug court in Las Vegas for a number of years. There is arguable legislative authorization for us to be running that drug court in that getting a person off drugs is necessary in order for them to secure employment. We would like more specific statutory language authorizing drug court in child support cases. We have one woman who recently graduated and came into drug court. Her children had been removed by Child Protective Services. She was in the program for a year; she is now an executive chef. She is being reunified with her children as a result of the drug court. We have others who have had $10,000–$20,000 in arrears, and we have gotten them off drugs. There are very few incentives, unlike the criminal drug courts where the incentive is the avoidance of jail. Really the only incentive here is that we will temporarily lower their current child support obligation as long as they participate in the drug court programs. The idea is that we want to get the dollars, and we want to make them available so that we can collect the monies in the future. Perhaps that drug court program could include some incentives in terms of the waiver of TANF monies or other ideas to try to encourage that participation, so that, at some point, we have a paying and robust noncustodial parent meeting their obligations.

The final recommendation here is going back to the administrative review process. I am not convinced that the entire child support program would benefit from conversion to an administrative process in its entirety. There are things, however, I think would work. One example is the driver's license suspension. Current law allows that once we give notice that we are going to suspend a

license, the noncustodial parent can request a court hearing, and we can do nothing until that court hearing. The noncustodial parent does not even need to meet with us to try to resolve the issue ahead of time. We would like to require an intermediate process before they can go to court—require them to meet with us and to try to work it out before going to the court process. The only thing the court can do once they get there is say "Your arrears are not as high as the agency is saying they are" or "You are not the person who is the support." Those two findings are never made because they are never an issue. It is just a delay to that current process. Intermediate administrative remedies would be quite appropriate and save court time, enabling the courts to be there to do those things that they do best, which is to coerce compliance.

Finally, I would like to say that MAXIMUS has recommended that we emphasize the outcomes rather than the procedures. We agree with MAXIMUS' recommendation—we should be outcome-oriented. In deference to the State's position—through the management review process, which they have chosen to go—they are correct. That has enhanced our ability. I do not think it is the end-all, but an intermediate step that we have had to take in the absence of other programs, which would enable us to achieve the final goal. Let me give you an example.

In Clark County, we recently went through this management process where the State will come in to review a case and say, "You are required to take these 15 steps." The theory is that if these 15 steps are taken, a collection will come in at the end of the line. We did not take one of the steps. One of the steps we did not take was the driver's license suspension. We got a deficiency in our examination as a result of that. We did not take the driver's license suspension action because the license had already been suspended for other reasons. Instead, we proceeded immediately to the next step, which was contempt proceedings before the court. We were dinged by the State because we did not follow the procedures. Yet, we took action that resulted in money being collected. It is a mixed bag at the moment. The State has done what they have done out of the absence of having the ability to concentrate on getting across the goal line. Eventually, we need to concentrate on that, as MAXIMUS suggests, rather than concentrating on the process today.

Chairman Anderson:
Your responses to the MAXIMUS study are like those of a good attorney; you have tried to put your shots in early. There are some questions that we have, and some observations that I am sure the Speaker has relative to this historic problem. NOMADS was a lost camel when first introduced, and we are continuing to have problems with it. It has been out there wandering in the desert to try to find a solution to its problems. We have heard it from every

director in this program since it first started. We continue to be concerned. I wanted to come back to one of your exhibits that you went by fairly quickly—the color chart of the new positions for FY 2001–2007. Are all of these programs listed here related to this overall issue? Park Services has picked up dramatically, I see, and Family and Youth Services sky-rocketed. Are we to assume this is a reflection of change in program assignment? That the county has changed their fiscal support for these different programs?

Bob Teuton:
The purpose of this report is not necessarily to reflect on these other agencies. It is just to show that Family Support has received a fair share of resources. Just taking Family and Youth Services as an example: in FY 2000–2001 they received 5, then 12 the following year—a couple years they received zero. That organization morphed into two separate organizations—Family Services and Juvenile Justice Services. I would say, that from FY 2004–2005 through FY 2006–2007, that is only the Juvenile Justice remnant of Family and Youth Services and not Family Services. That is not included in this chart. I do not think it would be fair to try to make comparisons about resource allocations.

Chairman Anderson:
I realize you are not a member of the County Commission, nor may have been part of the budgetary discussion that revolved around this. Do you postulate that the loss of the dollars that I see here are a reflection of the dwindling numbers that were there? And, therefore, the conclusion that might be drawn is that less resources at the county level were needed?

Bob Teuton:
I am not tracking.

Chairman Anderson:
There are fewer number of cases, therefore, you do not need as many people.

Bob Teuton:
No. When I started in November 2003, we had in Clark County 86,000 open cases. While that case number has dropped to 79,000, we have received 30 additional positions. There is not a correlation between our caseload and. . .

Chairman Anderson:
In making your recommendations, for how many of these do you have BDRs submitted?

Bob Teuton:
There are none at this point.

Chairman Anderson:
The agency has not requested a BDR for any of these?

Bob Teuton:
No.

Nancy Ford:
No, there are no BDRs regarding the MAXIMUS recommendations. The audit was just released December 29, 2006.

Chairman Anderson:
None of these were anticipated as needing a statutory change?

Bob Teuton:
The driver's license suspension issue came up as a result of the recommendations regarding converting to an administrative process. The drug court has been pending for six years.

Chairman Anderson:
Do you have proposed language that you are ready to submit?

Bob Teuton:
I can have it here at your request.

Chairman Anderson:
I would ask that you submit potential BDR language to Ms. Chisel, so that we can potentially include it—at the discretion of the Speaker, of course—on a list of BDRs from this Committee. Are you making this report to any other committee?

Bob Teuton:
This will be the only presentation so far. I would be happy to have potential language on all those issues to your LCB representative within a week.

Chairman Anderson:
If you would have it to us by no later than Wednesday of next week, we would be most appreciative.

Bob Teuton:
That would be fine.

Chairman Anderson:
I remain concerned. Ms. Buckley, Mr. Carpenter, and I have been down this road in different sub-committees between sessions to try to work out different parts of problems with the computer system, particularly Clark County. I know that Clark County does not like to look on this problem. They decided to purchase a system that they wanted and that did not comply with some of the State's problems, which has led to some of our additional problems here—especially in tracking individuals. Do you see any issues relative to the homeland security or dollars available through homeland security in the tracking process that might be available to solve some of these problems?

[Assemblywoman Buckley leaves.]

Bob Teuton:
That is beyond my subject matter. I thought I have heard of other agencies looking at possible homeland security funding, and it has not panned out as a possibility. Perhaps the State could share their information.

Assemblyman Conklin:
I have two requests for information. Is it acceptable for me to request that?

Chairman Anderson:
Is this information that you are expecting his office to provide to the Committee?

Assemblyman Conklin:
At least to me.

Chairman Anderson:
We will have it come to the Committee.

Assemblyman Conklin:
In the first color chart, where it talks about positions, I have no idea what "clerk" means. On the efficiency report, you have two fiscal years—2005 and 2006—but we have no definition of what you use to measure efficiency. Because there is no historical chain here, I have nothing to compare it to in terms of understanding.

Chairman Anderson:
The first one you might be able to take care of right here.

Bob Teuton:
Clerks are the clerical support functions to district court judges and justices of the peace.

Chairman Anderson:
Those are an executive bunch. I understand there is a bit of a question about that in Clark County.

Bob Teuton:
There is a question as to who controls the clerks. Anytime the Legislature creates a district court judge, there are five clerk positions that have to be created and paid for at the local level to support that official. The second issue I would be more than happy to respond to the Committee in writing.

Assemblyman Conklin:
Why do we have a separate portion set aside for clerks when it really falls under justice courts and family courts? And those numbers are actually higher. Across multiple pieces of paper here, the first presenter showed us, as Ms. Buckley pointed out, FY 2006 had 45.92 percent collection rate on current orders. You had mentioned it early in your presentation that the numerator was changing but the denominator was remaining constant; therefore, those numbers may not be exactly as they appear. What strikes me as odd is that in your report, we are showing that this year our collection rates are incredibly high—and maybe those are entirely two different numbers. You also mentioned that the amount that we are charging is going up. If the amount that we are charging is going up and it is too high and we are collecting so much money, I am wondering why there is not some recommendation to lower that slightly. Sometimes a small change in a downward number could create a rather substantial amount of collection because people will see it as something they can attain. I recognize the fact that there are many folks who have no intention of paying ever. I do also believe there are some folks who get a $400 check, pay $100 in taxes, have $300 remaining, the court takes $200, then they have $100, and they cannot even pay their own rent. And they are trying to figure out how to help their child, but they cannot even make their own ends meet. These numbers are kind of odd when we consider the fact that the actual collection is down, at least over two years, and yet the gross number would appear to be substantially higher. I do not know if you have an answer to that.

Bob Teuton:
If I could meet with you off-line to discuss some of these issues, I will provide the answer to the entire Committee. It may take more time than we have this morning.

Chairman Anderson:
Mr. Conklin, I appreciate the nature of the question and its importance. I would ask Ms. Chisel that the Speaker is included in any kind of dialogue and documents presented.

It is now close to 10:30 a.m., and I do not want to leave the MAXIMUS out of this discussion. We will move to it now.

Jeffrey Ball, Vice President, Child Support Division, MAXIMUS:
We are going to quickly go over the top ten recommendations in the PowerPoint (Exhibit G). We ask that you consider admitting into the record the testimony that we prepared for you.

Chairman Anderson:
Please include as part of the permanent record for the day the testimony of Ms. Hara and Mr. Ball for MAXIMUS and their additional documents—the performance audit of Nevada's Enforcement and Collection (Exhibit H) and the Executive Summary (Exhibit I).

As you have heard already, the Speaker considers this issue to be of primary importance, as we all do.

Jeff Ball:
I will go to the PowerPoint presentation. The first page talks about the background and the gathering of data we did. We tried to be as exhaustive as possible. We sent out questionnaires to parents and staff. We talked to about half the states in the country and three counties about their best practices. We reviewed about 370 documents that the State provided.

As has been discussed, Nevada is—according to the performance measurements that are almost universally used by all the states when it comes to how well a program performs in child support—49th of 50 states in paternity establishment, 45th in order establishment, 49th in current support collected, 48th in cases with arrears in paying status, and 47th in cost-effectiveness. Nevada has room for improvement, to say the least.

Automation has been discussed by both the State and Mr. Teuton, and it is a huge issue. If you talk to the people who work the cases on a daily basis, automation is their number one issue. It really makes their work inefficient: if they do not do the correct next step, they get defaulted back to the beginning of the case. It is not the best system in the world for the State. The replacement of that system is high on everyone's list. As I understand it, the

NOMADS system will have paid for itself within a year or two. At that point, you may want to consider a feasibility study for the replacement of NOMADS.

I would like to go to the findings on page 4. The State Office has initiated steps toward improvements. Being a public assistance-based office seems to dominate much of the thinking as to how to approach case processing. While there are some connections between TANF and child support, there are crucial differences that necessitate different approaches. That goes back to what Ms. Ford was talking about before with the performance versus policy adherence approach to measuring how well the State is doing.

Larger local offices need to off-load their non-core services. A child support caseworker establishes paternity, establishes the order, and enforces the order. There are certain things that can be done by database matching that would be much more effective and universally applied if it were done centrally at the State level.

At the smaller office level, while you have some very high performing local offices, you tend to have many opportunities for inefficiency because you do not have economies of scale there. All the district offices would have to file reports, et cetera. Instead of having one person do that for a region, you would have several people doing it for each district office around the State.

[Assemblywoman Buckley returns]

The other thing that we were concerned about is customer responsiveness. The State has an IDR unit and a call center. The Clark County people have a customer service center. What would be the best thing possible is to have a statewide customer service unit that is extremely robust. This would take care of all the issues that face parents and employers regarding child support. They would have the data and the notes from the case at their fingertips. They would be able to respond in 95 percent of the cases as a caseworker would. That would free up the time of the caseworker to work the case.

The next slide is something that has been discussed already and is the financial support of the program. If you notice the federal financial participation (FFP) match to the State appropriation, you end up with a State budget of about $16.8 million. This was in State FY 2005. You have the county budget at $28.65 million and that, too, is with the FFP match. The total county dollars put into the program in FY 2005 were $9.56 million supporting a budget of $28 million. As we go through the discussions of the recommendations, we talk about a regionalization and the potential statization. Those are the dollars that we would be talking about when we look at the statization issue.

Let us go to the first three recommendations. The first one is to restructure the program by pulling the current county appropriations and matching them to FFP to support the regional offices operated by locally chosen staff with State liaisons. What that means is instead of having district attorney offices throughout the State, you would be able to support a regional office taking advantage of economies of scale. We suggest Elko, Reno, and Las Vegas for the three regional offices. This would also give you that critical mass you need so you can start doing case specialization that you may not be able to do in a more rural, local office. After the regional offices are up and running for a while, the next step—and this would not be immediate—would be to determine whether it is appropriate to make those regional offices State offices. The reason why you may want to make them State offices is because, when you have one entity in charge of the program, there are no mixed messages, no differences in goals or outcomes, and everyone is reading off the same page.

In the country right now, 12 or 13 states have county-based programs. The rest of the country has gone to a state-based program. Very few of the smaller states—not the top ten in population—still have county-run operations. They have found that it is much more efficient to not do that. Obviously, the customer service and the customer contact pieces need to be carefully maintained. If you do have the regional offices, you are going to want to have circuit riding, whether it is going to be paid by the county or paid by the State. You are going to want to have telephonic hearings. You are going to want to make it as accessible as possible to the people who do not live in one of those three cities.

We talked about the call center that needs to be done at the State level. This way you would again have economies of scale. The Montana IV-D director once said that she thought by having a centralized call center, she took away 25 percent of the caseload work from the workers and put it on the call center. If something similar like that occurs in Nevada, it would give the local caseworker more time to do the necessary work.

You need the centralization of the financial institution data match, which is a federal requirement. You need a State-based database of property liens that could be checked by title searchers and an employer database so you maintain clean information about employers. You need insurance match, which is a new federal requirement that states do some sort of insurance match with personal property insurers. It has not yet been implemented at the federal level, although there has been a voluntary mechanism in place for a while that about half the states are using today. You need statewide locate, that is robust and is strengthened at the state level, so that we find the people. That is obviously

the first step in establishing an order. Mr. Teuton talked about the outgoing interstate cases and efficiency gained by having an imaging- and document-handling central office. Regarding measuring performance, we do believe measuring performance is paramount. That does not mean that you should throw policy adherence out the window. In fact, you would want to do both. You would want to make sure that you follow policy, as necessary, but you do not want to make that the end—that is the means to an end. To use Ms. Ford's metaphor, if you are going to New York, you want to end up in New York; how you get there is not quite as important as getting to New York. You do not want to violate federal rules as a matter of course, but you want to take the steps necessary to get you to your end results, which may or may not be according to the criteria laid out in your policy manual. The example would be quarterly locate: you may need to do quarterly locate matches with the federal data that is available for locate matches more often. There are other examples, too. The mandatory enforcement tools right now are just income withholding, federal tax refund offset, and the financial institution data match. There are many other enforcement tools that could and should be used in an individual case, so you need to go through what is appropriate in the case and take those necessary steps.

This is the best way for Nevada to try to reach the levels of other states. Other states are improving at the same time, so it is not just that Nevada needs to improve and everyone else is static. There is a fixed amount of incentive dollars—$450 million last year. Nevada should be getting its share of that pie to help fund the program activities.

At this point, I would like to turn the testimony over to Ms. Hara to talk about the rest of the recommendations.

Chairman Anderson:
In many of the statistics that you are dealing with, Nevada often falls at the bottom end of the scale. If it is a bad list, we are number one; if it is a good list, we are last. I am concerned about the statistics that tell a story of improvement. We have heard, statistically, that it looks like we are improving. Nevada's ranks continue to move to the bottom. You have a national perspective that is rather unique. Are the services actually reaching the people in need? From my understanding of your report, they are not. Yet, one of the recommendations is that we should put in a central telephone system and call system. Those are administrative remedies rather than people remedies. I am concerned about that—how we spend our money and where it goes.

Jeff Ball:
I believe that if you have a statewide call center, you have expertise and uniformity in answering a client about inquiries that they may have. Most inquiries are about whether a payment has been made, the status of a case, et cetera. That is the type of information that would be at the fingertips of the customer service specialist. They would also be trained in anger management in dealing with parents who are upset about either money being taken from them or money not yet being paid to them. When you have it at the caseworker level, you will have some caseworkers who are fantastic at customer service—they would be able to work with a person for a long period of time. That may compromise their ability to work their queue of cases for the day by doing that, but they are very attentive to that case. You may have other people who do not return calls on a regular basis. You need a cadre of specialized people who do this for a living. If there are issues that can only be answered by the caseworker, those cases should be transferred to the caseworker for answers.

Chairman Anderson:
Again, it seems that statistics provided by the division tell a story of improving achievement. The focus of improving policies and statistics has become a big issue. Are we going to improve services by these recommendations?

Jeff Ball:
Usually as your performance improves, your calls go down and your volume will go down if you are doing a good job. By performing at a very high level, freeing up the caseworker to work the cases, you should be able to provide the ultimate in customer service—providing child support to the children.

Ruth Hara, Project Manager, Child Support Division, MAXIMUS:
I would like to cover the remaining recommendations, the fourth one being training. In talking with staff across the State, there was an overwhelming expressed need for training. Consistency and standardization in training lead to consistency and standardization in working cases across the State. What we recommend is that there should be a training academy established for IV-D staff, both State and county district attorney staff, similar to what is already in place for the State TANF case managers. Also, we recommend there be a user manual available online, so that as case managers are working the case on NOMADS or a replacement system, they could easily see what the policy is pertaining to the screen.

The next recommendation is addressing strategic planning. Currently, Nevada Division of Welfare and Supportive Services (DWSS) is lacking a strategic plan. They are in the process of developing one. In discussions with other states in

gathering best-practice information, many states stress the importance of a strategic plan. They have a lot of involvement from the grassroots frontline caseworker level up through the manager office level. Everyone knows and understands what the strategic plan is, where the Child Support Division is moving towards, what the ultimate goal is, and what their contribution or expectations are at the individual level to reach the goals expressed. We recommend that DWSS move forward with developing a strategic plan. Potentially, through the use of an outside resource, someone who has expertise in developing strategic plans can help facilitate that. Clearly, in order to improve performance, everyone needs to know what their roles are in reaching that goal.

We also recommend the development of an oversight committee. Currently, there is an IV-D Planning Committee that is in place and includes representatives from the regional program area offices, which are DWSS offices as well as representatives from the various district attorney IV-D offices. We also recommend that in the oversight committee, there also be included TANF, the district office representation, hearing master representation, employer community, and other stakeholders in the child support program. With the formation of an oversight committee, you have a broader base to draw from as far as education and promotion of objectives of the child support program.

The next recommendation is improvement of paternity establishment. Ms. Ford, Mr. Teuton, and Mr. Stagliano already touched on this in their testimonies. We recommend establishment of a plan for outreach to the hospitals, birthing clinics, and county health clinics. We need to educate those involved in the paternity establishment at the hospital about the importance of in-hospital paternity establishment. Mentioned earlier, one of the best practices in place is the use of the buccal swab and allowing the case managers at the county or the State level to actually do the buccal swab rather than having to go through appointment scheduling with, in this instance, LabCorp—the current vendor for the buccal swab in Nevada.

We recommend a change to adopt conclusive presumption of paternity when the results of the genetic test come back and it is 99.9 percent probability. Use of a conclusive presumption would expedite the establishment of paternity.

Another recommendation is the use of administrative processes. This is something that is in play in many states and child support programs across the country. It is something that we have discussed in our effort to gather best practices from every state child support program. You see that the administrative process saves court docket time, leads to quicker resolution, saves on personnel costs, results in more personal appearance, and leads to

quicker enforcement. With or without the regionalization, adoption of administrative hearing officers is important so they could step in and be the administrative force for those hearings.

We recommend the implementation of more robust reports. This is related to the issues surrounding NOMADS. In talking with case managers, the caseworkers at the frontline, and office managers, what is lacking is an effective tool for them to understand where cases are in the process. They do not have a means of assessing the performance of the individual units, the individual workers, or the individual offices. That makes it difficult for them to know where they stand as far as the performance of any individual or office at any point in time.

[Assemblywoman Buckley leaves.]

At the State level, we recommend the implementation of more robust reports, as well, to help them manage performance at the county level as well as the State level.

Another recommendation is the adoption of the imaging of documents. Clark County had implemented this as a result of the PSI study. They now image the referrals from the TANF district office over to the Clark County District Attorney's Office. This has resulted in expedited processing of those TANF referrals. We recommend that imaging of these referrals be adopted statewide. This avoids the loss of paperwork, the inappropriateness of referrals, and allows them to immediately act on referrals as they are received.

Finally, we recommend the replacement of NOMADS. It has proven to be more of a burden than an effective tool across the State. When talking with case managers from every office, the number one complaint was NOMADS. Currently, caseworkers have to use a number of work-arounds, and that number is not consistent from office to office or even within a single unit in an office. The alerts that they have to work are creating an immense problem. Some offices have established initiatives to tackle the alerts. Some workers just find them overwhelming and are not able to deal with the work problem. We would recommend the replacement of NOMADS and the beginning of an implementation initiative to begin sooner rather than later.

Chairman Anderson:
I note that some of my colleagues have departed the room. Have you concluded your testimony?

Ruth Hara:
In conclusion, I would like to say that in talking with staff across the State, there is a sincere effort and commitment on all levels—both the State and the county levels—towards the child support program. There is a high stress level and a high level of frustration, primarily related to NOMADS. The most important thing is that they be provided the right type of tools in order to perform their jobs.

Chairman Anderson:
Let me indicate to the members of the Committee before they leave that I am going to take on this issue as a personal responsibility. I am going to give it to myself, and I am going to ask Mr. Ohrenschall, Ms. Allen, and Mr. Carpenter to take on this issue. I am going to have information coming from the Clark County District Attorney's Office. I would hope that Ms. Ford will make part of her staff available to examine your recommendations. We will hold these all at the pleasure of the Speaker, who has already indicated a specific interest in this particular issue. It will take a high priority. We will not act as a sub-committee yet, but rather as a review committee. We will ask Ms. Chisel to act as a central coordinating point for our information. Everything should be sent to Ms. Chisel by Wednesday morning at 8 a.m.

Ms. Hara, Mr. Ball, I appreciate your diligence in taking this audit and the timeliness in getting it to us, so that we could take action in this legislative session to solve some of these problems.

Is there anyone else who feels they have something they need to get on the record relative to this? I want to be sure that the record is still open. Ms. Ford, if there is something that needs to be submitted and you would like to make it part of the official record of the meeting, we will take it in writing. We would ask that the meeting be held open and any materials should be sent to the office by Wednesday of next week.

We are adjourned [at 10:54 a.m.].

RESPECTFULLY SUBMITTED:

_____
Danielle Mayabb
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 8, 2007 Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Assemblyman Horne	Sentencing and Pardons, Parole and Probation
	D	Nancy Ford/Division of Welfare and Supportive Services	Presentation to the Assembly Judiciary
	E	Robert Teuton/Clark County District Attorney's Office	Written Testimony
	F	Robert Teuton/Clark County District Attorney's Office	Memorandum
	G	Jeff Ball/MAXIMUS	PowerPoint Presentation
	H	Ruth Hara, Jeff Ball/MAXIMUS	Testimony
	I	Ruth Hara, Jeff Ball/MAXIMUS	Executive Summary