

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

**Seventy-Fifth Session
April 28, 2009**

The Committee on Corrections, Parole, and Probation was called to order by Chairman William C. Horne at 8:05 a.m. on Tuesday, April 28, 2009, 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/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman Bernie Anderson
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Nicolas C. Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Julie Kellen, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

David Smith, Executive Secretary, State Board of Pardons
Commissioners, Department of Public Safety
Mark Woods, Deputy Chief, Northern Command, Division of Parole and
Probation, Department of Public Safety
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance
of Nevada, Carson City, Nevada
David Mincavage, Assistant City Attorney, Criminal Division, City
Attorney's Office, Henderson, Nevada
Mark Jacobs, Senior City Marshal, Criminal Division, City Attorney's
Office, Henderson, Nevada
Doug Swalm, Chief Probation Officer, Department of Alternative
Sentencing, Douglas County, Nevada
Rory Planeta, Chief, Carson City Department of Alternative Sentencing,
Carson City, Nevada
Justin Roper, Marshal Commander, Reno Marshal Unit, Reno Municipal
Court, Reno, Nevada
Matthew Fisk, Court Administrator, Reno Municipal Court, Reno, Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'
Association, Mesquite, Nevada
Rebecca Gasca, Public Advocate, American Civil Liberties Union of
Nevada, Reno, Nevada
Jason Frierson, Chief Deputy Public Defender, Clark County Public
Defender's Office, Las Vegas, Nevada
Sam Bateman, representing Nevada District Attorneys Association,
Las Vegas, Nevada

Chairman Horne:

[Roll called.] We will open the hearing on Senate Bill 238 (1st Reprint).

Senate Bill 238 (1st Reprint): Revises certain provisions relating to the restoration of civil rights for certain criminal offenders. (BDR 16-895)

Senator David R. Parks, Clark County Senatorial District No. 7:

I am here to present Senate Bill 238 (1st Reprint). This bill authorizes the State Board of Prison Commissioners to adopt a policy to provide for an expedited process for restoring the civil rights of certain persons under certain circumstances. This bill is a product of the Advisory Commission on the Administration of Justice. That committee was established by the last session of the Legislature, and the Commission was not permitted to have bill draft requests (BDR), so a number of legislators offered up personal bill drafts, and S.B. 238 (R1) is one of those that I have provided for the cause.

Existing law authorizes certain criminal offenders to apply to the State Board of Prison Commissioners to have their civil rights restored. It further provides for the Board to consider such applications at a meeting after providing notice to the district attorney (DA), the district judge of the county where the person was convicted, and if requested, to each victim of crime committed by the person whose application is being considered. This bill authorizes the Board to adopt a policy to provide for an expedited process for restoring the civil rights of certain persons as determined.

David Smith can provide a detailed explanation of the process of granting pardons.

Chairman Horne:

Most of the civil rights that are being restored are under current statute and restored automatically upon completion of parole and honorable discharge. What are we expediting? I do not see that this bill is granting restoration before that completion.

Senator Parks:

The process is fairly lengthy. What this bill does is look at those particular cases that are, for lack of a better term, no-brainers, and to move them through more quickly toward the restoration of their rights.

Chairman Horne:

Is there anyone in particular that you would like me to call up first from your team?

Senator Parks:

I believe David Smith from the Pardons Commission is here, and he would be a good start. There are other individuals here from Parole and Probation.

**David Smith, Executive Secretary, State Board of Pardons Commissioners,
Department of Public Safety:**

The Pardons Board usually meets two to three times a year to consider both inmate and community case applications. Community case applications are what we are referring to in this bill. These people have discharged their sentences either off of probation, parole, or prison and have served a period of time in the community without anymore criminal conduct. They are applying for the restoration of their civil rights, or a pardon.

How the process works now is once we have established a meeting, we will take the group of suitable applications and provide them to Parole and Probation, who then completes background checks. We then provide the packet of background checks to the DAs and to the Pardons Board members. They review those cases and decide which cases merit receiving pardons. The process can take up to a year from the time a person applies to the actual meeting. The person meets in front of the Pardons Board—sometimes having to fly in from out of town—and if there is no objection from the DA or judge, the Pardons Board grants him, by way of a consent, a pardon. The Board takes the applicants as a group.

As these applications come in, the background checks would be done, and we would notify the judge and the DA. If there is no objection, by way of a file review, it would go to the members of the Pardons Board, and if a majority—including the Governor—votes to restore their civil rights, they can issue the order. This way, the applicant would not have to fly in to come to a meeting. It could be done in a quicker manner and without all of the work that is involved in conducting a meeting.

Chairman Horne:

If a qualified or suitable applicant has expired his parole and received an honorable discharge, and he has no other offenses or pending offenses, he must come before the Board and apply to get his right to vote, et cetera, returned to him?

David Smith:

Some civil rights, as you mentioned, are automatically restored. It depends on the offender's circumstances, what type of crime he was convicted of and if he has any prior criminal history, whether his rights are automatically restored. Some of the cases that we typically see that have no objection are possession of a controlled substance or driving under the influence (DUI). For reference, even if a DUI has been pardoned, it does not erase the fact that a person was given a DUI. If a person is given another DUI in the future, the first conviction can still be considered. The pardon forgives, but it does not forget.

Chairman Horne:

Which civil rights are typically automatically restored?

David Smith:

I do not know all of them. Usually it is the right to vote, the right to serve on a jury, et cetera. The only right that cannot be restored without Pardons Board action is the right to bear arms. Even sealing of a record does not restore that right.

Chairman Horne:

Looking at *Nevada Revised Statutes* (NRS) 213.157, "A person...is immediately restored to the following civil rights: the right to vote; and the right to serve as a juror in a civil action. Four years after the date of his release from prison, is restored to the right to hold office. Six years from the date of his release from prison, is restored to the right to serve as a juror in a criminal action." The right to vote and to serve in a civil action seems to be automatic. There seems to be some time limitations to hold office and to serve on a criminal trial. The only thing that seems to be missing is the right to bear arms. How often do you get requests for the restoration of the right to bear arms?

David Smith:

Most of the community cases that apply do request the full restoration of their civil rights. One example I can think of is a DUI that took place in the early 1990s. He was a retired military person who could not serve on a military honor guard without the reinstatement of his right to bear arms. That is a typical example.

There are cases where people may be convicted of violent crimes, for example, domestic batteries, or a misdemeanor. They may request the restoration of their right to bear arms. Any case that involves violence, or if violence is in a person's background, the Pardons Board looks at closely, and typically denies them. I do not envision any of those going through this process. They would go through a meeting. One of the provisions in this is that it allows the DA to review the case before it is considered. If there is any objection, it would not be handled in this manner, and it would go to a meeting.

Chairman Horne:

That is what concerns me. It seems like most rights are pretty much automatic, and the only reason there would be a need for an expedited process would be those who are seeking to have their Second Amendment rights restored. It should be a rare occasion that a convicted felon, especially one with any violence in his background, has the opportunity to own a firearm again.

Assemblyman Carpenter:

How many people do you usually see at Pardons Board hearings?

David Smith:

That is another provision of the bill that is silent in this. For example, over the course of two meetings in a year, 40 community case applicants are considered and 75 percent of them are done as a consent. It takes up time that could be spent on other types of cases, including the more serious cases. Usually 12 to 15 inmate cases are considered at a Pardons Board meeting. I have seen up to 30 community case applications heard at a Pardons Board meeting. When those meetings are scheduled, we schedule for the whole day because we do not know how much time each case is going to take. Some days we finish early, and some days we do not.

If the minor cases that are likely to be granted at a Pardons Board meeting are disposed of throughout the year as they come in, it leaves more time to consider other applications that are being set aside due to time constrictions.

Assemblyman Carpenter:

So 30 to 40 cases are considered every year?

David Smith:

Yes. I can provide statistics back to Governor Miller's period, if you would like.

Assemblyman Carpenter:

How do you notify the victims? When would they be notified?

David Smith:

Victims are notified in two ways. Under this process, the Parole Board supports the Pardons Board, so we have requests for notifications by way of Parole. Parole and Probation has requests for notifications by way of probations. District attorneys have requests for notifications by way of their victim services centers. If neither we nor Parole and Probation have a victim notification on file, we, typically, will then contact the District Attorney's Office to see if they do. Because most of these cases are drug cases, there is not a victim on file. Victims would be notified in writing.

Mark Woods, Deputy Chief, Northern Command, Division of Parole and Probation, Department of Public Safety:

We support this bill. The Division's role is that we are the ones who do the investigations. The investigation itself takes about 60 days from the time we receive it to completion. The only concern we had with this bill has already been dealt with by talking to Senator Parks. We have the staffing now to do it

without a fiscal impact if the numbers continue as they are now and do not increase substantially. This bill will help us. Instead of getting all of the investigations in one shot, we would get them on a regular flow throughout the entire year, which allows us to better utilize our staff. We can do about 16 of these per month, but we could get 40 that are all due in 2 to 3 months, and that hurts us. This bill would help us the way it is written now.

In response to Assemblyman Carpenter's question, when we get the investigation, we look at the crime. If there is a victim involved, part of our investigation is to find that victim and get his ideas and feelings about a pardon for this individual. We actually include that in a pardons investigation.

Chairman Horne:

Can you outline the scope of the typical background investigation for this?

Mark Woods:

It is basically an expanded pre-sentence investigation. Instead of the crime itself, we concentrate more on what the individual has done since he has been off parole, probation, or released from prison. How was he within the community? What actions did he take? We look to see what kind of volunteer work or any community-oriented work he did in that period. We also look at his job stability and the stability of his home life. We look at the criminal record. What we find most often is not new criminal activity, but failures to pay fines from previous crimes.

That is the other thing this bill will help. Many people will forget that they owe \$300 in attorney's fees. We will not recommend that he be granted a pardon if he has any outstanding fines or fees. Basically, we see how he has earned his right to a pardon. What has this person done to show the community that he has changed? That is what we look at.

Assemblyman Ohrenschall:

If this bill becomes law, do you think it will free up staff and time so that the Pardons Board can meet more often on inmate cases and not on community cases?

Mark Woods:

I can only say that this would create a constant flow to the investigations versus twice a year. We would be able to take the "no-brainers" off the docket, which will give the Pardons Board more time to spend on the bigger cases.

Our investigations are very thorough, and we do not anticipate changing that. They will get the information they need. I believe it will allow the flow of it versus two meetings a year.

Assemblyman Anderson:

You stated that you talk to the victims, and they may indicate that there is a problem; for example, restitution has not been completed or the like. That is indicated to the Pardons Board in a separate document. There is no objection from the court or DA, and the Board has received a written request for notice. Those are the only three requirements in the bill. Where does your report come into play here if we are not weighing it? How do I know that it is going to be considered and that the victim has been questioned?

Mark Woods:

I think I am the wrong person to ask that question. Our understanding is we would continue to do the investigation, and all of that information would be in that document itself and not in a separate document.

Assemblyman Anderson:

You would file that with the Pardons Board?

Mark Woods:

We work with Mr. Smith's department and we send everything to them immediately.

David Smith:

Assemblyman Anderson, to answer your question regarding restitution owed to a victim, when we discover that restitution is still owed—this is typically found during the investigative process—we stop. It does not go forward until they pay that restitution in full. That has been a policy of the Pardons Board for a number of years.

Assemblyman Anderson:

It is not stated here in this new policy. That may be the practice currently, but there is a certain value in making it part of the process to make sure that it is going to be weighted by you in your report.

David Smith:

Part of this is the actual Pardons Board meeting. The Board consists of the Supreme Court, the Attorney General, and the Governor. They would have to meet to create the policy by which they would consider these types of cases. I

would not envision them expediting any process that has a victim that is owed restitution.

Assemblyman Carpenter:

Does that policy go through the Legislative Commission?

David Smith:

Any Pardons Board regulations would go to the Legislative Commission for review.

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada, Carson City, Nevada:

My organization supports this bill. We have been involved in registering ex-offenders to vote for quite a few years. We support any efforts that we can to make this process more simplified. Many states, and we are in the bottom third, restore voting rights for all ex-felons. We support that change and decided not to come forward this session to amend the bill. It is a very good bill. I want to say that we feel that ex-offenders, once they are released from prison, parole, probation, or pardons, should be given their voting rights back. It seems like a simple thing. Once you have paid your debt to society, we feel it should be automatic.

Chairman Horne:

I will close the hearing on S.B. 238 (R1).

I will open the hearing on Senate Bill 84 (1st Reprint).

[Senate Bill 84 \(1st Reprint\)](#): Authorizes cities to create departments of alternative sentencing. (BDR 16-257)

David Mincavage, Assistant City Attorney, Criminal Division, City Attorney's Office, Henderson, Nevada:

[Spoke from prepared written testimony ([Exhibit C](#)).]

I would like to review the bill itself. In February, the bill passed unanimously in the Senate Judiciary Committee and went through the floor of the Senate. In the Senate Judiciary Committee hearing, we amended language because the draft language, at the time, required counties to use city programs. This is "enabling legislation," and we want the courts, who know their own situation, to determine who they contract with to run alternative sentencing.

I have provided you with an amendment from the draft language that came over from the Senate ([Exhibit D](#)). This amendment simplifies the point that the

courts know their own situation. They should be able to contract with a qualified program if they do not currently have alternative sentencing. You will see "a qualified person" in the amendment, and we took that language from *Nevada Revised Statutes* (NRS) Chapters 4 and 5, which specifically allow us to run the program that we do.

Let us turn to section 7 of the amendment that I have proposed to you. The draft language came back and almost misinterpreted what our bill's intent was. You will see the purple portion that is struck out. This added language allowed the city alternative sentencing chief to control what the county courts do. That is not what we intended with this bill. We intend for the courts to choose what program they want if they have no alternative sentencing.

I apologize for the amendment because we have a green portion that actually exists in section 3 of the purple struck-out portion. What our legislative team wanted to do was emphasize our intent. We want the courts to be able to choose what program they run. Similar language is used in section 8, and that draft language tried to tie the city courts to the county program if present. Once again, this is "enabling legislation," and we want the courts to choose what program they use if there is not one available in their city.

Assemblyman Segerblom:

The bill talks about contracting with an outside entity. Are there existing entities that do this kind of work?

David Mincavage:

It talks about "a qualified person." We took that language from NRS Chapters 4 and 5. Chapter 4 deals with justice courts, while Chapter 5 deals with municipal courts. Those chapters say that, if there is no alternative sentencing for the county, a justice court can contract with a qualified person. Municipal court language in Chapter 5 says the same thing regarding alternative sentencing and contracting with a qualified person. We borrowed that language to put it into NRS 211A.

Assemblyman Segerblom:

Who would be a qualified person? Are there companies that do this?

David Mincavage:

I am not aware of that down south. Our municipal court contracted with our investigators. The Henderson Municipal Court does not have alternative sentencing, and they contracted with our department, including our investigators and marshals, to run the program. They qualify under NRS 211A.

Assemblyman Anderson:

When we began alternative sentencing, we were predominately concerned about driving under the influence (DUI) offenses. The DUI statute that we were dealing with was to accommodate Judge Lehman, and this was before the establishment of alternative sentencing in 1995. We wanted to give municipal and district court judges an opportunity to use means other than traffic school.

Originally, we were concerned about making sure there was a volume large enough to ensure the cost of programs were available and would hopefully be available through a centralized county system. I am trying to figure out how this helps the city without harming the county programs. Is this a recognition of what is currently going on? Are we trying to create a business for some outside firm that wants to handle this?

David Mincavage:

In the city of Henderson we run a nationally recognized program for how we prosecute domestic violence. We keep in contact with the victims and have them come to court to testify. The feeling was that after the victim testified, you would watch her walk away from the courthouse, and the defendant goes to jail for maybe 10 days. It did not feel like we were helping the victim; we kept in contact with them and brought them to the trial, and that was the end of it. We really like the idea of supervising and staying in contact with these people for another year or so. When the offender gets out of jail and comes home to the woman who just testified against him, we will still be in contact with the victim.

We would also like to monitor our offenders. Clark County does not have an alternative sentencing department. We have been using NRS Chapter 5 to attempt to have an alternative sentencing department, but our hands are tied. We must go to the judge to get a warrant rather than enforce it like an NRS 211A alternative sentencing program could.

As far as contracting, NRS Chapters 4 and 5 allow us to contract with other alternative sentencing agencies. Up north, there are many alternative sentencing agencies. Cities in the south, like Mesquite, may not have the volume to have an alternative sentencing program, could contract with Las Vegas or Henderson to monitor their people. That is the thought we had.

Assemblyman Anderson:

I am not sure you answered my question.

David Mincavage:

I am sorry; maybe you could rephrase the question.

Assemblyman Anderson:

Maybe I did not articulate it clearly enough. Clark County has no alternative sentencing program?

David Mincavage:

No, not in Clark County.

Chairman Horne:

Mr. Mincavage, outline for us exactly how Clark County conducts an alternative sentencing type structure. You do not know?

David Mincavage:

I do not know. I deal with Henderson Municipal Court.

Chairman Horne:

Henderson is in Clark County correct?

David Mincavage:

Yes.

Chairman Horne:

You have no familiarity with how those offenders who come out of, for example, the justice court are put on residential confinement or the like?

David Mincavage:

No, we deal with our court programs.

Chairman Horne:

Let us talk about your court program.

David Mincavage:

Our court program monitors all of the conditions a defendant is given. Say a defendant is given DUI school, anger control counseling, or traffic school. They go through our court programs, and then the court would monitor who is completing what programs and how long it takes them.

Chairman Horne:

Would you define Henderson's program as an alternative sentencing program?

David Mincavage:
Not under NRS 211A.

Chairman Horne:
You said under NRS Chapter 5?

David Mincavage:
Yes.

Chairman Horne:
What is the difference between NRS Chapters 5 and 211A?

David Mincavage:
Nevada Revised Statutes (NRS) Chapter 5, for municipal courts, says that you can suspend sentences and monitor how an offender completes his sentence. However, if there is a violation, you must submit a warrant to the judge in municipal court to apprehend the offender for the violation. In NRS 211A, there is a chief of an alternative sentencing department who monitors the conditions placed on a defendant and can make an immediate arrest if he believes there was a violation of those conditions.

Chairman Horne:
It is your hope with this legislation to expand the scope of authority for Henderson Municipal Courts?

David Mincavage:
If they choose to. This is enabling legislation, and the City Council would still have to vote and decide they want an NRS 211A alternative sentencing department.

Chairman Horne:
I understand if they choose to, but if the city attorneys come and say we got this through the Legislature and we need this, will they comply?

David Mincavage:
We are hoping.

Chairman Horne:
Have you worked with any other jurisdictions on their alternative sentencing programs?

David Mincavage:

I know Reno has the same idea as we if this bill passes. They would like to have NRS 211A alternative sentencing. They are present and will testify.

Chairman Horne:

If this bill passed, and you chose not to create an NRS 211A alternative sentencing program, you could contract out to a qualified person.

David Mincavage:

Nevada Revised Statutes (NRS) Chapter 5 could do that.

Chairman Horne:

You have not done that yet?

David Mincavage:

We have contracted out to our investigations unit to run a similar alternative sentencing program, using NRS Chapter 5 rather than NRS 211A.

Mark Jacobs, Senior City Marshal, Criminal Division, City Attorney's Office, Henderson, Nevada:

[Spoke from prepared written testimony ([Exhibit E](#)).]

Chairman Horne:

These are the same arguments that were made in a similar bill earlier in the session: Assembly Bill 367. In particular, portions of the bill state we want to have probable cause arrests for pre-sentence persons. In A.B. 367, it was expanded to gross misdemeanors and felonies, but it also applied to conditions for pretrial and pre-sentence release.

It seems you want, as an example, to have a person who has been arrested on a battery domestic violence first offense to have a pre-trial stay-away order as part of that order. Today, if that person were to violate that stay-away order, you would have to get a warrant unless the officer actually sees the violation. Typically, this is done because the alleged victim has said that her husband or boyfriend came by her home uninvited. Once that warrant is issued, you can find him and put him in jail for that violation. How long does it take to get a judge to grant such a warrant?

Mark Jacobs:

It has been my experience that obtaining a warrant from a judge is specific to the situation. It could take a couple of hours or it could take several days. If we are able to contact the judge and walk it through, we can get it within a few

hours. However, we still have to prepare it, and that could take up to two hours with travel time and other preparations.

If I might address another part of your statement about the presentence supervision, our bill is specific to, and only includes, after sentencing. That is what we are concerned about enforcing: the conditions that are placed on an individual who has been convicted or pled to the charge and has specific conditions as ordered by the court. Those are the conditions that we need to supervise.

We do have another avenue to enforce bail conditions that is specific to our city. As for the bill that you mentioned, our request is that it is after the sentencing that the supervision and the ability to arrest the offender starts.

Assemblyman Anderson:

We hear criticisms about the follow-up process of the sentence, but you are trying to ensure that the sentence from the court is followed. The judge is sitting in his courtroom, and you are enforcing his orders. One of the major issues is the restoration of fines and fees. Are you going to take up that part as well? That is one of my concerns. The person who has been adjudicated by the court has several responsibilities besides staying away from the victim, including paying fines and restitution and attending programs. I am concerned about that issue, whether there is a business that is waiting to pick this up. It sounds like the city is currently doing it but you are looking to privatize it.

Mark Jacobs:

Our intent is to have the ability to develop a department of alternative sentencing for our city so that we will be able to run a probation department per se. That is our long-term goal. Currently, the court contracts with the investigations unit of the City Attorney's Office. Our intent with this bill was to allow jurisdictions that do not have the ability to contract with other departments of alternative sentencing so the offenders will be supervised. Currently, NRS Chapters 4 and 5 allow for a qualified person. If you look up a "qualified person," it specifically states the qualifications of a chief of alternative sentencing in NRS 211A. This is what I hope we can do, while following guidelines. It is our city's intent to develop our own alternative sentencing program, or be able to contract with another agency that does so.

The concern we have between NRS Chapters 5 and 211A is the necessity for expediency and the assurance that we are able to react to any situation. I was a probation officer for ten years with the Nevada Division of Parole and Probation, so I know from experience that it is important to act quickly when situations arise. We do not have that ability right now, and that is what

concerns us. We need the ability to take people away who have been convicted because the safety of our victims is foremost.

Regarding the contracting with other alternative sentencing agencies, I believe Washoe and Douglas Counties are here in support of this bill. They can probably address what happens because they have been dealing with this since 1995. Your specific question can probably be better answered by them.

Assemblyman Anderson:

The City of Henderson has been running this program since 2007?

Mark Jacobs:

Yes, sir.

Assemblyman Anderson:

Over that period of time, how many people have you supervised?

Mark Jacobs:

We have a small pilot program and since 2007, we have probably reviewed over 100 cases and have recommended to the courts that about 90 cases be supervised under our program. The courts have probably sentenced 45 of those individuals to direct supervision. Out of that, our violation rate is probably around 35 to 40 percent. These are not necessarily violations where we had to arrest the person. We have specific situations with victims, as I read in my testimony, and there are more than a handful of these individuals who we have actually supervised.

Assemblyman Anderson:

You have 90 people who the court has recommended you examine, and 45 have actually ended up within your program?

Mark Jacobs:

In the City Attorney's Office, we have a committee that reviews cases. Out of all those cases, we have identified over 100 cases to be reviewed. We recommended about 90 cases to the court that those individuals be placed under direct supervision. Of those cases, we have been given about 45 cases of actual sentencing to the alternative sentencing program, and we have found about 35 to 40 percent of those individuals in violation of the court conditions, which went undetected or were addressed later on in time. We want to be able to expand on that and be able to supervise all of the individuals, including those individuals who have a condition of no contact, and not just the worst offenders. That is an important condition when talking about domestic violence. A no contact order cannot be enforced right now. There is no way to

enforce that other than bringing the person back in for a "show cause" type of hearing. If we are able to supervise these people and get them in custody when it occurs, the likelihood of the victim staying safe is much better.

Chairman Horne:

You say it is going to give you more supervisory power if you eliminate the warrant requirement that you currently have. I do not understand how that gives you more supervisory power because you still supervise people. What this allows you to do is skip a step. For example, if a woman claims that her ex-husband just came by her house, under this piece of legislation, you would find that to be enough probable cause to find him and make an arrest. Under the scheme we currently have, you would not be permitted to do that. You would have to get a warrant and tell the judge what the victim said—along with the offender's conditions—and the judge would have to say yes to the warrant, correct?

Mark Jacobs:

Yes, that is correct.

Chairman Horne:

Your level of supervision of these offenders has not changed; how you react to perceived violations has changed.

Mark Jacobs:

That is correct. Taking a statement from an offender who says that this occurred would be situational. Just as Parole and Probation and the Department of Alternative Sentencing must do every day, you have to take everything into account and look at the big picture to determine if an arrest should be made. It is hard to put everything into a cookie cutter situation. We now take the situation as a whole and, if this individual is in direct violation of his conditions, he needs to be in custody.

Chairman Horne:

Because everything is not a cookie cutter situation, it may be necessary to have a neutral magistrate look at a person who may need to be taken off the street. I understand the line you are attempting to walk.

Assemblyman Anderson:

In a smaller community, it is easier for the limited law enforcement officers to understand that these are the most dangerous calls they go on because they never know what is going to happen. But, being in a larger community does not lessen the responsibility for the patrol officer who is going to be responding.

Am I to understand that the whole purpose of this bill is to identify people who specifically were arrested for domestic violence, or is it also for other people who would fit into an alternative sentencing program, particularly those involving drugs or alcohol? There are only a handful of people who will fit there. You are part of the regular force, but are you going to specialize? Is that the dichotomy of doing this, so that the regular law enforcement officer does not have to consider this to be his number one priority?

Mark Jacobs:

New crimes being committed would still be handled by the street officers. We would enforce the violations that cannot be handled by an officer. Officers will always respond to calls, just as Parole and Probation will always have new arrests each day, but they are not a part of that particular enforcement situation. What is important for us is that we can say this individual was in violation of a condition and that individual needs to stay in custody until a judge determines what to do with him. That is what our main goal would be: the aftermath.

Assemblyman Anderson:

Currently, a regular police officer would do that?

Mark Jacobs:

No, not under these conditions. Currently, unless they are under our direct supervision, the sentencing conditions are not enforced by police officers. They would have to apply for a warrant just as we would on any kind of condition that would be ordered on an individual, specifically a no-contact order.

Assemblyman Anderson:

This particular program is endorsed by the municipal judges?

Mark Jacobs:

Yes, it is.

Assemblyman Anderson:

The domestic violence program advocates feel that this is a positive program for them?

Mark Jacobs:

Yes, and in fact, they have been aware of our current agreement with the courts for some time, and they were in support of it in 2007 when we started.

Chairman Horne:

Mr. Mincavage, your offenders would enter into these programs and would be required to pay fees for this supervision that they are currently not paying?

David Mincavage:

Yes. If they are currently on our direct supervision program, they are paying a fee. If you look at NRS 211A, there is a specific way that the chief can determine if they cannot afford the fee, how much to waive, or what is appropriate. We do not have that in NRS Chapter 5.

Chairman Horne:

You have some type of program now?

David Mincavage:

Correct.

Chairman Horne:

You charge these people under supervision a fee?

David Mincavage:

Correct.

Chairman Horne:

How much of a fee do you charge?

David Mincavage:

We charge \$40 a month.

Chairman Horne:

You charge \$40 a month for this. If this bill passes, what happens then?

David Mincavage:

We would probably follow that same schedule.

Chairman Horne:

It would still be \$40 a month?

David Mincavage:

Correct. I think that is set in statute.

Chairman Horne:

Do you anticipate more inmates coming under supervision should this piece of legislation pass?

David Mincavage:

We hope so, but we must have the city council approve it first.

**Doug Swalm, Chief Probation Officer, Department of Alternative Sentencing,
Douglas County, Nevada:**

Prior to 1995, there were no court services except for the juvenile court services. A person did not receive, or was not eligible for court services, until he was convicted of a gross misdemeanor or a felony in district court. In 1995, the Legislature filled that void for the justice courts by bringing in the Department of Alternative Sentencing. I do not know why the municipal courts were not brought into it in 1995. There is consistency in the judicial system now.

Essentially, the Department of Alternative Sentencing is nothing more than a probation department to supervise convicted misdemeanor defendants. The convictions of the defendants who we supervise are domestic battery, battery, DUI first, DUI second, pending DUI thirds, DUI notice of election, traffic violations, theft, civil matters, resisting arrest, destruction of property, trespassing, contempt of court, stalking, drug offenders, child molesters, minor consuming alcohol, contributing to minors, disorderly conducts, weapons violations, bad check violations, obstructing police officers, statutory sexual seduction, assault, and violation of court orders. Those are the people, or members of the community, who we supervise.

We charge a \$40 monthly supervision fee in Douglas County. We charge an additional \$60 laboratory fee for any and all drug testing while the defendant is on probation with the Department.

They cannot put together an alternative sentencing department in Lyon County. There is a gentleman named David Ezell who created a business named Alternative Sentencing. Because Lyon County does not have a department of alternative sentencing, they contract with Mr. Ezell to provide services such as residential confinement. Within the realm of the Department of Alternative Sentencing established through NRS 211A, we receive grant funding and write grants. My budget per year is just over \$400,000, but because of grant reimbursements, charging defendants the supervision fee of \$40 a month, the \$60 laboratory fee, and residential confinement fee, I anticipate bringing in \$350,000 this year into the general fund of our community. Therefore, it is not a self-sufficient program, but the taxpayers are not out a lot of money. The offenders are paying for their own supervision, which lessens the burden to the taxpayers.

I produced an annual report for the Senate when I spoke to them on S.B. 84, the current bill that is in front of you. If you take a look at the statistics of the individuals who we supervise, we know that the recidivism rate is less than the 10 percent national average. It might go as high as 5 percent this year.

Having a misdemeanor probation department, we supervise drug offenders. There is not a drug offender out there who should not have been addressed as a felon, but it has been de-escalated, or backed down, to a misdemeanor status, which relieves the burden of the district courts by a huge percentage. We are benefitting the community. If I am supervising a defendant who is on probation, Chief Planeta of the Carson City Department of Alternative Sentencing can assign a deputy to do a probation check if I need assistance with that individual. Oftentimes, I have gotten on an airplane and gone down to Las Vegas because an individual has come up to Douglas County, has offended, and has been put on probation through the alternative sentencing here. By doing that and networking, I would be able to use those people with the alternative sentencing powers in Clark County and Henderson to assist me in enforcing the court's orders. I just recently received a high profile case out of Fallon, Nevada, where the judge wanted the supervision. This case had a lot of contributing to minors. The judge found that it warranted a type of supervision that a department of alternative sentencing provides. They have contracted with us to do that supervision.

Assemblyman Anderson:

Assemblyman Carpenter and I were here in 1995 when we created the alternative sentencing program and the drug courts. At that time, the only drug program was in Clark County. One of the issues that we dealt with over the years has been the limited amount of money available for programs that are necessary to support those alternative sentencing guidelines that the courts want to have. Is this going to be an opportunity for the municipal courts to make application for the limited resources available through the funding programs for alternative sentencing programs? Is that what this is about, trying to get some of that pool of money?

Doug Swalm:

I do not believe there is a pool of money. Each individual justice court or municipal court must function on its own. When we adopted the Department of Alternative Sentencing in Douglas County, just like in Carson City, it was presented to the Board of County Supervisors, and they had to elect to take on the program. There was no pool of money. We started with a grant that gave us seed money to begin the program. The program gained notoriety because it was successful. When we need money, we have to apply for certain grants.

When the program started 12 years ago, we started with a limited budget that just paid the bills for the residential treatment providers, the equipment, and the drug testing. The grant initially paid for my position, and then the County adopted it fully, as we are supposed to do with grants. We are supposed to sustain it. We then applied for another grant and received another position. We are currently working through a domestic violence grant that we received that pays for a full-time district attorney (DA) investigator, and another officer under me to strictly monitor domestic violence offenses. There is no pool of money.

Assemblyman Anderson:

I think it would come as a surprise to the justice in Douglas County if he found out that there was no money coming from the state for the operation of his court. In recognizing this particular part of the program, is that going to endanger the existence of those funds and dollars that are already tightly earmarked among the drug programs and courts? Is this an opportunity for cities to make an application for that? You do not believe it is going to impact it in any way?

Doug Swalm:

I do not believe so. In the 2007 Session, when the Legislature passed the third-time DUI offender not going to prison, there were concerns as to who would supervise the individual while he was out on probation for three to five years. There was an issue with that, but that issue has since been resolved. In 2008, the district court judges approached Chief Planeta and me and asked us if we would monitor these third-time DUI offenders. We agreed to it, and we built a fantastic department out of this. I have 25 defendants now who are being supervised for third-time DUI offenses. Chief Planeta has roughly the same number. Up until this year, the specialty court funds were not available to the Department of Alternative Sentencing. The only reason we would even be able to seek those funds now would be for that third-time DUI offender. These specialty court funds are extremely safe.

Assemblyman Anderson:

Carson City fits into an unusual category in that we have combined municipal and justice courts and, therefore, have the benefit of utilizing both NRS Chapters where other municipals cannot. I understand the nuance of this argument, but I am a little concerned about what the long term ramifications are. This is an admirable program, but I want to make sure that we are not endangering other programs.

Doug Swalm:

I agree with you wholeheartedly. It is up to the counties to bring this in, and there is no sense of entitlement to lay claim to money that was specific for

other agencies. What we are trying to do here is to take that void that you filled in 1995 and open it up to the municipal courts. I believe that is all we are here to do today. We want to invite them in to do the same thing that the Assembly did in 1995.

Assemblyman Carpenter:

When you supervise these individuals, are they also going to drug court and other programs in an effort to rehabilitate them?

Doug Swalm:

Yes, with an explanation. Oftentimes, convicted felons on parole and probation are convicted of a misdemeanor offense that does not warrant the revocation to put them into prison. I share, or co-supervise, many cases with the Department of Parole and Probation. Recently, the district court judges and Chief Curtis have gotten together to use the Department of Alternative Sentencing for any type of pretrial or revocation information that would assist the district court in sentencing a felon. We are working well together with Parole and Probation. To answer your question, we may be supervising an individual on misdemeanor probation, and that same individual is also on felony probation.

Assemblyman Carpenter:

Maybe you did not understand my question. If someone has a drug problem, and they are going to drug court, do you have anything to do with those? I know that Parole and Probation helps when they are going to drug court. Do you do that in Douglas County also?

Doug Swalm:

Yes, we do. Now that we have the inception of the third-time DUI offender program, we are invited into the drug court. We actually have drug court at 10:00 a.m. and after drug court, Judge Breen or Judge Blake will remain on the bench and hear the third-time DUI offenders. Getting back to your question, I am now invited into the discussions prior to court, and if they have an offender who is sidestepping them, or they need a little bit more supervision, Judge Breen or Judge Blake will not hesitate to ask me if I can provide some assistance. We have a clear understanding that if they are in violation of drug court and not committing a new crime, I will not arrest that individual. However, I will report on that person's activity, and I will collect a urine sample, test him, and breathalyze him. I will then bring a report to the drug court.

Rory Planeta, Chief, Carson City Department of Alternative Sentencing, Carson City, Nevada:

We are unique in the fact that we have the municipal and justice courts both at the same place with the same judges. Our Department runs a little bit differently but along the same line as Chief Swalm's.

Alternative sentencing is just that. It is an alternative to prison or jail as misdemeanors are, but it also gives the DAs and the defense attorneys a chance to work out a plea bargain to where these people are supervised but not convicted of a felony that was brought down to the misdemeanor level. We can supervise them under the same court conditions that a felon would be placed under. We do that, and we have been very successful.

We do work along with Parole and Probation quite often. We monitor the same people for a misdemeanor crime from us and a felony from them, and we are in constant contact.

We are also in the DUI court arena, and we do the same program as Douglas County. We are in drug court first, and then DUI court as a follow-up to that. The people in DUI court are sentenced and then brought down to us for supervision for three to five years. Once that is done, their felony is removed, and they get a second DUI. We are very involved with those types of programs.

We also put people into rehabilitation, and we have many programs that we oversee. We put people into those programs and place them in as either inpatient or intensive outpatient. If a judge sentences someone to intensive outpatient programs, we make sure they are going all the time.

We also use progressive discipline. I know that was one of Chairman Horne's concerns. We may bring someone back into court, but he may only serve a day in jail and we reiterate the conditions to him and let him out to go back into the program. It sometimes takes two or three violations before they do their sentences.

We also monitor house arrests. Last year, we saved approximately 7,000 days of jail time for people by putting them on house arrest. That is offender-paid and is at no cost to the city or county. The offender pays for those programs. The program in Lyon County that Chief Swalm spoke about with David Ezell, he primarily does house arrests for those counties. They may want people out of jail but they want certain conditions on them, so they send them to David Ezell for house arrest.

I have been in contact with the Healthy Communities Coalitions for Lyon, Storey, and Churchill Counties. Lyon County is very interested in trying to start an alternative sentencing department. We are working with them and trying to help them through the grant process to get their program started. They see that as a way to reduce jail population as well. They are a growing county, their jails are bursting, and they want some relief from that with some conditions placed on these people so they are not just out in the community. We work with other communities as well.

My department currently has over 400 people on formal probation. Those people do pay fees. Our fees are \$50 a month, but the difference is that we do not charge the \$60 drug testing fee. We add it in over the cost of the entire time they are on probation. We do waive those fees for people who cannot afford it. In some cases, we make them do community service instead of fees for that month, so they give back to the community again. That is our purpose. We try to put these people back into the community and also give back to the community what was taken when they committed their offenses.

There was a question about restitution. My department is in charge of restitution on misdemeanor cases, so we do collect restitution and distribute it back to the victims. We collect fines and fees for the city and distribute those as well.

Acting Chair James Ohrenschall:

If this bill passes, will it change your operations at all, or is it primarily for other counties? Also, if it passes do you think it will allow more people to take part in alternative sentencing and not end up in jail?

Rory Planeta:

It will not change the way we do business, and it will not have a real effect on us. We do have people in Reno and Clark County who we are supervising, and we cannot do home visits to those who are far away. This would give us the opportunity to call Henderson or someone else down there to say "we have a probationer and could you check on them for me," and they would be able to do that. We do go up to Reno and take care of our probationers there. If it is a Washoe County resident, we can call Washoe County. This would be a networking situation very much like Chief Swalm talked about for Parole and Probation. It is the same kind of situation where we can ask other people to help us supervise a person. I got a call specifically from Judge Albright in Reno, and he asked me to watch one of his probationers up there. That type of networking would enhance all law enforcement and keep every community safer.

**Justin Roper, Marshal Commander, Reno Marshal Unit, Reno Municipal Court,
Reno, Nevada:**

I wanted to address some of my concerns, and why I am in favor of this bill. Currently, we do have a county department of alternative sentencing. However, that county entity is responsible for 15 courts in Washoe County, and not just the Reno Municipal Court. With their 15 courts, they have to divide their time among all of them. They cannot focus solely on my offenders coming out of the court or any other city within the county. We are limited by the amount of personnel they have available to us. As a non-mandated function of the county, we are also at their mercy if, during this tough economic time, they decided to cut that program. The city, while it has it available to them, has no control over it.

We currently have about 3,000 offenders we feel would be eligible for some form of direct supervision but, at this time, we are only referring 200 of those offenders to the county organization. That is because they only have 11 personnel available to monitor all of the county's courts. We are not addressing the issues for the other 2,800 defendants because there are not enough people to monitor them.

We believe this bill is an enabling bill, and that it allows the cities to take some control over the offenders they are putting into the system. It also allows us to hold these offenders accountable, which has been an issue with all of the courts throughout Nevada. We dedicate all this time and resources on the front end to catch people violating laws and put them in front of the court to be adjudicated. There is indirect supervision. We say "do this," and we send them out there and hope they do it. We want to hold these people accountable, and we want them to pay back the community in which they violated the crime, as well as possibly mentor them and help them so they do not commit crimes in the future. The Department of Alternative Sentencing's sole responsibility is not saying, "You did something wrong. Go back to jail." It is also to give these people life tools, skills, and the help they need to prevent them from committing a crime in the future.

We do not want to take business away from the county, and the county does not want to take business away from the city. We want to put as many people out there to help hold these people accountable and to give the courts teeth to hold those who violate a law accountable for that violation at the misdemeanor level. By doing so, we hope to reduce recidivism so we do not see future misdemeanor, gross misdemeanor, or felony crimes. That is what my intention and why I support this bill and have asked for the support of the Reno Municipal Court judges. The more people we can have out there on the back end like we have on the front end the better it is for all of us.

[Assemblyman Horne resumed chair.]

Matthew Fisk, Court Administrator, Reno Municipal Court, Reno, Nevada:

I am the Court Administrator for the Reno Municipal Court and I was the court administrator for the Carson City Justice/Municipal Court. Prior to that, I worked in the Department of Alternative Sentencing in Carson City. I was their chief for a time, and I was able to watch the program develop. I recall when a couple of the district court judges, a DA in Carson City, and Douglas County representatives came in front of the Legislature to establish the Department of Alternative Sentencing. I have watched it grow since then.

The only purpose we have in coming here today is to allow cities to also establish departments of alternative sentencing to work hand-in-hand with county agencies where they exist, and where they do not exist, to provide such a program. Our plan is to work alongside the Washoe County Department of Alternative Sentencing. They supervise approximately 400 to 450 people I believe. We have about 3,000 people who are eligible for this type of supervision, with 200 having been referred to Washoe County Alternative Sentencing.

We want to ensure that that program continues and these misdemeanor convicts receive the supervision they need so they do not become felony convicts later on at a much higher cost to the community.

As far as any concerns about Assembly Bill No. 29 of the 72nd Session or specialty court funding, that funding has always been available to all of the courts. I was involved in the process of putting together the application, and I am very familiar with it. I know that the priority of that funding is for treatment and related services. While a department of alternative sentencing could apply for that funding, it would be one of the lowest priorities on the list. Personnel are one of the last things funded through that. Had department of alternative sentencing wanted to apply for that funding in the past, they would have. Many of them have been benefiting from that funding all along, and I can speak on behalf of the Carson City Mental Health Court. Currently, the Reno Municipal Court has two drug courts for which it receives funding from A.B. No. 29 monies. I do not anticipate any change as far as that funding goes. That is not the focus of this request.

Another difference between having an NRS Chapters 4 or 5 type of supervision department, aside from the fact that we can perform home visits and carry out immediate arrests when necessary, is the fact that there is a supervision fee that NRS 211A allows us to charge probationers to offset the costs of processing those cases.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada:

I would like to go on the record to make sure the people know that this is a very effective community program, and we work hand-in-hand in those communities that have alternative sentencing programs. It is an extension and an integral part of our law enforcement efforts in the community. We would like to see this ability extended to the municipal courts to provide alternative sentencing. Once we get those people into custody, it is important that they understand that if they are convicted and punished, that punishment is going to be carried out. In the domestic violence area, they have been very helpful keeping the level of domestic violence down.

Chairman Horne:

Chuck Calloway from the Las Vegas Metropolitan Police Department is in favor of this bill but does not wish to speak.

Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada, Reno, Nevada:

The American Civil Liberties Union (ACLU) supported this bill on the Senate side. We are in support of alternative sentencing, particularly for those individuals who are nonviolent offenders whose risk of recidivism is greatly reduced by programs provided by alternative sentencing in courts. We are signed in neutral on this bill because after the original hearing in the Senate, there was an amendment added into the bill, which you will find at the bottom of page 3, line 43, continuing to the next page. That would allow for the privatization of the alternative sentencing courts.

While we understand that NRS Chapters 4 and 5 allow for that in other avenues in the criminal justice system, we think this is a mistake that we would prefer not be made again. Essentially, when the government adds a privatization clause—particularly in a duty that the government carries out, and in this case sentencing—it is important that clear and concise laws be put in place in order to hold those private institutions or individuals accountable. In this case, there are no accompanying laws that would seek to mandate that with regular reporting, fiscal reporting, or constitutional assurance that this individual is carrying out his job in an effective and constitutional manner.

One of the gentlemen who testified earlier mentioned that in one case there is a deputy who has been selected to carry out that private function. In that case, the person is a public employee and is intimately aware of the system and how it operates. That is okay, but if a county or city were contracting with a private company without any sort of accompanying laws that would hold those individuals or company accountable, we think that is a wrong path for the

criminal justice system to take. This bill, with that particular amendment, would allow that to happen.

Furthermore, by allowing a private individual or a private company to contract those services, it takes out the accountability of not only that person but also those individuals who are hired by that individual or that company. As you heard from earlier testimony, going and visiting offenders' homes is one of the most dangerous jobs out there for police officers and law enforcement officers. They go through extensive training in order to prepare themselves for that, and nothing in the law would mandate that an individual or a private company have their employees go through that same training. There are standards that are lacking.

We support this bill in its intent to extend alternative avenues to offenders, but we do not think privatizing this job is a good way to effectively carry that function out in the courts or sentencing in general.

Chairman Horne:

You went from support to neutral because of the language on contracting with private entities?

Rebecca Gasca:

Yes, sir.

Chairman Horne:

Did you express that concern with the proponents of the bill?

Rebecca Gasca:

No, we have not, particularly because they did it in reflection of NRS Chapters 4 and 5. We understand why they did, but we disagree with putting that in as a function in this case, and in the other cases as well, because it leaves it open-ended in an unhealthy manner in our view of the justice system.

Assemblyman Anderson:

I am looking at the proposed amendment that has come in. I would like to ask Mr. Mincavage to come back up so I might get some clarity on this amendment that has been proposed.

In looking at the amendment under the City of Henderson's April 23, 2009, amended format, I see section 8, which deals with NRS 5.052, states that "the municipal court may contract with a qualified person to administer the program of supervision." If I am to understand, it would not be the city council of the

City of Henderson but rather the Court would be able to create, in and of themselves, a contract with someone to put on a program?

David Mincavage:

That is correct. It is a check and balance for the concern that was just expressed. It is the court that would contract with a qualified person, and it would be the court that would monitor the situation because they are monitoring the court sentences.

Assemblyman Anderson:

If the city chooses not to have a city administered program, the court, which has made an appeal to the city to do this and has been turned down, now gets to contract out privately in order to do this?

David Mincavage:

I think the term "privately" is up to the court to decide. As I have said, Henderson has contracted with the Marshal's Office in the City Attorney's Office. It is still public employees who carry out the supervision.

Assemblyman Anderson:

The court marshal works for the court as it is, correct?

David Mincavage:

The marshals work with the City Attorney's Office.

Assemblyman Anderson:

Now the court will be dictating to your marshals even though the city has determined that they cannot afford this program just like Clark County could not afford to have this program. Now the marshals are going to take it up because you and the court have decided that is what you are going to do?

David Mincavage:

I believe that Mr. Jacobs could answer that because he contracted with the court on that.

Mark Jacobs:

Under Chapter 5, we have contracted with the city courts to do the supervision. It is the court's endeavor, just as it is ours, to get it into NRS 211A so that the city could. I believe our City Council has the same idea in mind as they approved us to bring this bill to you now. Currently, if NRS 211A does not get passed, we will continue to operate under Chapter 5. The city courts have entered into an agreement with us, and they will continue to be in agreement with us to do the actual supervision.

Assemblyman Anderson:

I want to make sure that I understand the procedure that could potentially happen. The City Council could have said that this was something they did not want you to do, but the courts said that it is something that they wanted. If the courts wish it to happen, it will happen anyway, even though the city itself did not want it to happen.

Mark Jacobs:

Yes, and specifically in Chapter 5, it gives the courts the ability to do that. It has nothing to do with the City Council.

Chairman Horne:

Mr. Frierson, I initially called you back because there was some discussion on the alternative sentencing program in Clark County, or the lack thereof. Mr. Bateman, you can come up too.

Mr. Frierson, if there is not a formal alternative sentencing program in Clark County, can you explain, from your perspective, what type of program they have there, particularly at the municipal level.

Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:

I believe the department of alternative sentencing in title is somewhat a misnomer. It is essentially a misdemeanor probation department. In justice court in Clark County, we do not have such a department.

The way it typically operates in both municipal and justice court is that an individual who was convicted or pled guilty to a misdemeanor charge is put on informal probation, which includes conditions that the magistrate imposes. Those conditions are typically to stay out of trouble, community service hours, and things of that nature. They also have a status check date. Sometimes there is a class involved such as petty larceny school, battery domestic violence classes, and DUI courses. They sometimes have orders to stay away from a victim, stay out of a certain building, and there is a status check date where the individual is ordered to return to court and show the court that person's progress and explain to the court whether or not he stayed out of trouble, complied with those conditions, or how far along in the process he complied with those conditions. If that individual does not comply with those conditions and either picks up a new charge, does not show a good faith effort to try to comply with the conditions, or is in any other way noncompliant with the court's direction, the court has the discretion both in justice and municipal court to remand that person into custody. Often, if he picked up a new charge, he is already in custody. The courts have the discretion to give the individual more

time or another chance, sometimes with more restrictive conditions, or remand him into custody to serve whatever sentence was originally imposed.

In practice in municipal court, the misdemeanors, DUIs, and battery domestic violence charges are sometimes the most serious things that come before that court. In municipal court, they are more likely to get a stiffer sentence than in justice court because justice courts are often looking at gross misdemeanors and felonies. When they see a misdemeanor come through, it is more of a typical standard situation.

Currently, in both municipal and justice court, status checks simply make them come back on a new date to see if they are in custody or out of custody and to explain their progress, and the court goes from there.

Chairman Horne:

In this informal probation, with regard to status checks, there are no additional fees that are imposed on the defendant for this period of time, and it is just their standard fines?

Jason Frierson:

That is correct. It would be the fines and any fees associated with programs such as ABC or Legal Rehab, but no fees simply for being supervised.

Sam Bateman, representing Nevada District Attorneys Association, Las Vegas, Nevada:

I think that covered it.

Chairman Horne:

You concur with Mr. Frierson?

Sam Bateman:

I concur with Mr. Frierson's presentation of the facts. There is existing statute in NRS 211A, which provides what we are talking about here, which is the formal probation for misdemeanors. I think it was directed at justice court. Justice court is county and municipal is city. It is my understanding that the city wants to be able to take advantage of those existing statutes in NRS 211A, which include the ability for a probation officer to actually arrest a probationer who is violating their probation. They can do that now with felonies. For instance, if the Division of Parole and Probation in Clark County is supervising a felony probationer, they can go out and bring them before the judge if he is violating his probation. My understanding is that is basically what the city is trying to do. We have that statutory scheme that was passed in 1997 that the justice courts in some areas are taking advantage of, but Clark County is not

taking advantage of it, so the city wants to. That is my understanding of what this bill really does. The Nevada District Attorneys Association does not take a position on whether the municipal courts should be able to take advantage, or what the program would consist of.

Jason Frierson:

I mentioned a couple of companies, and I realized that we sometimes speak in acronyms. ABC and Legal Rehab are companies in Clark County that provide counseling services, and those are frequently some of the conditions. Usually because the sentence on a misdemeanor is a maximum of six months, the status check is somewhere within the six months that they have to complete those conditions.

Assemblyman Segerblom:

Mr. Frierson, I know that when you are on probation, you can apply to get your constitutional rights as far as being able to be searched. Would that apply in these cases? Would the marshal be able to search your house or person without probable cause?

Jason Frierson:

Currently, no. There is no provision that would allow anyone to search your home while you are on informal probation, particularly for a misdemeanor. I believe that, if a department of alternative sentencing was formed, they would certainly be able to create conditions that they deemed necessary. I do not know if their intention is to create a search clause, but if they are under formal probation that will certainly be within their preview.

Chairman Horne:

I will close the hearing on S.B. 84. [Meeting adjourned at 10:05 a.m.]

RESPECTFULLY SUBMITTED:

Julie Kellen
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Corrections, Parole, and Probation

Date: April 28, 2009

Time of Meeting: 8:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance rosters
S.B. 84	C	David Mincavage	Written testimony
S.B. 84	D	David Mincavage	Proposed amendment
S.B. 84	E	Mark Jacobs	Written testimony