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

Seventy-Fifth Session
March 24, 2009

The Committee on Corrections, Parole, and Probation was called to order by Chairman William C. Horne at 8:13 a.m. on Tuesday, March 24, 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:

Assemblyman Moises (Mo) Denis, Clark County Assembly District No. 28
Assemblyman James A. Settelmeyer, Assembly District No. 39

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Nicolas C. Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Sean McDonald, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

David Kallas, representing the Las Vegas Police Protective Association, Las Vegas, Nevada, and the Southern Nevada Conference of Police and Sheriffs, Las Vegas, Nevada
Kristin Erickson, representing the Nevada District Attorneys Association, Reno, Nevada
Sam Bateman, representing the Nevada District Attorneys Association, Las Vegas, Nevada
Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada
Orrin Johnson, Washoe County Public Defender's Office, Reno, Nevada
The Honorable William Voy, Judge, Eighth Judicial District Court, Juvenile Division, Las Vegas, Nevada
Carey Stewart, Washoe County Juvenile Services, Reno, Nevada
Frank Cervantes, Washoe County Juvenile Services, Reno, Nevada
Scott Shick, Chief Juvenile Probation Officer, Juvenile Probation Department, Douglas County, Lake Tahoe Office, Stateline, Nevada
Larry Carter, Assistant Director, Clark County Juvenile Justice Services, Las Vegas, Nevada
Douglas Swalm, Chief Probation Officer, Department of Alternative Sentencing, Douglas County, Minden, Nevada
Matthew Fisk, Court Administrator, Reno Municipal Court, Reno, Nevada
Rory Planeta, Chief, Department of Alternative Sentencing, Carson City, Nevada

Chairman Horne:
[Roll called. The Chairman reminded the Committee members of Committee rules and protocol.]

I will open the hearing on Assembly Bill 384.

Assembly Bill 384: Revises provisions governing certain unlawful acts committed by prisoners. (BDR 16-820)

Assemblyman Ruben Kihuen, Clark County Assembly District No. 11:
This is a bill being introduced on behalf of David Kallas from the Las Vegas Police Protective Association, and with your permission, Mr. Chairman, I would like him to do the testimony.

David Kallas, representing the Las Vegas Police Protective Association, Las Vegas, Nevada, and the Southern Nevada Conference of Police and Sheriffs, Las Vegas, Nevada:
I would like to thank Assemblyman Kihuen for bringing this bill forward. It was generated from requests from officers, not just police officers but corrections officers who work in detention facilities or jails in North Las Vegas, Henderson, and Clark County, who have concerns about the prosecution of individuals who excrete bodily fluids. I have heard statements made in the building about "the spitting bill," as this bill has been commonly referred to. We are not here trying to reinvent the wheel. I can imagine that some of the critics, who may come up and oppose this piece of legislation, would say that anytime an individual is charged, we would hope they would be charged appropriately for a crime based on the facts and circumstances known to an officer, and that their actions would meet the elements of probable cause and, at such time that those elements are articulated, you would then proceed with prosecution. The problem we are having, at least in Clark County, is with the application of the provisions of *Nevada Revised Statutes* (NRS) Chapter 212 and what truly is the definition of a prisoner. If you look under Chapter 208 of NRS, the definition of a prisoner is somebody who is in lawful custody or in confinement. From the perspective of an officer, whether it is a police officer or a corrections officer working in one of the jails or detention facilities, he would think that anybody in custody is under a lawful arrest. If that individual then excreted some sort of bodily fluid from the backseat of a car, whether it was spitting or urinating, defecating, or anything else, we would think, under the circumstances, that under the definition of being in lawful custody, that the appropriate charge would be a violation under Chapter 212 of NRS. Unfortunately, as you read deeper into Chapter 212 of NRS, it talks about the excretion of bodily fluids with respect to the prisoners in confinement in a prison. Therefore, it presents a problem for the prosecutors in their interpretation: does that conduct meet the elements or the intent of what that legislation is supposed to be about. That is why we brought this bill forward: to clarify, once and for all, who a prisoner is, what the definition is, and whether the definition includes somebody in the lawful custody of a law enforcement officer or agency; and that the provisions

of Chapter 212 of NRS would apply when they spit, urinate, or use any other type of excrement against an officer.

Chairman Horne:
In my assessment of my discussions with you, your attempt is to have the same punishments for this conduct that may occur in a detention center also apply to the patrol officer in the street.

David Kallas:
That is correct. Under NRS 208.085, a prisoner is defined as "any person held in custody under process of law, or under lawful arrest." Our position is that if you have an individual who is under lawful arrest in the backseat of your car, and for whatever reason he spits on you, urinates, or excretes any other bodily fluids, then he would be subject to the provisions of Chapter 212 of NRS. Unfortunately, the way the district attorneys' offices—at least in Clark County—are interpreting it, that statute is only related to incidents that occur within the prisons, even though it meets the statutory definition of "under lawful arrest."

Chairman Horne:
You mentioned "under lawful arrest" in the back of your car, but there are instances where an officer will detain someone in the back of his car during his field investigation. Do you think that would constitute being "under lawful arrest?"

David Kallas:
A lawful arrest is lawful arrest. The detention is another thing. I think an argument goes, when are you detained, when are you free to leave, and when are you under arrest. I think it certainly has to be in the mind of both the officer and the individual as to whether they feel that the detained person was free to leave. In the officer's opinion, was that person free to leave or was the officer intending to place him in handcuffs, even though they were standing in front of the car. I think that would have to be articulated by the officer if they were to charge him, if this bill was passed by the Legislature. They would have to articulate that like they do with any other probable cause in any other crime.

Assemblyman Gustavson:
Under Rule 23, I need to make a disclosure. My daughter is a deputy sheriff with Washoe County, and although she is, this bill will not affect her or me any more than anybody else in that field, so I will be participating and voting on the bill.

Assemblyman Anderson:
If I am to understand, if you have somebody involuntarily regurgitate, or even urinate, do you have to demonstrate that it was a purposeful act as compared to an involuntary act?

David Kallas:
I would think, as in any other crime, there has to be an articulation of facts regarding intent. Certainly, I could not see an officer who had an individual who was sick and urinated on himself—obviously there was no intent to excrete the bodily fluid to the officer—if he was sick and it was an involuntary action on his behalf—that he would be charged under this. This is about the intentional and willful act of an individual, who is in custody and decides he wants to take whatever he has in his mouth and spit it in the officer's face or, if he is in the backseat of the car, and decides he wants to pull his pants down and do whatever else he does in the backseat of the car.

Assemblyman Anderson:
Even if it may be an involuntary act, the officer may be concerned for his own health and safety as a result of the action. Who would pay for the testing to make sure that he has not been exposed to some potential health problem?

David Kallas:
I believe that would fall under worker's compensation since it occurred in the scope and course of an officer's official duties. There is a provision in this particular bill that mandates that, if there is an intentional act, and somebody is charged under this, that the agency must allow the officer to be tested and provide the results of that test to the officer.

Chairman Horne:
Some of the questions could probably be best answered by the members of the district attorneys' offices who are present.

Kristin Erickson, representing the Nevada District Attorneys Association, Reno, Nevada:
In response to Mr. Anderson's question: yes, there would definitely have to be an element of intent shown. An involuntary, non-intentional act is not a criminal act.

Chairman Horne:
Mr. Kallas testified as to his scope of knowledge of how this is being treated down in Clark County. What is your experience on this type of offense in Washoe County?

Kristin Erickson:
Right now, case law has defined lawful custody as being in actual confinement. Merely saying that a person is under arrest is not lawful confinement. When we have that situation, where a person is under arrest and the person starts spitting at the officer, we treat it as a battery upon an officer. That has its own difficulties in proving because battery has to be a willful and unlawful use of force or violence. The issue for the ultimate trier of fact is whether spitting is force or violence.

Chairman Horne:
If this were to move forward, would that resolve the problem of determining whether spitting is force or violence?

Kristin Erickson:
We could then prosecute under this current section, NRS 212.189, rather than the battery statute, which is NRS 200.481. Yes, it would give us a different avenue in which to prosecute spitting, amongst other activities.

Sam Bateman, representing the Nevada District Attorneys Association, Las Vegas, Nevada:
I think Ms. Erickson's analysis was correct. Our office does treat the Chapter 212 of NRS provision for only those individuals who are in a correctional facility based upon our review of all the relevant statutes. Obviously, it limits spitting to those instances. For any spitting that would occur out in the field, we would be in the difficult position of prosecuting it as a battery and, in light of the definition, that could be challenged on grounds of whether spitting is in fact force or violence.

Chairman Horne:
I am curious because, in my notes, in *Dumaine v. State*, 103 Nev. 121 (1987), the Nevada Supreme Court interpreted the phrase "under lawful arrest," as used in the definition of "prisoner" set forth in NRS 193.022 and 208.085, to mean there is an actual restraint of the liberty of the person. The person has to either submit to the control of the arresting officer or is captured, that is, taken and held in control.

Sam Bateman:
"Prisoner" is defined in a number of different areas in the statutes. Obviously, we use statutes in prosecution from Chapter 193 all the way up to the 400s. If you look at the title of Chapter 212, it specifically references correctional facilities. I think what we look at in terms of what is a prisoner are the statutes that relate to those particular titles as opposed to trying to extrapolate a definition from a significantly different section of the NRS. The last thing we

want to do is get into a fight in court over definitions when there are some serious issues as to whether the definitions apply. I do not want to have to stretch the definitions of these statutes to try to address these crimes. That is the analysis our office has taken with regard to the human excrement statute which, of course, then leaves us with a battery statute. I am sure we have charged battery for spitting. What I can say is there is the obvious issue out there of whether that definition is appropriate for spitting. We probably do not charge it as a policy in our office, but in some instances we may do it depending on all of the circumstances of the case.

Assemblyman Carpenter:
My question was in regard to paying for tests on officers. Does it have to be a willful act before the agency will pay for those tests?

David Kallas:
No, it does not have to be a willful act. If you believe that you have been hurt because of the excretion of bodily fluids—you may have been exposed to HIV or have come into contact with something like that—I believe it is part of the worker's compensation portion of your job. So, you would be covered. You would fill out a worker's compensation claim, go to the hospital, explain to them what happened, and then it would be up to the agency to determine whether it is truly a worker's comp issue or it is something your insurance will have to cover. That is one thing that is separate. This bill mandates that the testing take place and that the agency discuss the results of the testing with the officer or officers involved. That would be covered by the agency.

Assemblyman Carpenter:
I think it also says that they will pay for it, does it not? I heard somebody say that they would not pay unless it was a willful act. That is what I was wondering about.

David Kallas:
Anytime an officer or employee is injured or is believed to be injured during the course and scope of official duties, it would technically come under a worker's compensation claim, which would be paid by the employer. This bill mandates that the agency pay for it if there is any discrepancy as to whether it really occurred in the course and scope of an officer's duties, or if he tested positive for something because of contact with a suspect or something that happened outside the workplace.

Assemblyman Anderson:
Ms. Erickson, please help me to understand. This is a category B felony crime to be applied here and a category A if the person knows that they have a

communicable disease, because of the life-threatening quality of that event. Under battery, you do not get to go that high. Battery could be a gross misdemeanor or a category E felony.

Kristin Erickson:
Battery itself, with no aggravators, is a misdemeanor. Battery with a deadly weapon is a felony. I am not sure, but I believe it is a category B felony. Battery causing substantial bodily harm is also a felony.

Assemblyman Anderson:
So, if it was a communicable disease, then I am to suppose that it is causing substantial harm if the test came back positive indicating that you were infected?

Kristin Erickson:
That is a very interesting question. Substantial bodily harm is defined in Chapter 0 of NRS as prolonged physical pain or impairment, or something to that effect. Would being spit upon, having had a communicable disease, fit into that definition? I do not know.

Chairman Horne:
Mr. Kihuen, did you have anyone else that you wanted to testify?

Assemblyman Kihuen:
No, Mr. Chairman.

Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada:
To address a few things: currently, spitting or otherwise exposing an officer to bodily fluids is a category B felony, and if that person knows that they have a communicable disease, it is a category A felony. That is 10 years to life or a definite term of 25 years. That already exists. What this bill does is essentially overlook the fact that we have legislation that addresses this conduct. Battery on an officer is a gross misdemeanor; battery by a prisoner is a category B felony, 1-6 years.

I believe that there was a question of whether spitting constituted battery. I can tell you my experience. I have seen several complaints where battery by a prisoner was expressly the charge for spitting on an officer by somebody who was taken into custody. I can certainly provide the Committee with at least a couple of complaints that I had sent to me over the past couple of weeks, none of which were by jail or prison inmates, but were by people who were being taken into custody in the process of an arrest. They were either in an office, about to be handcuffed, in the back of a car, being talked to, or in the midst of

an investigation of a battery domestic violence complaint and being handcuffed, and having that individual spit on the officer. Those are tools that they already have.

I think that it is dangerous to seek to draft legislation that addresses discretionary functions. When there is a particular officer who has a situation, which is referred to the prosecutor's office, and for whatever reason—lack of resources, lack of enough evidence to convict, or because there are several other charges associated with that arrest that far exceed that particular act—if that particular case is not proceeded on due to that reasoning but others do, it is dangerous that we come forward to try to propose laws because that one case did not get proceeded on. The tools are there. What this essentially does is take the same conduct and move it from a category B, 1-6 years, to a category B, 2-10 years. This attempts to put conduct that is covered in NRS 200.481 into NRS 212.189, which is the bodily fluid and excrement section.

In doing some research on the history of NRS 212.189, it dealt with gassing. It dealt with inmates in prison who stored, compiled, and planned to use bodily fluids to assault employees. Because they were allowed to take their time to store, to put it in bags or towels, to plan, and then wait for an employee to come by, the Legislature saw fit to treat that conduct differently because of the heightened danger and concern for those employees who have to deal with those people one-on-one on a day-to-day basis. Testimony on NRS 212.189 talked about the deterrent effect because the individuals they were targeting in that legislation were individuals who were serving 10-15 years in prison and they had to see those people every day; if there was a law to address that conduct, the deterrent effect of creating such a law would be significant. I do not pull the 10-15 years out of thin air; that was the testimony, that this conduct was targeting those typically serving 10-15 years in prison. This bill proposes to treat individuals on a first time encounter in the general public as if they were the same as individuals who were planning and storing and collecting materials and were serving 10-15 years.

Chairman Horne:
The part of the policy reasoning behind that, as well, is the inherent danger in urine and feces. It is not like they are storing food to throw at somebody. It has been noted that we have communicable diseases that can be transmitted with this type of conduct. That same risk, while maybe not as frequent, is still a risk for the officer in the street. Would we want to have something in place to address that conduct?

Jason Frierson:
I do not recall the exact statute—I do not want to misquote—but I believe NRS 212.189 deals with prison inmates. I believe we already have legislation in place to deal with individuals who intentionally expose others to communicable diseases. I think that is where this belongs. This bill goes so far above and beyond people who intentionally expose others to communicable diseases; it essentially touches on day-to-day contact with the general public.

One of the complaints that I reviewed recently was a battery domestic violence call where the woman involved did not want to talk to law enforcement and told them, "If you touch me, I am going to spit on you." The officer touched her and cuffed her, and she spit on him. The basis for the complaint was battery by a prisoner. She spit on his chest, and that was the basis of a category B, 1-6 years, charge. Those are the typical things. The other cases that I had were juvenile cases where there was a group of kids, the police came to break it up, and there was one unruly juvenile. Now, you have taken that conduct and made it a category B, 2-10 years, crime for that type of behavior with somebody who is not as mature as say the woman in the first example. Those are separate from the individuals who are incarcerated for 10-15 years and can plan, store, and compile. I believe the statute discusses buying material for that purpose. I think it is treated worse, and should be treated worse, than the person who encounters somebody on the street and has a bad interaction and spits on an officer. I think there was an example about pulling down pants and urinating. We have indecent exposure statutes and other statutes that we can use to address that type of conduct, all of which are felonious. To treat an individual in daily contact with law enforcement the same as prisoners who are in for 10-15 years and plan, store, and compile this for that purpose, I think is a separate issue and should be treated as such.

Assemblyman Carpenter:
We heard that it is very difficult to prosecute these people. It seems to me like we need something there other than battery or communicable disease. That is not a nice thing to do to someone, and we ought to have some other way to prosecute them rather than on battery, which is very difficult to do. Do you have any suggestions on how to handle the situation?

Jason Frierson:
I heard testimony that it is difficult, and I think what was being testified about was that it allows a potential challenge by the defense. I can say in Clark County, it is hard for me to imagine it being difficult when I see it as often as I see it. When I make a phone call back to my office and I get five examples right away, I think that they are able to pursue it currently. I think a category B felony, 1-6 year prison exposure, is appropriate. I think it is severe. We are

talking about deplorable conduct. We are talking about disrespectful and rude conduct. But we should not treat them the same as someone who is serving 10-15 years and has much less to lose. Therefore, we need a deterrent to prevent them from storing and planning it. I think it is treated separately for that reason.

Assemblyman Carpenter:
We probably need to create a separate crime.

Assemblyman Anderson:
I am curious about this, and possibly somebody from a district attorney's office can help, but I notice that as the legislation was originally written in 1999—and I was here when we first took up this bill—it applies to all, other than a person who is in residential confinement. If one of the things that we are concerned about is the potential for the storage of this, I might be concerned about somebody who came from parole and probation who might be coming to visit me and check on whether my Global Positioning System (GPS) bracelet was still intact, or whatever else, and I might resent him and have a great opportunity to make his life less than desirable for a revisit. I agree with Mr. Carpenter that we possibly need to put this in a different section. Clearly, I think what we were trying to get at here is the distinction between those who are in prison and those who are being taken into custody. I would not object to seeing a lower crime if they were trying to be taken into custody. An A or a B felony is a bit too high. I presume you do not encourage this type of activity by your clients.

Jason Frierson:
Absolutely not. It is seldom, if ever, in their best interest to do anything that would result in additional charges. I would also like to mention for those who are already incarcerated, the sentence is consecutive. It would certainly not be in their best interest. That point speaks to the fact that in 1999 the Legislature was targeting those who had very little to lose as opposed to the daily first time contact.

Orrin Johnson, Washoe County Public Defender's Office, Reno, Nevada:
I think Mr. Frierson covered the bases. I have seen several cases where spitting was charged that way. To the enormous credit of the officers, they merely put a spit hood on instead of taking other actions that others might. It certainly occurs; what the numbers are, I do not know. We agree that existing legislation is sufficient to adequately cover the punishment for that type of behavior.

Chairman Horne:
I will close the hearing on Assembly Bill 384. It appears, Mr. Kihuen and Mr. Kallas, from the questions by Messrs. Carpenter and Anderson, that there

may be a little more work to be done with this bill. I suggest that you talk with them to see what can be done to address those concerns.

I will open the hearing on Assembly Bill 265. In order to retrieve Mr. Denis, we will stand in a brief recess.

[The Committee stood in recess at 8:53 a.m. and was called back to order at 9 a.m.]

Assembly Bill 265: Revises provisions governing juvenile justice. (BDR 5-834)

Assemblman Moises (Mo) Dennis, Clark County Assembly District No. 28:
In talking with a constituent, we talked a little bit about some of the issues concerning juvenile justice, truancy, and other issues. The issue that this bill came up from is not new; you have seen it before. I believe Assemblywoman Kirkpatrick brought this forward in years past. We have made some adjustments to it. It is not an uncontroversial bill. For me, the bottom line is we have kids who we need to get to school. This is not just about truancy; it is about kids who are refusing to do what is being asked of them: in other words, contempt. I do not know if this is the perfect way to do this, but I think it is important to have this discussion today and see if we cannot figure something out so we can work through this issue.

Chairman Horne:
I take it you will want to pass the baton to Judge Bill Voy down south.

Assemblyman Denis:
Yes, thank you, Mr. Chairman.

The Honorable William Voy, Judge, Eighth Judicial District Court, Juvenile Division, Las Vegas, Nevada:
Let me start by a full disclosure: the constituent that Assemblyman Denis mentioned was not me. I think there are some in the room who think that I was part of getting this up and I was not. He was right that a similar bill was presented in this Committee back in 2005. The original intent of that bill, and of course this bill, was to reinstate, or put in place, the court's inherent power of contempt, which under Chapter 62 of *Nevada Revised Statutes* (NRS) is not present.

I originally had requested that the bill be brought up, and it was. My concern was not truancy at the time, but was for us as a court—since we are processing thousands of cases—to find a mechanism to hold kids accountable when they come to court, just like in justice court. For example, when a person is brought

in on a misdemeanor, he is told to go do community service or go to a counseling program, report back in 90 days, and if he does not the judge could put him in jail, or hold him in contempt. We do not have the ability in juvenile justice to do that. That was the original intent of bringing contempt back and giving the court the ability to hold a child in contempt, which is an easy procedure to do, so that you could have the child, rather than being put on a formal probation, doing community service or whatever the program is for six months, and report back to court. If he does not, you have to file a form of violation of probation, bring that into court, have another proceeding, and then maybe on that violation threaten to put the child in detention for the weekend if he does not do what was originally asked of him six months ago.

That was the original intent in 2005, and it was still my original feeling when I saw this bill come down about a month ago. What people have said is, listen, if you give the court back the power of contempt, then they are going to use it on so-called status offenders, habitual truants being the biggest one. And, because of federal law, that would be a bad thing. The federal law we are talking about is the policy and regulations that exist for the funding that the state receives for its detention centers for juveniles. That law allows for a certain percentage of so-called status offenders every year, or dead days be used, and, if you exceed that amount for that period of time, then you can be penalized and potentially lose the federal money. That is what they are talking about. It is almost like the highway funds and the speeding limits. "Yeah, state, you are free to set your own speeding limit, but if you do not go along with what federal policy is, you do not get your highway funds." Same kind of concept. The fear, I guess, from a lot of folks is that somehow, if the court is given back its inherent power of contempt over juveniles, it will be used to erase six years of efforts in Clark County initiated by myself and others with our Juvenile Detention Alternative Initiative (JDAI) process, and somehow the floodgates are going to open up, and we are going throw all of these truants into detention. That will not happen on my watch. That is not anyone's intent, from those who I have talked to here, if this bill were to pass.

I think it brings us to a bigger issue: truancy and why we are even dealing with it in the first place in juvenile justice. For years, we have been trying to cajole children, convince them, connive them, threaten them like a toothless tiger, to go to school when they come before the truancy court. The court does not have any resources other than that. I am not saying the threat of putting a kid in jail if he does not go to school is the answer. All I am saying is this highlights a very deep problem, especially here in Clark County, of a lack of resources to deal with the truancy issue, and then having the juvenile court be the primary jurisdiction to deal with the habitual truant, with no resources. We have one probation officer assigned to our truancy court to deal with this issue for all of

the truants here in Clark County. We are losing that position June 1. I have a hearing master—when I found out about it I told him to stop it—who for months was spending thousands of dollars out of his own pocket to buy incentives for kids in his truancy court because there were no other resources to provide that. If anything comes out of this in any opposition to this bill, the focus should be on the problem that they are raising as far as the fear of truants being put into detention, and let us bring—whether this is the proper committee to have that heard, probably not, I do not know—that issue forward and deal with it in the context that it needs to be dealt with, not in the context as a defense or an excuse for the court to not have its inherent power of contempt.

Chairman Horne:
I have some issues with the bill. In my education, I learned that there is a reason we have two separate systems, one for juveniles and one for adults. This is blending the juvenile system back into the adult realm. That gives me pause. You also touched on the federal monies. One of the things you said was that throwing the truant juveniles in jail is not going to happen on a grand scale on your watch; unfortunately, it may not always be your watch. That is something to keep in mind because those who come after you may see it as something different. If we put something in statute that allows that, it may harm us in the future. I understand what you are attempting to do, and I agree that you have a heavy load down there—you have been doing it for quite some time. Maybe this is not the committee that is appropriate for it, but I appreciate the bill, as Mr. Denis said, to at least raise the discussion of what is going on.

Sam Bateman, representing the Nevada District Attorneys Association, Las Vegas, Nevada
We perceive this change as being used in the following way, and it is why we support it: oftentimes in juvenile court, we do deferred adjudications. As you know, Mr. Chairman, working in the criminal court, we often do what is considered informal probation. It occurs when you are dealing with a misdemeanor, and it can occur in district court with gross misdemeanors. The way we see using this particular statute in juvenile court is in those cases where we are trying to avoid, for instance, a case with a juvenile sex offender. We are trying to not label them a sex offender where we have provided them a deferred adjudication of some sort. In the course of doing that, the court orders certain conditions that the juvenile must meet. As of right now, it is our understanding that there are virtually no penalties for juveniles who do not comply with the conditions. We are not intending to use the contempt time towards truancy, and perhaps, in the course of moving the bill forward, we can look at some language in the bill. We are not looking to use contempt time for status offenders. We are looking to use it for those particular offenders who are more serious, because we know what the bed space is in juvenile detention. We are

looking to put those individuals who are serious offenders in those beds, not people who are not serious offenders.

It was brought to my attention this morning, and I did not know this, that there is actually a juvenile drug court in Clark County, much like the drug court we use in criminal court. We use short stays in detention in that drug court system and everybody applauds that system because it gives those carrots and sticks to offenders to comply with court orders. Much like that scenario, we intend to use the no-longer-than-10-day statute, or what is now being included, in that particular route.

I think it was noted by Judge Voy that Clark County is one of the first, if not the first, in Nevada to attempt to comply with the JDAI requirements. We would continue to do that. I know the Chairman brought the issue up about different administrations or different judges going forward and perhaps we can address those concerns with language in the statute. As of right now, we simply do not have a penalty going forward for people who violate court orders.

Chairman Horne:
You mentioned that there is no "penalty" for juveniles who violate court orders. They have been brought back and put into detention centers for failure to comply. I know Judge Voy said it typically happens six months down the road. I do not know if that is better addressed with the frequency of being brought back before the judge. The juvenile drug court is different than the adult drug court because it deals with juveniles. I did an externship with the drug court. Those differences are still there. Detention for the juvenile drug court is still much different than for the adults.

Sam Bateman:
I would certainly defer to your experience with drug court but my understanding is there is juvenile detention as essentially a contempt for failing to comply with drug court protocols. And you can correct me if I am wrong...

Chairman Horne:
But not in adult jails.

Sam Bateman:
No, and it is my understanding that this bill does not send juveniles to adult jails. Am I wrong?

Chairman Horne:
I know it says, "Is at least 18 years of age but less than 21 years of age, be placed in the county jail for not more than 10 days." Now, I know they are 18,

but they may have committed their offense when they were 17 and are still in the juvenile system. Like I initially said, we are starting to blend now. Somebody is being treated as a juvenile but we are going to put him in an adult facility. It gives me some angst.

Sam Bateman:
We would certainly be willing to work with the Chairman and the sponsors with regard to that particular issue. What I was referring to, and I apologize if I was confused, is for juveniles who are under 18 and are violating court orders, that they be placed within a juvenile detention facility and not an adult detention facility. The only other note I would make is we are not talking about, I believe, juveniles who are actually on formal probation in the juvenile system. We certainly would not suggest that the changes in this particular bill supersede any options that we have with actual, formal probationers. There are other routes to address those. That may be what you were talking about with regard to sending actual, formal probationers to jail. I believe we can charge them with contempt or some other violations and seek jail time if they are on formal probation. What the district attorneys' offices and the District Attorneys Association is concerned with is addressing those situations where there really is not any sort of penalty for violating court orders. If we can tighten up the language, if we can make some exceptions, or address any of your concerns, certainly the Nevada District Attorneys Association would be willing to be a part of that conversation.

Assemblyman Carpenter:
In this bill, it says that "the juvenile court may punish a person guilty of contempt...in the county jail for more than 25 days." I do not know whether that is supposed to speak to the 18- to 21-year-olds or whether it would be younger than that.

Sam Bateman:
It is my understanding that we are not sending juveniles to the county jail. Judge Voy may be better qualified to answer that.

William Voy:
The issue is that we do not have a mechanism to order someone to go do something without putting them on formal probation. In order to get them to do something and then enforce it, we have to put them on formal probation. Having contempt power will obviate the need to put them on formal probation in order to get them to go do what you asked them to do. That is really what it is: being able to get rid of the issues of putting someone on formal probation and having the trappings of formal probation, especially when you have 75 kids per

probation officer down here in Clark County, which is way too many, and being able to enforce that order.

The issue of 18 and older in the Clark County Detention Center mirrors the current statute that exists, and has existed for quite some time, that if a person is in formal violation of probation, and the court finds a violation of probation, and the kid is 18 or older but still a juvenile by definition because he committed his act before his 18th birthday, the court has the option to send that child to the Clark County Detention Center for up to 25 days. That is why that language is there in this bill. They are trying to mirror, apparently, what currently exists for a violation of probation.

There is no intent, obviously, to have a 17-year-old placed in the Clark County Detention Center. It would be against the statute for the court to do so, and it would obviously not be the right thing. Quite frankly, it is within the discretion of the court as to whether an 18- or 19-year-old is still under the jurisdiction of the juvenile court, and if he would spend any time in the adult detention center versus the juvenile detention center. That is why that language is in this bill draft: it mirrors the existing violation of probation penalties.

Sam Bateman:
By having this as an option, like Judge Voy said, we as prosecutors, in a tough case, can more readily agree to informal probation if we know there is actually a penalty, means, or mechanism to make sure that the juvenile complies with the court order as opposed to handling those close calls by going with a formal probation situation. We have to have those reins on the particular juvenile, and the only way we can have that is if he is on an actual formal probation. In the end, this very well could benefit those juveniles that are on that line by allowing us to make that decision to keep them in an informal situation rather than a formal one. I do not know if Judge Voy would agree with that, but from a prosecutor's standpoint, it is very consistent with what happens in criminal court when we have that option.

Carey Stewart, Washoe County Juvenile Services, Reno, Nevada:
For the record, Washoe County Juvenile Services, as well as the Second Judicial District Court under the leadership of The Honorable Francis Doherty, are in opposition of A.B. 265. As was previously mentioned, both Washoe County and Clark County have been involved over the last four years through the JDAI. In working with the Annie E. Casey Foundation, the core strategies of the initiative are to eliminate the unnecessary use of detention. Over the years, in doing that, both counties have been very successful in eliminating or reducing the reliance on secure detention and, in fact, through

2008, Clark County has reduced their use of secure detention by 31 percent and Washoe County by 28 percent.

In implementing the core strategies of getting to the point where we are at right now, we have learned, both in Washoe County and in Clark County, some very important things in working with kids. First of all, secure detention needs to be used for the most serious and chronic offender in the juvenile justice system. Also, eliminating the unnecessary use of detention really made us look inward to how we worked with kids who, in essence, were noncompliant. Over the years we found that, in eliminating this use of detention, we were locking a lot of kids up because, in essence, they upset us. We were putting low-end offenders and misdemeanor offenders in with very serious felony offenders. One of the things about this initiative is it has made us utilize national research and experts in the field. They were able to show us that when you put low-end offenders into secure detention facilities as a means of punishment, they do not get better. They gravitate to the more serious offender and, in essence, you start a process where you are really not helping yourself by doing that.

One of the key factors in opposition to this bill is the issue of truancy. My colleague, Mr. Cervantes, can testify to that. When working with these kids who are chronic problems, the system needs a more systematic approach in dealing with them. They are tough kids to work with because they are noncompliant. They do not like to follow through at times, but your response as a system needs to be proportionate to what the kid is doing. In Washoe County, with our collaborative efforts with the school district, we have developed what I consider a model truancy project that does a lot of case management with kids. It starts addressing the truancy issues at the earliest stage of, hopefully, successful intervention, which is at the elementary school level.

One other aspect that I will testify to is that one of the things that was alarming to myself and my colleagues in Washoe County in regard to this bill is we do not know what effect this bill could have on a very big issue in our state: disproportionate minority confinement (DMC). Through our JDAI efforts, we have had successes in eliminating the usage of secure detention. An issue that we need to get much better at is our DMC issues. Those are the toughest issues juvenile justice has to work on, and we need to implement some very strong strategies. In looking at this bill—and this opinion is formulated through our truancy intervention project—a lot of times the kids who are chronic offenders are kids who come from homes that have lower incomes, and our kids of color are affected by so many different aspects in their daily lives and in their neighborhoods, that to have a blanket strategy that deals with noncompliance

with detention could have a tremendously adverse effect in a big issue that is affecting the state right now.

Chairman Horne:
You heard the testimony that they are looking for a type of mechanism to put someone in compliance by means of contempt proceedings. Instead of formal probation, how would you propose that it be done, if you have that noncompliant juvenile but you do not want to put him on formal probation?

Carey Stewart:
Those are difficult cases to work with. What we have found in Washoe County is that our response should be proportionate to what the kid is doing. When we have our kids who are on probation and they have contempt issues, we have alternatives to detention, such as evening reporting, supervised release programs, work programs—methods of becoming more active with those kids to gain compliance. With your misdemeanor offenders who are not on probation, we still have resources available to us, such as supervised work programs. I will be honest with you, at times we are very successful in getting them to comply, but there is a small pocket of kids who sometimes will not do their work crew. With the amount of effort that you put into them, they are still noncompliant. We take a step back, look at that misdemeanor offender, and we apply resources and community-based programs to assist him, and if he is still noncompliant, we have found that we will back away from that kid at that point in time. We do not need to get a pound of flesh from him just as a way to prove a point. If we keep those misdemeanor offenders at a misdemeanant level, even though there is noncompliance, we still look at those as successful cases. We will still throw efforts and resources at them to keep them at that level, and if their behavior escalates into a more serious behavior, then we will address it according to our probation efforts.

Chairman Horne:
I think that illustrates what Judge Voy said, that the resources are becoming scarce, particularly in his jurisdiction. He is about to lose his only probation officer. That is one of the concerns.

Assemblyman Ohrenschall:
I have a question. This bill contemplates giving a judge the power to throw a teenager who is a habitual truant in contempt and put him in a detention facility for not more than 10 days. If that happened, what kind of other offenders would the teenage habitual truant be locked up with?

Carey Stewart:
I know in our jurisdiction, Washoe County, that individual would be exposed to sex offenders, burglars and kids who commit very violent offenses. This morning in Washoe County, our detention population was 37 kids. Those 37 kids have a very serious profile, so you would be putting that kid in the same environment as those types of offenders that I just mentioned.

Assemblyman Ohrenschall:
How do you deal with habitual truancy in Washoe County?

Carey Stewart:
Two years ago, our juvenile court confronted us with that exact problem. We had a practice in Washoe County where we were putting kids on probation for truancy. The juvenile master, Janet Schmuck, brought me into her office and she asked, "Carey, what do you want me to do with these kids?" What we have found is that, by the time they get to the juvenile court level, the issue is much bigger than just putting them on probation to solve the problem. At that point in time, we met with the Washoe County School District and we formed a collaborative partnership, our truancy intervention project. We took our outreach staff and the truancy officers, who were working within the school at that time, and we combined our resources through the McGee Center. We also got the assistance of the Children's Cabinet, a nonprofit, to have early identification of these kids in our schools as the truancy problem was starting. At that time, we assigned them on 20-day monitors, where the school would follow these kids for 20 days and get involved with the families in the home environment where they would look at what the issue was. Obviously, the identified issue is not going to school, but we have noticed that there are bigger issues underlying the not going to school. Through that collaborative partnership, we no longer put kids on probation for truancy. We keep them at that level, and we keep them in the school system to try to keep engaging them there.

Assemblyman Ohrenschall:
Sounds like a great program.

Frank Cervantes, Washoe County Juvenile Services, Reno, Nevada:
I was going to speak to what Mr. Stewart just outlined very well. *Nevada Revised Statutes* (NRS) 392.126 provides the ability to create student advisory review boards (SARB). At those boards, we are able to take a collaboration with the school district, community-based partners, and our own staff and really create what Mr. Stewart just described. It has a positive effect at an early stage on these young kids going to school. Clearly, getting kids to go to school

is labor intensive. We have not found that putting them in detention really creates a positive outcome.

Scott Shick, Chief Juvenile Probation Officer, Juvenile Probation Department, Douglas County, Lake Tahoe Office, Stateline, Nevada:
I am also here as a member of the State Juvenile Justice Commission. I would just like to voice strong concerns regarding this legislation. I want to commend Judge Voy for his activity and concerns about juvenile justice. He is constantly bringing things forward that benefit the system and trying to find solutions to problems that we face. I like working with him. I would have liked to have seen this bill draft come before the Juvenile Justice Commission's Policy and Legislation Committee, as well as the Nevada Association of Juvenile Justice Administrators, who actually implement these policies in our urban and rural regions, to help craft something that would work. Truancy is a huge issue for all of us. The feedback from both of those groups can be beneficial in pushing this type of legislation forward.

Our interpretation of this bill is it establishes concrete detention sentences and fines for juveniles found in contempt of a juvenile court order. That is clearly what the intention is. I do not want to repeat what everybody else has said. Mr. Stewart and Mr. Cervantes have strong SARB systems and truancy- and school-based probation. That is where you solve the problem. Here is detention and here is school, where am I going to get an education? It is in school. How do you keep kids in school? It is one of the highest risk factors for juveniles. If a juvenile is not successful in the academic environment, you can almost guarantee that he is going to struggle in life and potentially permeate the adult system. So we will do everything we can on a front-end system with detention reform to keep kids in school. That is where the funding should be. I am absolutely empathetic with Judge Voy's circumstances. As far as truancy is concerned, he should have six officers to manage it, with respect to the configuration that Washoe County has successfully implemented.

I believe that this action will also impact the juvenile justice act [Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974, as amended (*United States Code*, Title 42, section 5601 et seq.)], which all juvenile justice administrators have to be in compliance with. That act defines what is the appropriate detention and treatment of status offenders. It could impact block grant funding to the state based on the detention of status offenders, and that is something that needs to be looked into. It could also have a direct impact on the disproportionate minority confinement, but typically it is disenfranchised kids who are not going to school. A lot of our disenfranchised in this state are from our minority populations. They are the ones that are going to be impacted. Detention means absence from school, where they should be involved. They

are most likely behind at that time. By putting a kid in detention, what guarantee is there that the education is going to continue? My school is way over here across town, and here I am in detention. I can certainly go to school that day, but I am not going to be in line with my core academic requirements. That is another fence to hurdle with respect to detention of a youth at any given time.

The Juvenile Justice and Delinquency Prevention Act calls for the appropriate detention of youth, but there are better policies. As far as how to address this population, it is school-based probation. It is those types of programs. My judge right now can assign a kid a detention for being out of compliance with a court order. Of course, the kid is on probation, and that is what we have discussed here, that there is a gap in the ability and authority of the court to impose certain things if you are not on formal probation.

Larry Carter, Assistant Director, Clark County Juvenile Justice Services, Las Vegas, Nevada:

I am a member of the Nevada Juvenile Justice Commission and the current president of the Nevada Association of Juvenile Justice Administrators. Trying to be a little more concise and save some time, my colleagues up north brought forward some of the issues. My testimony now is condensed because I feel this bill is too broad and it opens up too many things. There has been a great deal of effort in this state over the last five or six years to eliminate the unnecessary use of detention for juveniles, which had run rampant across this country and in the State of Nevada. We have had some excellent gains. Right now, we are on the national forefront of being a best-practice state in juvenile justice. We need to keep those things going. I think including the status offenders makes this bill too broad. The status offenders are low-level offenders and need not to be a part of this.

Nobody in the juvenile justice field has any qualm or disagreement with placing serious, violent, chronic juvenile offenders into detention, or putting them into detention for the violation of court orders. Our caveat is that we do not want to be mixing low-level status offenders and nonoffenders with serious offenders and utilizing the expensive resources of detention for low-level offenders.

I understand what the intent of the court and the District Attorneys Association is on this bill, but I think a lot of this needs to be redefined; it is much too broad, and we need to tighten it to protect what all parties are trying to do in this matter.

Chairman Horne:
It seems, from your testimony, Mr. Carter, and from the testimony of Mr. Shick, that perhaps you guys were not included in the discussion of crafting this piece of legislation, but what a wonderful thing the Legislature is: it brings people together. I am sure Mr. Denis can get you gentlemen together, and you can work something out because it does seem like there is a problem, and it seems workable. Mr. Denis, do you have anything to add before I close the hearing on this?

Assemblyman Denis:
I think you put it well, Mr. Chairman. There are some things that we could work on to try to work this out. It is always hard to try to get everybody together, but the Legislature gives us an opportunity to see if we can work on some of these issues, and obviously today we have seen that there is an issue, although it does not look like it is insurmountable, so I think we can get together and work something out.

Chairman Horne:
Great. I urge you to do that and to get back to the Committee. With that, we will close the hearing on Assembly Bill 265. We are in recess.

[The Committee stood in recess at 9:42 a.m. and was called back to order at 9:50 a.m.]

We have eight of us, a quorum. This is Assembly Bill 367.

Assembly Bill 367: Makes various changes relating to departments of alternative sentencing. (BDR 16-979)

Assemblyman James A. Settelmeyer, Assembly District No. 39:
I was contacted a couple months back by Judge Jim EnEarl on bringing this matter forward. The question really is who should deal with alternative sentencing. What had previously occurred under Chapter 211 of the *Nevada Revised Statutes* (NRS) is that the court was already dealing with alternative sentencing in matters dealing with misdemeanors. We have had several laws that have come out in the past year through the Assembly talking about felonies: the third-time driving while under the influence (DUIs), domestic violence and stalkers, and other matters. An issue comes up: who should be dealing with the matters pertaining to gross misdemeanors and these felonies? Some individuals have said that maybe the state should be doing it. The reality, I think we all know, is that we really do not have the funds to consider having an alternative sentencing department for the State of Nevada. The other issue that came up is maybe the counties should have their own system separate

from the court or have dual systems, which to me starts to present problems. I believe that the courts are the best places to have these matters addressed, since they are clearly the ones dealing with these matters at 2 a.m. when something goes wrong. In that respect, we brought the bill forward. The other concept—I cannot believe that I am quoting Mr. Obama—is we should use the existing programs that we already have to deal with problems.

To do this, we would need to have a change in the NRS. It has been stated by the courts in the past that conditions of bail need to be within our NRS. This is something we want to have clearly stated so that the departments can deal with this. I brought with me today Doug Swalm from the Douglas County Department of Alternative Sentencing so that he could talk a little bit about alternative sentencing. There was also an amendment that was handed out that I hope all of you have (Exhibit C). What occurred is that upon getting the language back from Legal, I took this bill and gave it back to Mr. EnEarl to show him the revised language to make sure it was all in compliance. He then gave it to Judge Gibbons, who took it to a conference he was at and showed it to many other judges. They all agree with the concept of the bill. There are a couple of wording changes that they wish to have included, so they handed that back to me and those are the amendments that you see in front of you.

If you wish, I can entertain questions at this time, or it may be better to have Mr. Swalm and other individuals talk about alternative sentencing to try to clear up any questions that may come up.

Assemblyman Anderson:
Is the court concerned that they would prefer their language because they do not like the bill drafter's language: "pursuant to an order" versus what is currently in statute?

Assemblyman Settelmeyer:
They are indicating—Judge Gibbons and Judge EnEarl said the same thing—that on occasion it is acceptable to have an oral order as well as a written one, and they wanted to have that authority. That is the reason they brought this particular amendment forward.

Assemblyman Anderson:
In the past, we had statutorily demanded a higher level, that it actually be a written order rather than just an oral order.

Assemblyman Settelmeyer:
I am unaware of how it was brought up in the past or why it was done that way. This is just an amendment they felt would help clarify it and make it

easier and better for them. I will contact them and try to find that out and send you an email back in response.

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

I would like to briefly explain the history of the Department of Alternative Sentencing. Prior to 1995, the court services were in place for the juvenile offender and did not start again until after a person was convicted in district court of a gross misdemeanor or felony. In 1995, the Legislature adopted Chapter 211A of the NRS and established a department of alternative sentencing for the courts that wanted to establish a court services program for the misdemeanor offenders. This filled the void for the juvenile system up until the person was sentenced in district court.

The Department of Alternative Sentencing is nothing more than a probation department where we have convicted misdemeanor defendants. I have presented a handout titled "Bail" (Exhibit D). From page 2 on to page 4, I enlarged the print to specifically cover that bail conditions have been established for people who have made bail or have been released by the court on their own recognizance. There has never really been an agency to supervise the bail conditions in the manner that we do. With A.B. 367, we are requesting that the Department of Alternative Sentencing be allowed to carry on with bail conditions by writing into Chapter 211A of NRS the verbiage.

Bail conditions initially can start out as a felony—drug trafficking, third time DUI offender, and domestic violence offenders—and oftentimes the defendants are released. We have found that utilizing armed peace officers to supervise these bail conditions have dramatically assisted the courts and have produced positive results in protecting victims and ensuring that the individual returns to court. There are many cases where, as a condition of an own recognizance release, the court will instruct the Department of Alternative Sentencing to supervise the individual. We can be included on a GPS tracking device for domestic violence offenders. Supervision can include the serious and violent offenders such as drug traffickers and DUI offenders. Most recently, we have been involved with what was Senate Bill No. 277 of the 74th Session, the third time DUI offender bill. At that time, it was undecided by whom the person would be supervised. It was unclear at the time whether Parole and Probation would be tasked with the charge of supervising the individual. My district court judges, Judge Gamble and Judge Gibbons, came to the Department and asked, since the person had not been convicted of the third time felony, if we could put together a program for the offender in accordance with S.B. No. 277. We were able, along with my colleague Rory Planeta, to put together an outstanding program for the third time DUI offender.

Since then, the Supreme Court has ruled that Parole and Probation is tasked, if the court orders it, with the supervision of that third time DUI offender. By putting these conditions under the Department of Alternative Sentencing, it would add more credence to what we already have done. In combination with the package on the bail conditions (Exhibit D), you will see that we have given you an actual condition of bail and release form. As you can see, it is not the same standard for everyone. The court actually approves certain conditions of a release or bail to the defendant. So you would not have your reckless drivers being subject to search and seizure for drugs. It would have to be tailored to the bail conditions, which are outlined in NRS 178.484.

Chairman Horne:
I am still not certain what is trying to be accomplished here. We have pretrial and posttrial services, but for pretrial services, particularly for those not yet convicted, the bill says they are being treated like probationers. Typically, we do not do that. Those who are just charged, and the level of supervision that is attached to those people, is typically only for the purpose of ensuring their appearance in court, not to put other conditions on them that a probationer would typically have. I think we start getting into a problem when we start treating those pre-convicted persons—for all intents and purposes innocent people—with the same conditions a probationer would typically have. That is what gives me concern with this piece of legislation. I do not understand why you are trying to blend them. Are you not able, in Douglas County, to appropriately supervise them to a level to ensure their appearance in court? Why do you want to treat them like probationers?

Douglas Swalm:
To answer your question, I can explain that with more than one case example, but one clearly stands out. We had an individual who violently beat his wife and choked her with a T-shirt. He was taken into custody, he had enough money to make bail, and there was a no-contact order placed on him and a protection order. The court felt it necessary to add conditions and one was a GPS tracking device. We did not limit the defendant's mobility; we just wanted to know where he was and that he would comply with the terms of the no-contact order in having no contact with the woman he had beaten. As soon as he got out of jail, he got his cell phone, and he immediately called the victim and started to apologize. He explained to me that he was going to be staying at another residence, and I was able to monitor him on a GPS tracking device to know exactly where he was. In the meantime, he coerced the victim into bringing his clothes and everything else that he had down to one of the casinos. He had a suite there. I was able to track him. He had told me he was going to go have some dinner, and it was late in the evening, so I figured he was maybe in the coffee shop. I checked the coffee shop, the casino floor, then I went to

room reservations and found that he had rented a suite, which was outside of the scope of where he reported he was living. Several other officers and I got together and we went to his room. He had a no-drinking clause, and he was in violation of that. He had a no-contact clause, and he was in violation of that because we could prove that he had coerced the victim, the one he had just about strangled to death, to come to the room. She had brought his dog, his clothes, and everything she could to gravitate back to him. We were able to stop any further violence simply by having those bail conditions in place. When it came to his disposition in court, there was no room for probation. He had shown that he was a definite threat to the community; therefore, he was sentenced immediately by the court to jail for the maximum term for domestic violence.

That is just one of the stories, Mr. Chairman. There are many, many more. Not everyone who has access to bail would have conditions, hence the reason I showed you the form. There are many people out there who have made bail without conditions. Some of the offenders that we have now are those third time DUI offenders. If you asked just about any judge in this state, who is your most serious offender in your community, it is the repeat DUI offender. The repeat DUI offender drinks and drives vehicles but for the grace of God has not killed anybody, or perhaps they have. We put those conditions on that person so that we can reach out. We have equipment nowadays that we can use to monitor phone lines at the residence, or we can attach a device to the offender's ankle, so we know where they are at all times, and we know if they are consuming alcohol, which is a direct violation of their bail conditions. So far, since we have started the program, we have not had a repeat offender. We have had more prosecution for domestic violence than we have ever had before. We have found that the recanting of the victim does not occur when the victim has no contact with the offender. It is only because of these bail conditions or conditions of release that we have found that it works.

Chairman Horne:
I still think we have some issues in blending them, legally.

Assemblyman Anderson:
In the example that you gave, it would appear that the existing law works. Because of you and your department's diligence, the continuation of domestic violence in this particular case was prevented. The appropriateness of the court's action would appear to be the determination of the fact that they should be held for the maximum period of time in the jail. Do you see those things as somehow being altered by this bill, and if so, how? I am in kind of a quandary as to how this is going to help the victim be better protected other than the actions that your department already provided in support of this.

Douglas Swalm:
By placing what has already existed in Chapter 178 of NRS to allow the Department of Alternative Sentencing to supervise not only the domestic violence offenders, but others when we make the offender aware that somebody is watching, I think it only enhances the safety of the victim. In this particular case, it was definitely the safety of the victim. It can be used to further prosecute simply because we have found that, even though the court order mandates that a domestic violence offender have no contact with the victim, at least until an arraignment process can happen, before we implemented these programs, they would release the offender from jail and within 15 minutes he was back in the house. With the technology we have today, we can stop that. We can see it, and if he violates those bail conditions, we can return him back to jail and back to court.

Assemblyman Anderson:
I heard that part of your testimony earlier. Your response in that particular case was so obviously correct. I am in a bit of a quandary relative to the alternative sentencing projects that are taking place both in Washoe and Clark Counties, which I understand are working very efficiently. I do not want to do anything that would change the composition of those programs by moving responsibility away from where it is vested in the court by going overbroad in terms of what has happened to somebody who is on parole and probation. I do not want the entire parole and probation process to be moved to the jurisdiction of the courts. I am concerned about how this is going to alter existing programs that seem to be working efficiently. Your example showed me one that was working efficiently, so I am still in a bit of a quandary here.

Douglas Swalm:
I understand what you were going after now. I do believe that in Washoe County, as well as in Clark County, they have pretrial services. I believe that we would still keep those valuable programs. I would not take a nickel's worth away from those programs; they are very valuable. When we take a look at pretrial services as they stand today, the defendant comes in and reports, sometimes on a daily basis. One of the issues is alcohol testing. You will report to the office at 10 o'clock to take an alcohol test. We know that if a person drinks six beers within an hour, they are about a 0.10 blood alcohol content (BAC). We also know that if a person is going to be tested at 10 a.m., by 11 a.m. he can be totally drunk but he will be sober and ready to come back at 10 a.m. the next morning to be tested. What we can do to enhance this and get on board with is to go out to the offender's home at night, when he is least expecting it, and then test him. They have given their word to the court, in writing, that they will not deviate from the bail conditions. Just by simply having them report on a daily basis is not going to work. We have seen it time

and time again. There are many offenders who we have had come by for their daily preliminary breath test (PBT), but if we had gone out that night, we would have found them drinking. We are trying to make it safer for the community.

If you take a look at Chapter 211A of NRS, you only have four pages there. In 1995, I believe what the Legislature did was build a solid foundation on which we can build further. I believe that working with coexisting programs, such as court services in the cities—we do not have them in the rural counties—it will do nothing more than enhance the safety of the community, the accountability, and the rehabilitation. During presentence conditions, I have put many people into drug treatment programs before they are sentenced in district court or misdemeanor court. I work with the drug court programs. I do not see where there would be a conflict. Quite the contrary, I see camaraderie and I see making the programs better.

Assemblyman Anderson:
I appreciate the laudatory language for the 1995 piece of legislation. I am sure that Mr. Carpenter and I appreciate it, since it is our legislation. I am still in a bit of a quandary relative to how this is going to happen in terms of drug treatments and the ability of the courts in alternative sentencing? They have demonstrated a very effective program over the last 12 years of their existence. My concern is that they continue, so I will just have to take a look at this bill again.

Assemblyman Carpenter:
I guess this bill is asking to change the jurisdiction for one charged with a misdemeanor, a gross misdemeanor, or a felony. Is that really what this bill wants to do?

Douglas Swalm:
No, sir, it will not. Right now—I will say unofficially because it is not in Chapter 211A of NRS—the Department is only allowed to supervise convicted misdemeanor offenders. That is it. We have found a niche in which we can do pretrial conditions of bail or presentencing conditions, and we would like to include that in Chapter 211A of NRS. In the misdemeanor court, we work in it now. The district courts, both in Carson City and in Douglas County, use the Department of Alternative Sentencing to supervise the person who is charged with a felony, gross misdemeanor, or misdemeanor in a pretrial or presentence context. At the time that the justice court places the individual on bail conditions or release conditions, and those conditions will remain until their first appearance in district court if it is a felony or gross misdemeanor. At the district court arraignment, the judge makes a decision whether to continue with those bail conditions already in place or to modify them. More often than not

with the serious and violent offenders, the district courts, upon motion of the district attorney's office, will keep the conditions on that person and fill that big void that we have until the Division of Parole and Probation can become involved after the individual is sentenced.

Assemblyman Carpenter:
I guess what you are wanting to do is to put into statute what you are already doing.

Douglas Swalm:
That is correct.

Chairman Horne:
I do not know if it is that simple.

Assemblyman Anderson:
I do not want to put words in your mouth. By broadening it in this fashion, are you going to move the pretrial sentencing reports in felony, gross misdemeanors, and misdemeanors, into the control or potential control of the courts, where they do not currently have the actual control of who determines the presentencing report? I think the court can currently request that and then you as the chief try to assist the court in preparing such a report, but is this going to specifically give the court that power as a result of this piece of legislation?

Douglas Swalm:
We had never considered taking the authority out of where it was originally placed. When I heard you talk about doing the presentencing reports, those are still done by the Division of Parole and Probation, but where Parole and Probation benefits from it is that, while these individuals are under the jurisdiction of the Department of Alternative Sentencing for bail conditions for felony matters, they get a broader sense of how that person would do on these bail conditions. When they write their presentencing information report, they will list the issues that came up during that presentence, which adds more validity to the presentencing report.

Assemblyman Anderson:
I am talking about the broadening to the court. How does broadening it to the court change the efficiency of your department?

Douglas Swalm:
Well, a probation department enforces court orders. I do not think we would be taking away from any of that. The job of any parole and probation department is to enforce and supervise offenders that have been ordered by the court.

Matthew Fisk, Court Administrator, Reno Municipal Court, Reno, Nevada:
I have a background in alternative sentencing. I was the chief of the alternative sentencing department in Carson City and worked in the Carson City court system for about 14 years. As I did that, I performed pretrial supervision under the implied authority of Chapter 22 of NRS, where judges are allowed to issue court orders, and also under Chapter 178 of NRS to fulfill the purpose of bail. Of course, as you stated, bail is there to ensure a person's appearance in court, but judges are also obligated to weigh out public safety concerns and to impose conditions to ensure that the public is safe. A judge will typically look at a person's criminal history and the nature of the current case at hand to determine what additional conditions should be imposed. A good example of that is the document that Mr. Swalm presented to you, the conditions of release form that defendants sign as a condition of release back into the community.

The vast majority of the time these conditions are prohibitive in nature. You do not usually see a judge order a person into counseling or evaluation for substance abuse in a pretrial situation. Most of the time it is a no-contact with an alleged victim clause, do not consume alcohol or drugs, only use prescriptions according to your doctor's orders, those sorts of conditions. Those are the main conditions that are enforced by these officers. Different than a typical probationer who is convicted, what we are trying to do is free up the jail population. It is kind of a filtering process, ensuring that those who are in jail should be in jail because of the public safety risk, and those who are out of jail receive the proper supervision when those cases are so fresh and volatile. What this does is bridge a gap: it allows for the appropriate level and type of supervision according to the nature of the case. It balances public safety and fiscal concerns as well as court attendance.

Just as a practical example, when I performed this duty in Carson City, we typically had about 300 people out on pretrial supervision. The people were screened, and the appropriate conditions were imposed by the judge or the pretrial services officer. This level of supervision is typically not as intrusive as what a convicted probationer would receive. We would have typically 15 to 30 second and third offense DUI offenders out with ankle bracelets and being monitored randomly for alcohol and drug abuse.

We also had quite a few people who were out of custody awaiting trial, or their first appearance in front of the court, for recently alleged domestic batteries and

so forth. I remember one gentleman, who owned a construction company, was accused of breaking his wife's arm in a really severe domestic battery. He spent his 12 hours in jail, bailed out with a credit card, and would not be seen by the court for about a month and a half. So, it was good to have a pretrial services officer be able to intervene and make sure that he understood that he was not to have contact with the alleged victim and take into account his criminal history to impose the right conditions.

You may remember some years back the Anthony Eccles case. A gentleman who had no criminal history was arrested for violating a temporary protective order. He bailed out of jail immediately with his credit card and went and shot his estranged wife's boyfriend and killed him. In response to that case, I believe that the 12-hour hold was established by the Legislature. These are the cases that the pretrial model of supervision focuses on. I would like to point out that there are so many people who cycle through the jails, and at any given time, two-thirds to three-quarters of our detention centers' population are pretrial defendants. A lot of those individuals could be released, and judges would be more at ease to do so if they had proper supervision. A lot of people are out of custody who do not have the conditions imposed.

Just to address one more concern: in Washoe County, the court services agency does a great job of screening all of the defendants. They supervise the defendants who are out of custody and have been granted an own-recognizance release, those who have not posted bail. However, the people who had to post bail or a bond are not under their supervision. They are left to be supervised by bail bonds agencies that provide very minimal supervision, if anything. Those individuals, at this time, really are not receiving supervision up until they are arraigned or go to trial.

Assemblyman Anderson:
The court gets to determine, at the time of arrest, if a surety bond is required in certain kinds of cases. I thought the bond was only supposed to hopefully guarantee that defendants are going to show for trial because you do not want to put them in jail to await trial because you do not want to overcrowd limited bed space at the jail. When you get pulled over for speeding and sign the ticket, it is a promise, on your word, that you are going to appear. That is the lowest form of a surety, your word. After that, you then go to a dollar amount. These sureties are to avoid you being arrested and taking up space in jail because you have broken the law, whether it is a speeding ticket or something dramatically more substantial, such as battery, abuse, DUI, or anything else that is clearly unacceptable behavior in society. You would not want to change that to broaden the scope of the alternative sentencing program to become involved

in all of those kinds of low-level crimes, I would think, even at the misdemeanor level.

Matthew Fisk:
As with anything, we are forced to prioritize, especially in these times. Typically, what you would see at the Carson City jail, if you were to walk into the booking section, is a binder with a series of templates for bail condition forms, like the one Mr. Swalm presented, and you would have one that fits the crime of petty larceny, another for domestic battery, et cetera, so that way a person is not only posting a bail but he is also warned against going back to that same business or bothering that same alleged victim. That is a gap right now that really needs to be filled. As I said, these cases are fresh and volatile. Once the person gets arrested, there is really no supervision or guidance up until they go to court and that could be weeks or sometimes months away. That is the gap we are trying to bridge.

Rory Planeta, Chief, Department of Alternative Sentencing, Carson City, Nevada:
I came here today to explain a little bit about how we do business in Carson City. We are doing those pretrial services without the statutory authority to do so, other than the judges' court orders. Mr. Fisk said that we have people who are placed in jail, get out with a bail bond, a credit card, or they can post a cash bail, and they have certain conditions that go along with those crimes, and they are given those conditions in the jail. Either that day or the next day, they come to my office and we talk to them, get their current address, phone numbers, how to get a hold of them, explain their charges, and explain their conditions of bail or conditions of release to them. We can then watch them from that point forward.

Often, the jails look to us for the release of people on their own recognizance. When the jails get too full, they will contact me and ask if a person can be released on their own recognizance. We do that, but we need to set up certain conditions for that. They are let out of jail without those cash bonds, just on their word. We want to make sure that they comply with the conditions that would be set forth, so they have to come see us the next day.

I have three officers and myself and we have about 2,100 people in our caseload, about 500 of whom are under pretrial or presentence conditions. And those are the only ones who the judges feel need that extra amount of supervision, that their crimes, mostly a DUI or a battery, require more supervision and to try and break that cycle by intense supervision by visiting their homes. It is one of the things that is lacking in some of the pretrial services, not all, and I certainly do not want to knock pretrial because they do a

great job of what they are doing, but this would take it that one step further. Officers are out at night, they are out on weekends. Chief Swalm gave an example of the person who takes a PBT in the morning and then gets drunk that afternoon. We do catch those people sometimes, but sometimes it is months before we do that, when they finally get into that comfort cycle of using alcohol, and they come in and have a low breath alcohol content, and then they get arrested for doing those things. There is that 24 hours in between the times when they check in that they can drink. We use current technology, a secure continuous remote alcohol monitoring (SCRAM) device, so we get readings every half hour on whether a person has been drinking. A judge will put those things on the DUI offenders, especially the third DUI offenders.

Last year, we saved the jail 7,000 days of jail time just on house arrest in pretrial conditions with the ankle monitor GPS-type systems. We use those things, and it is a win-win for us: we save the jail $100 a day, which equates to about $700,000 just for those people, and they pay their own way through that. They can go back to work, take care of their families, and things like that, and be out of jail. So, those pretrial and presentence conditions are very necessary to our city. We use them a lot. The people who are released without those kinds of conditions, the only condition they have is no alcohol or not to return to a business from where they stole something. If they are caught again, they get rearrested and brought before the judge again.

Chairman Horne:
We have a memorandum from David Bennett, a criminal justice consultant, dated March 23, 2009. We will not read it into the record, but we will make it a part of today's record (Exhibit E). He is expressing his opposition to the bill. I suggest that the Committee read it when they get an opportunity to do so.

I will close the hearing on A.B. 367. Is there any housekeeping left? Seeing none, we are adjourned [at 10:37 a.m.].

RESPECTFULLY SUBMITTED:

_____
Sean McDonald
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Corrections, Parole, and Probation

Date: March 24, 2009 Time of Meeting: 8:13 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Guest list
A.B. 367	C	Assemblyman James A. Settelmeyer	Proposed amendment
A.B. 367	D	Douglas Swalm, Department of Alternative Sentencing, Douglas County	Extract from NRS 178 and specimen form
A.B. 367	E	Chairman William Horne	Memo from David Bennett dated March 23, 2009