

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
February 22, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9 a.m. on Thursday, February 22, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Dennis Nolan (Excused)

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Michael R. Kerr, Deputy Executive Director, Deputy Legislative Director, National
Conference of Commissioners on Uniform State Laws
Debbie Conway, Recorder, Clark County
Kathy Burke, Recorder, Washoe County
Rocky Finseth, Carrara Nevada
Shaun E. Jillions, City of Henderson

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John R. Johansen, Highway Safety Representative, Office of Traffic Safety,
Department of Public Safety
Karl Nieberlein, Sparks Police Department
Kevin Higgins, Sparks Township Justice Court, Department 2, Washoe County
Laurel A. Stadler, Mothers Against Drunk Driving-Lyon County Chapter
Joan E. Neuffer, Staff Counsel, Administrative Office of the Courts, Nevada
Supreme Court
James Austin, Ph.D., President, JFA Institute; Consultant, Justice Center,
Council of State Governments
Randal Munn, First Assistant Attorney General and Legislative Liaison, Office of
the Attorney General

CHAIR AMODEI:

The hearing is opened with an introduction from Senator Wiener.

SENATOR WIENER:

I am privileged this morning to introduce my guest, Thomas Withers, from
Spring Creek High School.

CHAIR AMODEI:

The hearing is opened on Senate Bill (S.B.) 88.

SENATE BILL 88: Adopts the Uniform Real Property Electronic Recording Act.
(BDR 10-461)

SENATOR TERRY CARE (Clark County Senatorial District No. 7):

Senate Bill 88 relates to the Uniform Real Property Electronic Recording Act
(URPERA) and would give county recorders an option to record certain
documents electronically. All manner of documents such as deeds of trust,
deeds and judgments are recorded with the county recorder. I am unaware of
any controversy or opposition to the bill.

MICHAEL R. KERR (Deputy Executive Director, Deputy Legislative Director,
National Conference of Commissioners on Uniform State Laws):

Senate Bill 88 would adopt the URPERA. The Legislature adopted another
uniform act, the Uniform Electronics Transactions Act (UETA). Several
jurisdictions at the county level around the country have relied upon the UETA
to begin the process of electronic recordation of real property transfers, issues
and documents. Concerns were expressed to the Uniform Law Conference that

a statute specific to real property recordation would be desirable due to peculiarities of real property transfers and the secondary mortgage market. In 2004, the Uniform Law Conference completed work on the URPERA. It is consistent with the UETA and also the Electronic Signatures in Global and National Commerce Act (ESIGN), which is the federal law on electronic documents and recordation.

The URPERA would allow county recorders to implement electronic recordation systems consistent with UETA and ESIGN. With the Office of the Secretary of State, it establishes the ability to set regulations for statewide consistent standards within Nevada and other states.

I distributed a handout entitled "Senate Bill No. 88, Uniform Real Property Electronic Recording Act, Committee on Judiciary, February 22, 2007" ([Exhibit C](#)) to the Committee. The map on page 2 of [Exhibit C](#) shows approximately 8 or 9 adoptions and another 10 or 11 states considering the URPERA. The Act has been quickly adopted around the country.

Due to the secondary mortgage market and many people owning property in more than one state, consistency with regard to standards developed among recorders is important and useful. The URPERA provides clarity, reliability and confidence to county recorders who do electronic recording. It establishes standards that give power to the Office of the Secretary of State.

DEBBIE CONWAY (Recorder, Clark County):

Clark County supports S.B. 88 and is in the process of implementing electronic filing.

KATHY BURKE (Recorder, Washoe County):

I would like to introduce Werner Christen, President, Recorders Association of Nevada, and Alan Glover, Clerk/Recorder, Carson City. I will read my prepared testimony ([Exhibit D](#)) in support of S.B. 88.

I would like assurance that electronic recording will not be disrupted if there is a delay when setting up the rules and regulations by the Office of the Secretary of State.

ROCKY FINSETH (Carrara Nevada):

The Nevada Land Title Association supports S.B. 88.

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SENATOR CARE:

The regulations would address uniformity for all counties wanting to record electronically. I see nothing that would curtail Washoe County from continuing to record electronically while the rules and regulations are written.

Ms. BURKE:

An electronic recording act was passed in Nevada, which is the reason we are recording electronically. Perhaps, we could continue until S.B. 88 is adopted.

CHAIR AMODEI:

Is an amendment required to pass S.B. 88?

SENATOR CARE:

It would be sufficient if Washoe County is recording under the existing statute. The Office of the Secretary of State will set up the rules and regulations, but that would not stop the electronic recording process.

BRAD WILKINSON (Chief Deputy Legislative Counsel):
Senator Care is correct.

SENATOR WIENER MOVED TO DO PASS S.B. 88.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

The hearing is opened on S.B. 45.

SENATE BILL 45: Provides for the imposition of an administrative assessment on a person convicted of driving while under the influence of intoxicating liquor or a controlled substance. (BDR 14-672)

SENATOR MAURICE E. WASHINGTON (Washoe County Senatorial District No. 2):
Senate Bill 45 proposes an administrative fee of \$100 be assessed to people who plead guilty, nolo contendere or are found guilty of charges for drunk

driving or under the influence of controlled substances. The amount would be collected by the courts and used for ongoing intervention programs for drivers under the influence of liquor or controlled substances. It would be administered by the Department of Public Safety.

SHAUN E. JILLIONS (City of Henderson):
The City of Henderson supports S.B. 45.

JOHN R. JOHANSEN (Highway Safety Representative, Office of Traffic Safety, Department of Public Safety):

I provided copies of a slide presentation entitled "Senate Bill #45, Department of Public Safety, Office of Traffic Safety" ([Exhibit E](#)). I will discuss each slide.

- Traffic Fatalities & Homicides: Nevada, 1999-2005

This slide compares fatalities as a result of traffic crashes, impaired fatalities from traffic crashes and homicides. Murder is the No. 1 crime and impaired crashes rank slightly below or occasionally above homicide fatalities. No traffic fatalities are accidental because the term accident implies unforeseeable and unpreventable; all traffic crash fatalities are preventable.

- Total Impaired Traffic Fatalities-Nevada: 1995-2005

This slide indicates the numbers are rising slower than Nevada's population is increasing.

- Impaired Fatal Alcohol Only-Nevada: 1995-2005

This slide addresses alcohol, alcohol plus drugs and drugs only—three broad categories of impaired substances. Nevada has made progress reducing alcohol-only impaired drivers as a percentage of the total population of impaired drivers.

- Impaired Fatalities, % Alcohol + Drugs, Nevada: 1995-2005

This slide indicates drugs are more involved, and the percentage of impaired drivers has risen.

- Impaired Fatalities, Drug Only, Nevada: 1995-2005

This slide shows an increasing trend in the last five or six years.

- Fatalities by Type of Impairment, Nevada: 1990

This slide indicates in 1990, fatalities related to an impairing substance were 56 percent. Fifty percent of those were alcohol, 6 percent were drugs, alcohol plus drugs or drugs only.

- Fatalities by Type of Impairment, Nevada, 2003-2005

This slide indicates progress. Approximately 45 percent of fatalities relate to impaired drivers, 29 percent are alcohol only and 16 percent are drugs only.

- Type of Drug by %, Nevada, 2003-2005

This slide indicates marijuana and methamphetamine (meth) combined are 80 percent of driving fatalities. While meth is pulling ahead and marijuana is close behind, there is significant progress in the reduction of alcohol-impaired driving fatalities. Drugs are on the increase which offsets the gains; alcohol percentages in overall impaired fatalities continue to climb.

- Funding: Available vs. Requests

The Office of Traffic Safety accepts grant money from the United States Department of Transportation through the National Highway Traffic Safety Administration and redistributes it throughout the state for various efforts to reduce impaired driving.

- Special and Base Funding, 2007

The Office of Traffic Safety receives approximately \$435,000 for law enforcement, courts and community programs distributed through two funds. One is the 402 program, a generic fund subject to maintenance-of-effort rules allowing \$200,000 per year for the alcohol program. The second is the 410 program, a fund for alcohol programs that allows approximately \$235,000 a year.

Agencies requested enormous amounts of funding for quality programs that cannot be supported; consequently, funding for many of them has been reduced. In 2007, new rules, regulations and criteria to qualify for new levels of funding have been established. Base funding for Nevada rose to approximately \$735,000 per year, which recognizes alcohol as a huge problem.

Ten states with top fatality rates per 100-vehicle-miles traveled qualified for special funds required to be spent on high-visibility enforcement education. The increase in funds created a new set of criterion. The \$1.2 million special funding

used by the Office of Traffic Safety was allocated: \$550,000 for law enforcement overtime to apprehend impaired drivers, \$50,000 for bonuses and incentives, \$80,000 to produce radio and television spots, and \$360,000 for paid advertising throughout this fiscal year. Advertising ran three weeks at Christmas; Independence Day and Labor Day are the other key periods to utilize special funds for advertising.

Qualifying criteria for base grants changed in 2006, the first year Nevada qualified. Funds were issued late in the year and spent the following year. Three of eight criteria were required in 2007, four of eight criteria in 2008 and five of eight criteria in 2009. One criterion is an eye visibility enforcement program, and Nevada is qualified.

Another new criterion is a prosecution and adjudication program met by hosting an annual conference for judges and prosecutors that presents impaired driving information.

Nevada qualified for the Blood Alcohol Content (BAC) Testing Program in 2006 and 2007, but will not qualify in 2008 or 2009 because the criteria includes a statute requiring testing of all surviving drivers. Current law only tests drivers, passengers and/or pedestrians.

The state does not qualify for a high-risk program because the BAC criteria standard is 0.15 and Nevada's standard is 0.18. Nevada qualifies for alcohol rehabilitation and driving under the influence (DUI) programs because the state has sufficient DUI courses. Nevada qualifies for the underage drinking prevention program due to the Division of Child and Family Services, which manages juvenile justice funds and provides a strong program in Nevada. Nevada formerly qualified for Administration License Suspension and Revocation, but will not qualify under the changed rules. It will also require an ignition interlock program that is problematic in the administrative license area. Another new criterion is a self-sustaining, impaired-driving program not known when the program was considered.

- Program Areas Funded

Programs funded are: enforcement, which includes overtime and equipment; DUI courts, which include program managers and equipment; and community programs, training and education for law enforcement. Traffic officers are

provided a drug recognition expert course to be trained to recognize a person on ecstasy, which cannot be tested with a preliminary breath test.

- **DUI Arrests: Nevada-2000-2005**

There were approximately 12,000 or more DUI arrests per year reported from all state law enforcement agencies. Nevada lost momentum in 2001 and 2002, but things are improving.

- **Arrests Per Licensed Driver: Nevada-2000-2005**

What does 13,000 arrests mean? On average it means 1 out of every 110 licensed drivers per year have been arrested. To put it into perspective, in just a couple years, almost 1 out of every 55 drivers had been arrested.

- **Representative Fund Levels, Arrests x 80% Conviction Rate x \$90**

This chart represents funds that could have been raised to supplement and support ongoing efforts in the area of impaired driving. The courts proposed withholding 10 percent of the funds for administration. It is realistic to expect \$900,000 to \$1 million could be raised and returned to the communities for impaired-driving programs.

KARL NIEBERLEIN (Sparks Police Department):

I am a 19-year veteran of a municipal police agency in northern Nevada who investigates fatal traffic collisions. I also provide impaired-driver training to law enforcement agencies statewide, specifically, the drug recognition expert program and alcohol programs taught at various locations.

Although I support S.B. 45, there are questions that need answering. Why is this amount of money needed to combat the impaired-driving problem? Who is the best qualified to define what is needed to combat the problem? Nevada chiefs and sheriffs continually request twice as much as the Office of Traffic Safety can fund. Additional funding could be used for many things. Funding could provide DUI training on a regular basis, not just four or five times a year during the Joining Forces Programs funded through the Office of Traffic Safety. Funding could provide DUI checkpoints in areas that normally would not have them. A lieutenant from the Winnemucca Police Department indicated the town would benefit from a DUI checkpoint, but they do not have the manpower, funding and/or equipment.

More modern state-of-the-art equipment could be provided to agencies that now accept hand-me-downs. Programs such as the Fresno Police Department's successful intensive DUI apprehension program could be provided. More programs like Every 15 Minutes could be produced in high schools and offered in places where they normally do not exist. Law enforcement officers could participate in more national awareness campaigns for impaired driving. Various agencies such as the National Institute on Drug Abuse and the National Highway Traffic Safety Administration provide national campaigns, but Nevada is unable to participate because lack of funding prevents the required media time.

Funding could provide law enforcement officers participation in Safe Ride programs available in various locations during times of high-impaired driving such as New Year's Eve or Saint Patrick's Day. Funding could help courts fulfill sentencing requirements, such as substance abuse programs. Substance abuse programs are required, but many rural parts of the state lack money to provide them and in many cases, providers do not exist. Funding could help with ignition interlock programs, which will be required by the National Highway Traffic Safety Administration. Funding would help with court probation programs that monitor and supervise offenders as well as repeat offender programs targeting the most dangerous DUI offenders. It would also provide funding and innovative approaches to DUI and impaired driving.

Passage of S.B. 45 would be good for Nevada from a law enforcement perspective and paid for by those who have breached the public trust.

SENATOR CARE:

When does the municipal court get a percentage of the \$100? What happens if the county does not have a municipal court?

MR. JOHANSEN:

The assessment would be collected by the municipal, justice or district court in the jurisdiction of the location of the offense. Ten percent would be withheld by the court and maintained for use at the court's discretion. The \$90 remaining would go into a special account at state level and redistributed per need. The Office of Traffic Safety would take over that function using federal or legislative standards.

SENATOR CARE:

Is 10 percent allocated to the court that has jurisdiction over the case and the remainder to the State Treasurer?

MR. JOHANSEN:

That is correct.

KEVIN HIGGINS (Sparks Township Justice Court, Department 2, Washoe County):
The Nevada Judges Association opposes S.B. 45 as a pragmatic rather than a public policy consideration. As judges, we see the impact of drunk driving upon citizens, communities and families, but collecting from the funding source will be difficult to achieve.

A first-time DUI fine is \$503. In addition, an administrative assessment of \$115 goes into the fund and is split 51 to 49. Finally, a \$10 court facility fee, \$7 to the drug court and a mandatory clinical analysis fee of \$60 make the total fine \$695. Counseling is another \$150, and if an interlock device is imposed for three months, it is another \$500. Therefore, the basic fine for a first-time DUI is \$1,500.

A second-time DUI fine of \$750 with fees mentioned above totals \$942. Counseling is \$300 to \$500, and the mandatory interlock device is \$1,500 for one year. Therefore, a second-time DUI fee is approximately \$2,500.

A first-offense DUI removes a person's driver's license for 90 days; the second offense is 1 year. If a person needs to drive to reach his workplace to earn a living, he will be unable to pay the court \$2,500.

Justice and municipal courts have become collection agents for various funds. If fines are not paid, people are sent to jail. A bench warrant is issued, and the person is jailed for a couple of days until he can see the judge and explain why he will not pay the fine. The judge is often told the person has alimony, rent, taxes, etc. and cannot pay the fine.

A law professor once said, "The laws of the country are self-enforcing because the people believe in the legitimacy of the laws." As long as most people think most of the laws are good, laws will be followed. If the general public thinks

a law does not work, they will not follow it; there are not enough law enforcement officers or judges to do anything about it.

Although \$100 does not seem like much compared to the rest of the fines, fewer people will be able to comply. They will continue to drive without insurance and/or driver's license, get in another accident and not be compensated.

As a judge, I never considered playing the part of a collection agent informing people they had to pay the aforementioned fees as well as a victim impact panel, which is another \$35. We cannot go any further with administrative assessments.

LAUREL A. STADLER (Mothers Against Drunk Driving-Lyon County Chapter):
Mothers Against Drunk Driving support S.B. 45. In response to Judge Higgins' testimony, an offender chooses to drink and drive. A person usually drives drunk 50 to 200 times before his first time in court. The amount of money spent for alcohol is more than assessments, fees and/or sanctions. Every person in Nevada should be aware it is against the law to drink and drive. People make informed choices, but, unfortunately, their choices are made repeatedly. We would prefer to have no DUI crimes rather than sanctions, fines, cleaning up bodies and comforting victims. We have no sympathy for offenders who choose DUI.

JOAN E. NEUFFER (Staff Counsel, Administrative Office of the Courts, Nevada Supreme Court):

We oppose S.B. 45. We do not object to the remedy issue of DUI crime and/or the problems caused by people who commit crimes while drinking and driving; this is more an issue of funding and administrative assessments. Although we acknowledge and sympathize with the intent of S.B. 45 and the issues it addresses, the problem is adding an additional administrative assessment to existing law.

Administrative assessments have existed since 1983. The statutory scheme set forth in *Nevada Revised Statute* (NRS) 176.059 was brought before the Nevada Supreme Court in 1986 and 1990. The court found the law constitutional, but a law can be constitutional and its application unconstitutional. This is a policy issue. The questions are: Should we add to an existing law that has twice been challenged? Should we find other funding sources for problems created by

people who drink and drive? Should we continue to have justice courts act as collection agencies, which may lead to unconstitutional application of the law?

The first portion of an additional administrative assessment is allocated to unpaid assessments, the second to court facilities, the third to specialty courts and under S.B. 45, the fourth would go to DUI issues. The last portion of the funds would be allocated to the fines. As Judge Higgins pointed out, fines that would assist local courts are sometimes uncollectible.

SENATOR CARE:

Senate Bill 45 is drafted to give the court discretion. How is it determined a fine is uncollectible? Has a person ever lost a job due to a DUI arrest?

JUDGE HIGGINS:

Frequently, people lose their jobs due to drinking and driving. Many individuals live hand-to-mouth in low-income jobs. They are faced with numerous fines and fees, and the situation becomes insurmountable. Many request jail time rather than paying a fine. In that event, Washoe County pays \$97 per day to jail the person to pay off their fine. Part of the problem is the Administrative Office of the Courts does not want administrative assessments split into smaller amounts and demands \$115 up front, in which case the fine is uncollectible. The portion to localities has been placed low on the priority list; therefore, another administrative assessment must be collected before any money is distributed from the general fine category to the county, city or state. Judges believe everything should be paid out of the General Fund.

CHAIR AMODEI:

I do not disagree with anything said in regard to the General Fund. If this Committee had jurisdiction to fund the Judicial Branch from the General Fund, there would probably be a positive vote today as well as support on the Senate Floor. The issue of administrative assessment has been addressed in this Committee many times. Perhaps, there should be a meeting to discuss the history, mechanics and proposals of administrative assessments to determine if a nexus to S.B. 45 would allow the Committee to make a value judgment. There have been problems with existing programs in regard to fee and/or administrative assessment bills heard in various committees. If there are constitutional or legal concerns regarding how existing statutes are applied, it seems senseless to discuss how S.B. 45 applies to administrative assessments.

If there is an appetite for the Committee to address the issue in a global sense, a work schedule can be arranged.

JAMES AUSTIN (Ph. D., President, JFA Institute; Consultant, Justice Center, Council of State Governments):

In response to the discussion on S.B. 45, many people are failing in the probation system, and part of that failure is not paying their fees and/or fines. I would be happy to provide the Committee information on what is being done by other states on the issue.

CHAIR AMODEI:

We appreciate the information and welcome your input at a future hearing on this issue.

The hearing is closed on S.B. 45 and opened with an informational hearing on justice reinvestment options to respond to the recent and projected growth of Nevada's prison population.

DR. AUSTIN:

I will present a slide presentation ([Exhibit F](#), original is on file in the Research Library) focusing on issues in Nevada that address the justice reinvestment initiative in which Nevada participates. The Council of State Governments (CSG) Justice Center is working with eight states coordinating national resources to provide technical assistance. The CSG is a nonpartisan, nonprofit organization that works with state legislatures to provide solutions to their problems. This service is funded through state dues and represents all three branches of state government.

The purpose of this study is to provide data to make decisions regarding the state's correctional system and funds. We seek ways to deploy state money to make the correctional system more effective in terms of reducing recidivism, making the public safer and having a more just criminal justice system. A report funded by Pew Charitable Trusts showed Nevada would spend an additional \$27 billion to accommodate projected growth of the prison population over the next five years. Nevada has one of the fastest-growing prison populations.

The recidivism rate in Nevada has not changed in 30 years. Focus must be placed on certain neighborhoods and communities that are feeder systems to the correctional system. These areas contain a large proportion of people who

will end up in the criminal justice system at sometime in their lives. If those communities were attacked in a positive way, there would be a profound impact on the prison system. New York lowered its prison population 20 percent since 1995, diminished its jail population from 21,000 to 14,000 as well as experiencing a large drop in the crime rate. We will see how it can be done in Nevada.

Our function is to analyze the prison system, provide options on how to save money, estimate the savings and demonstrate how to reinvest it in communities as well as implement and evaluate. We are interested in success, which is our reason to be in Nevada.

Slide 8 of [Exhibit F](#) is a map of Arizona focusing on the city of Phoenix in Maricopa County. More people in that particular area enter the prison/jail system and are put on parole. The slide shows neighborhood blocks with a high concentration of people sent to prison each year. This costs the State of Arizona \$1 million to \$2 million per year. There are probably multimillion dollar blocks in Las Vegas and Reno. This is not a matter of raising money; on the contrary, the money is being spent. The question is whether it is spent wisely.

The map on slide 10 demonstrates that 2 of 15 major neighborhood areas in Phoenix account for more than \$100 million a year in prison expenditures. We intend to provide such maps in Las Vegas, Reno, Carson City and other areas to identify blocks where money is spent.

Other issues such as Temporary Assistance to Needy Families (TANF) by Health and Human Services is an area where money is spent. The close association between individuals incarcerated and those on welfare demonstrates more money is spent in certain neighborhoods.

Slide 14 shows how Arizona could reduce its prison population by approximately 4,500 by reducing the number of people who failed probation. Technical violations and length of prison stay could save \$90 million per year and \$300 million in construction costs. This is repeated state after state. There are people in prison who should not be there or remain as long. We will determine how many people are in the prison population, which ones can be released faster and how they can be prevented from returning.

Nevada has a bipartisan interest in cooperation among the major players. Data has been compiled and analyzed, and states are considering options. The key element is to analyze the prison, parole and probation populations at system and neighborhood levels. Maps will be prepared to demonstrate how many people are under the system by census blocks throughout the state. Policy options will be developed focusing on probation which is the key to providing solutions to the problems. We will identify opportunities to integrate services and improve outcomes in high-stake neighborhoods. This will be funded by the United States Department of Justice and the Pew Charitable Trusts.

Nevada is one of the nation's fastest-growing states, which puts pressure on the correctional system. Nevada's violent and property crime rates have always been higher than the rest of the country. These rates dropped 27 percent to 28 percent since 1994. Crime rates have dropped despite what states have done. By lowering its prison population, New York had the same impact on crime rates; therefore, crime rates are unrelated to changes in policy on imprisonment.

Nevada's incarceration rate is 490 inmates per 100,000 population; the nation's average is 423 per 100,000 population. Nevada is higher than the rest of the country. There is a low rate of people on parole supervision, which is positive; but more importantly, there is a low rate of people on probation compared to the rest of the country. Nevada's rate of people on probation is 723 per 100,000, half the national average of 1,800. Nevada does not put many people on probation as this is an expensive decision.

A surge of prison admissions in 2006 drove that population up, largely in Clark County. The forecast is 12,000 to 17,000 new prisoners over the next 10 years. Unless something is done, most people who will be incarcerated in 2016 are currently teens living in the pinpointed neighborhoods.

The women's prison population in Nevada is growing faster than the male population. Although women pose less risk to public safety and are less likely to recidivate, they are incarcerated at a faster rate than men. Nevada's recidivism rate is significantly lower than the rest of the country. This means 27 percent of the prisoners released each year return within 3 years. This is due to three things: (1) a large number of low-risk people are incarcerated rather than put on probation; (2) 20 percent of the prison population are California residents

who return there after release; and (3) illegal immigrants are deported upon release and unlikely to return to Nevada's prison system.

Nevada's parole grant rate is high, which means the Board of Parole Commissioners is doing a good job. Sixty percent of the cases coming before the Board are paroled. On the other hand, the parole grant rate of many states is 25 percent to 30 percent. A risk instrument is used to make parole decisions. Nevada has an 80-percent success rate among people released from parole supervision, which is high compared to the rest of the country. Why? The Board makes good decisions, and prison time is reduced for every day a person completes parole successfully. This is called a good time law, which is a carrot for the parolee. If a person follows the rules with good behavior, his time on parole supervision shrinks 50 percent.

The cost of the parole system is diminishing, the parole population is going down and more people are being paroled. Incentive is not offered on the probation system. It does not matter how a person behaves or follows the rules, he must serve time on probation; consequently, Nevada's probation success rate is lower and only half of those put on probation complete it successfully. Improvement in the probation system would impact the prison population by thousands.

Forty-six percent of violators fail probation because they use drugs, test dirty, abscond, lose their jobs, cannot pay their fines or are arrested for traffic and/or misdemeanor-type crimes. Then the probation officer orders them back to court, their probation is revoked and they return to the prison system. This is a common pattern. At the first sign of this breakdown, we want to remedy the situation to get the person back on track.

In Nevada, the Board makes a recommendation to the court for either probation or prison. When the probation officer recommends probation to the court, judges follow it in 95 percent of cases. When the probation officer recommends prison, the courts disagree in 40 percent of the cases and put the person on probation. The Board recommends prison at a greater rate than accepted by the court. Why? What happens when the Board does not want an individual on probation, but the court puts them on probation anyway? What is their success rate? Are they failing at the highest rates?

In other states, the probation department recommends prison and the court agrees. Nevada's courts disagree with the recommendation in 40 percent of the cases, which is significant. A special study has been done to examine those cases, track them to determine how many fail probation, understand the reason the Board recommended prison and discover why the court decided to retain the person in prison.

CHAIR AMODEI:

You began by telling us Nevada incarcerates people who should not be incarcerated, but now you tell us judges are not following recommendations of the Board.

DR. AUSTIN:

They appear to be liberal.

CHAIR AMODEI:

Who incarcerates people if judges are not following probation recommendations? Is it from the violation side?

DR. AUSTIN:

Yes, 55 percent to 60 percent of all people incarcerated failed the probation/parole system; therefore, the system is feeding upon itself. In Nevada, people are failing probation at a higher rate, which is interesting because the same officers handle probation and parole.

Research has shown the length of time a person spends on parole or probation does not matter, it is whether or not he is successful. Length of supervision is not critical; it is whether a person can be stabilized in the first 12 months. As a rule, violators are unsuccessful within 12 months. The Board cooperates with us to improve success rates so my comments should not be construed as criticism.

A tool used to make a recommendation to the court has not been studied in ten years. This tool should be looked at to determine what is causing the 40-percent recommendation for prison with which the court disagrees.

Nevada has what I call silos, which contain the prison, Department of Corrections, Board of Commissioners and a probation and parole supervision function within the Department of Public Safety. Typically, a state the size of

Nevada places those divisions under one umbrella organization called the department of corrections or criminal justice. There is a director over corrections, probation and parole, and they work together to marshal resources. Nevada struggles with a lack of communication and understanding between entities.

I observed disconnects that are a threat to public safety. In one instance, a sex offender violated probation because he was arrested the day of his release. He was a young offender with a long history of child molestation. The Board ordered mandatory parole because they wanted him under some form of supervision. He was released from prison in Carson City and told to report to a treatment facility for sex offenders in Reno. He walked out the door of the prison and headed for the shopping mall. A police officer recognized him, he was arrested and returned to supervision for failing to report for treatment.

In any other state, a high-risk offender would be hand delivered to the treatment facility and not given the opportunity to find his own way. This does not happen in Nevada. Better coordination is needed between releasing people from prison and supervising high-risk offenders. Low-risk people should be left to go their own way.

There is a perceived but unknown lack of services for probationers and released prisoners. I am told there are no treatment services in Nevada, but I am skeptical of this information. The Board does not know the treatment needs of its population. There has been a problem with the assessment process and a study is being done this month to discover the service needs of the parole and probation population. After information is gathered, we will discuss what is missing.

SENATOR HORSFORD:

I was on the Legislative Committee on Health Care Subcommittee to Study Services for the Treatment and Prevention of Substance Abuse that prepared a report in which statistics showed 80 percent of people incarcerated have some type of substance abuse or alcohol-related problem. The report indicated a statewide lack of treatment and prevention services for substance abuse and other mental health problems for the general population, not just ex-offenders.

DR. AUSTIN:

That report would be helpful.

We implemented a new risk instrument for the Board with guidelines that will help determine whether to revoke a person and if revoked, for how long. Nevada revokes people for a period of 12 to 18 months. Many states limit it to no more than 90 days because they have discovered the short hit is more effective, particularly for technical violations. Revoking people for too long is disruptive and causes them to lose their jobs, homes and loved ones, and it makes it more difficult for them to get back in sync. This will reduce the number of technical violators the Board returns to the prison system.

A special study is being done with the Division of Parole and Probation to determine mental health, substance abuse and other special needs of that population. We welcome ideas from the Committee and in turn, will estimate the savings and address how and where the money could be reinvested. We will address the severity of the methamphetamine epidemic in Nevada. Current legislation will be added to the projections.

SENATOR CARE:

This is my fifth regular Legislative Session on the Senate Committee on Judiciary. Every session brings another bill for enhancement of statutory minimums. Have you looked at how Nevada's statutory scheme affects the prison population? In California, it is three strikes and you are out.

DR. AUSTIN:

We suggest addressing how felons are classified because sentences vary based on classifications. Legislators are trying to establish incentives to prisoners whereby if they complete a series of programs, they receive a lump-sum award of good time, which moves up their parole eligibility date or mandatory release date. These types of programs reduce recidivism rates and are win-win situations. The population is reduced and money is saved to support programs. Nevada prisoners receive an average of 15 to 20 days of credits whereas many states award day for day or 30 for 30. If Nevada went from 15 to 30 with program credits, the prison population would be different in size and cost; the recidivism rate, which is already low, would go lower.

The length of time a person is incarcerated is an issue. A low-risk person not released quickly is like keeping a straight-A student in the university system for five years rather than four. Money is wasted on them. On the other hand, failing individuals need to be kept in school longer.

SENATOR WIENER:

In my first Legislative Session, I introduced a bill for therapeutic communities, which was instituted in a northern Nevada prison and other facilities. Providing the Committee with substantive information to support the benefits of therapeutic communities would be appreciated. Therapeutic communities enrich the prison and corrections environment, although there are no statistics on its effects on released prisoners. Therapeutic communities reduce recidivism.

DR. AUSTIN:

Some people benefit from therapeutic community behind prison walls, but we should also increase treatment outside. Prisoners are paroled based on completion of a prison program. This means a wait of three to six months to accomplish Phase 1. Treatment is more effective for the moderate offender outside prison whether it is residential bed or outpatient. We have an excellent specialist who works with states on substance abuse to eliminate expensive programs in prison. Not everyone needs to remain in prison to receive treatment. More people could receive the same benefits by receiving treatment while on parole supervision. Treatment in prison is only effective when continued in the community. A bigger system in the community would alleviate the probation problem.

A person on drugs is detoxed in jail. There might be a better impact if offenders could be in treatment without fear of being returned to prison. Many options could lower projections, parole prisoners more quickly and allow credits for prisoners to get released faster. The money is in the prison budget; it is a matter of moving it to other locations.

SENATOR WASHINGTON:

In 1995, Nevada's crime rate was escalating and the public was clamoring that something should be done. At that time, California was invested in the Three Strikes and You're Out law and putting offenders in prison. During the 1995 Legislative Session, the Committee considered the felony sentencing structure. Several states were studied with the intent to harden the prison population. Subsequently, the Committee arrived at an innovative sentencing structure. We came up with a number of mechanisms to divert offenders from prison by setting up parole, probation and drug courts. Now you say we need to rethink our sentencing structure, the manner in which we imprison offenders, how we release prisoners on probation and our parole structure.

In the 1997 Legislative Session, the Committee dealt with parole and probation and reconstituting eligibility for parole board commissioners. We realize Nevada has an escalating drug population, and many crimes increase due to controlled substance offenders. Are you saying we need to develop a new scheme?

DR. AUSTIN:

Let me give you a pat on the back. The Committee's achievements brought a decline in Nevada's incarceration rate and a 27 percent to 28 percent reduction in the crime rate. You were successful.

The surge of people going through the prison system, largely out of Clark and Washoe Counties, is increasing faster than the demographic growth. This does not make sense considering the downward crime rate trend has turned around the state's projections. Nevada's crime rate was consistent with demographic growth and the rate of incarceration was No. 1; Nevada's current rate of incarceration is at midpoint.

I would focus upon the probation population to ascertain whether Nevada can get a better bang for its buck. Nevada also needs to deal with problem communities and form partnerships with city and county officials on a broad spectrum. Nothing has been done to deal with high-risk, high-stake feeder systems.

SENATOR WASHINGTON:

Are you referring to inner-city communities with low employment?

DR. AUSTIN:

Yes, these communities have certain well-known characteristics. It is difficult to change those places because things are entrenched. In a study done in New Orleans, certain areas were targeted and one particular block in a low-income neighborhood stood out. A ten-story public housing building had disintegrated into a drug-infested, drug-dealing community in which all the residents were in prison or jail, and family members were under the care of the government. It was not just poverty because adjacent areas were not as bad.

SENATOR WASHINGTON:

The intent of the 1995 legislation was to strengthen the law regarding release and probation of offenders. Based on your information, we were successful because our parole rate is low.

DR. AUSTIN:

The success rate on parole is high, but the success rate on probation is lower. We need to observe who goes to prison and for how long. Tweaking the system could mean tens of millions of dollars reallocated and reinvested to other causes.

SENATOR WASHINGTON:

Growth in Nevada impacts the correctional system, transportation, education and health care.

DR. AUSTIN:

The rate of incarceration is growing faster than the population growth.

CHAIR AMODEI:

I invite you to work with Ms. Eissmann on problems that are legislative in nature to which the Committee can react within the 2007 Legislative Session.

DR. AUSTIN:

I share your urgency. I will return in two weeks to meet with the correctional contingency to accomplish practical things that are legislative in nature.

CHAIR AMODEI:

If it makes sense for that contingency to appear before this Committee for updates, we will welcome them.

Mr. Wilkinson, has anything been generated in the Assembly from the special committee or targeted in the general NRS chapters?

SENATOR HORSFORD:

Due to the constitutionally mandated spending cap and projected level of growth, at some point, we will not be able to spend more than the cap will allow. Please incorporate that information into your projections.

DR. AUSTIN:

I will do that.

CHAIR AMODEI:

The fiscal staff can help as well.

I request a motion to introduce Bill Draft Request (BDR) 13-903.

BILL DRAFT REQUEST 13-903: Revising certain provisions of the Uniform Principal and Income Act (1997) governing disbursements made from principal and income. (Later introduced as [Senate Bill 148](#).)

SENATOR WIENER MOVED TO INTRODUCE BDR 13-903.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CARE AND NOLAN WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

The hearing is opened on the Work Session ([Exhibit G](#)). The first item to be addressed is S.B. 10.

SENATE BILL 10: Prohibits certain acts relating to capturing or distributing an image of the private area of another person under certain circumstances. (BDR 15-5)

LINDA J. EISSMANN (Committee Policy Analyst):

The Nevada Press Association initially mentioned the possibility of exempting legitimate news sources from the provisions of the bill; however, they are no longer pursuing it.

SENATOR CARE:

I have reservations regarding section 1, subsection 2 of S.B. 10 because it is unclear whether it creates a duty.

CHAIR AMODEI:

Based on your concern and after studying the issue further, an amendment on the Senate Floor would be acceptable.

SENATOR MCGINNESS MOVED TO DO PASS S.B. 10.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

The hearing is opened on S.B. 57.

SENATE BILL 57: Requires the parent of a child who is the victim of a sexual offense to give written consent before the name of the child may be included in a notice provided to a school. (BDR 5-669)

SENATOR WIENER:

Dr. Craig Kadlub from the Clark County School District and representatives from juvenile justice in Clark and Washoe Counties met with me and agreed to follow the efficiency and effectiveness of S.B. 57. If I serve Nevada for an additional four years, I will step forward with legislation if S.B. 57 does not serve the intended purpose.

SENATOR WIENER MOVED TO DO PASS S.B. 57.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

The hearing is opened on S.B. 89.

SENATE BILL 89: Makes various changes concerning legal representation of state agencies, officers and employees. (BDR 3-1)

CHAIR AMODEI:

Senate Bill 89 began as a bill draft requested by the Committee in the 2005 Legislative Session regarding concerns about private counsel. There were hearings on issues involving the Colorado River Commission of Nevada and the State Board of Pharmacy with pending litigation in both circumstances. The concern was how and when a decision was made to tender a defense and the expenses involved. Testimony from different agencies made it clear no framework existed which would indicate how it was evaluated or how decisions were made.

RANDAL MUNN (First Assistant Attorney General, Office of the Attorney General): Catherine Cortez Masto, Attorney General, supports S.B. 89. The bill is formalization of a circumstance that should have been done all along. Due to a lack of specific requirements, the suggested practices are done informally but undocumented. Documenting them will not be a burden on the Office of the Attorney General.

We propose an amendment ([Exhibit H](#)) that changes the language in order to avoid unintended consequences. Section 1, subsection 3 of S.B. 89 is based on the interesting use of definitions in chapter 41 of NRS, and the language refers to a particular person. There might be a circumstance where the agency is sued and a person is not. If the Attorney General hires outside counsel in that circumstance, the literal language would make the report and records vulnerable to being brought into a trial. The definitions do not include a state judge, and we defend state judges in both district and supreme courts if they are sued.

We ask the Committee to express its intent as to whether S.B. 89 would be an exception to public records law. When a report is produced, the question will be asked whether the press may obtain it. I read this in the nature of a form of privilege that cannot be admitted at trial. The Office of the Attorney General would be comfortable if the record would be excluded from the public records law.

CHAIR AMODEI:

I would like to re-calendar S.B. 89 to a later date.

SENATOR CARE:

Why should the summary and report not be public record?

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SENATOR WASHINGTON:

Does the Attorney General's opinion trump all other agency opinions?

CHAIR AMODEI:

There were issues whether it applies to private counsel in terms of litigation.

There being no further business to come before the Committee, the hearing is adjourned at 11 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____