

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

**Seventy-Sixth Session
March 9, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:08 a.m. on Wednesday, March 9, 2011, 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/76th2011/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 James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

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

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jeffrey Eck, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Wesley Goetz, Private Citizen, Incline Village, Nevada
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties
Union of Nevada
Larry D. Struve, Advocate, Religious Alliance in Nevada
John Cracchiolo, Executive Director, Nevada Catholic Conference
Bradford Glover, Re-Entry Coordinator, Department of Corrections
James Scally, Lieutenant, Department of Corrections
Sam Bateman, Nevada District Attorneys Association
James "Greg" Cox, Acting Director, Department of Corrections
Jeff Mohlenkamp, Deputy Director, Support Services, Department of
Corrections
Mark Woods, Deputy Chief, Division of Parole and Probation,
Department of Public Safety
Harold Cook, Administrator, Division of Mental Health and Developmental
Services, Department of Health and Human Services
Deborah McBride, Director, Substance Abuse Prevention and Treatment
Agency, Division of Mental Health and Developmental Services,
Department of Health and Human Services
James Hardesty, Associate Justice, Nevada Supreme Court
Kim Wallin, State Controller
Kristin Erickson, Nevada District Attorneys Association
Heather D. Procter, Deputy Attorney General, Office of the
Attorney General
Elana Graham, Intergovernmental Relations Director, Eighth Judicial
District Court
Mark Teska, Administrator, Administrative Services, Department of
Public Safety
Rick Gimlin, Administrative Services Officer, Division of Parole
and Probation, Department of Public Safety

Chairman Horne:

[Roll was called.] Good morning, ladies and gentlemen. We have two bills on the agenda today. We will take them in order. I will now open the hearing on Assembly Bill 93.

Assembly Bill 93: Provides for the establishment of intermediate sanction facilities within the Department of Corrections to provide treatment for alcohol or drug abuse to certain probation violators and offenders. (BDR S-509)

Assemblyman Tick Segerblom, Assembly District No. 9:

Assembly Bill 93 is a bill that was introduced during the last session by Senator Parks. He is here today to help with testimony. Before we start, I would like to ask that Senator Horsford and Senator Parks be listed as cosponsors of this bill.

Chairman Horne:

Thank you, Mr. Segerblom. We can amend that onto the bill.

Assemblyman Segerblom:

Assembly Bill 93 is designed to deal with what are called intermediate sanctions for people who have alcohol or drug problems related to their crimes. It essentially tries to separate those people out and provide for a civil process where they are incarcerated and given treatment. If they are successful with that treatment, they do not have a criminal record. It also allows for people who violate parole to go into one of the drug and alcohol treatment programs under certain circumstances and eventually become productive members of society.

It is estimated that approximately 20 percent of the inmates in state prisons are there because they are substance abuse offenders. These people are nonviolent, by and large, and, at \$20,000 per inmate per year, they cost us a lot of money. We are trying to save tax money that we could put to more productive use. We are also trying to keep these people from having criminal records and make them more productive members of society.

In 2009 Senator Parks introduced the bill. It is estimated that over the following two-year period, if the bill had been adopted, the state would have saved \$13 million. That is based on the 400-bed figure that we used in the bill.

I have also proposed an amendment, which is on the Nevada Electronic Legislative Information System (NELIS), that deals with the Department of Corrections (NDOC). One of their concerns was that if we mandated 400 beds,

there would be a large start-up cost. There would be a huge fiscal note, so we have asked NDOC to do what is practicable, which is to start it up slowly and phase into the program. Hopefully, we are taking care of some of their concerns about the cost. Many states have similar programs.

In dealing with the bill, section 1 provides for the creation of intermediate sanction facilities in both northern and southern Nevada. They would contain up to 400 beds. With the amendment, it would be as practical and not include all beds immediately.

Section 2 requires that persons in the court system be evaluated to see whether they would qualify for this program.

Section 3 allows probation violators to be evaluated to see whether they qualify for the program. These would be people whose probation violation was technical in nature, who have not previously been in the program, and who have not committed a violent act in the interim.

Section 4 requires the court to determine that the violators are addicted and, therefore, eligible for the program.

Section 5 requires that the courts make a determination whether offenders can be rehabilitated. If so, they could be held in custody in the NDOC for up to six months, and the sentencing would be deferred. In our amendment, we have changed this to allow, in certain circumstances, the offender to actually leave the facility and work, if that were feasible. That would allow the offenders to maintain an income and be with their families, if possible. Also, they would not be permitted to be at an intermediate sanction facility, unless they were in a minimum security facility.

Section 6 requires that the individuals pay for their treatment if they have the resources. If they do not have the resources, they can be placed in a community service program. My amendment adds "teeth" to this, because it allows the court to obtain a judgment for the cost of the program. That judgment could be enforced against the person. We do not want to burden someone who is just coming out of incarceration with some type of huge monetary amount, but we recognize that if the offender is able to pay, that would be a goal of the program.

Section 7 identifies what happens if the program is or is not successful. The main thing to remember here is that if it is successful and the candidate is rehabilitated, then the conviction is set aside. The person would not have the criminal record. One of the worst things we do in our society is label people

felons, and that felony label accompanies them for the rest of their lives. It impacts their ability to have jobs. There are numerous things in our society that you cannot do with a felony on your record. If we can prevent that, I think that would help everybody tremendously.

Section 8 requires that the Corrections Department collect data on the program to see whether it is actually working. There is evidence around the country that these programs do work, but it is important for us to come back in two years to evaluate what happened.

Section 10 appropriates \$250,000 a year for the program, although that is subject to change. I want to point out that this bill, assuming it is passed here, will go immediately to the Ways and Means Committee. That Committee will do the same thing that we are doing, but they will look at it from a cost standpoint. This is just the first step of this process. In the last session, it passed the Senate Judiciary Committee and then died in the Senate Finance Committee because of the cost.

Section 11 says that the bill would be effective January 2012. With your permission, Mr. Chairman, Mr. Parks would like to make a few comments.

Chairman Horne:

Thank you, Mr. Segerblom. Are there no questions? Good morning, Senator Parks.

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

Good morning, Mr. Chairman and Committee members. I am here this morning in support of A.B. 93. This is a bill that I have had experience working with in previous sessions. During the years I served in this Assembly, I chaired the Subcommittee on Public Safety, which included the Department of Corrections and the Division of Parole and Probation (P&P). I also chaired the Select Committee on Corrections, Parole and Probation in 2007. We made a number of recommendations in bills that, even to this day, we are looking at and revising.

I am here to speak in support of A.B. 93. I also had a bill draft and chose not to introduce the bill, since there is no need to have two competing bills in a legislative session. It is an issue that I am very passionate about, in the sense that I think it can save significant dollars for Nevada's budget by reducing the amount of prison facilities that we would require.

Intermediate sanctions have been around for probably 40 years. They have been used to varying degrees, and they have had varying degrees of success.

For the most part, they have been quite successful. Intermediate sanctions are really criminal sentences that fall between a standard probation and incarceration for the individual. Intermediate sanctions can include house arrest and intensive probation, which has conditions in addition to the regular conditions for probation, such as reporting to a probation officer. Additional conditions can include intensive boot camps, electronic monitoring, and the requirement to attend drug or alcohol treatment programs. Intermediate sanctions serve a dual purpose. First, granting a sanction over incarceration helps reduce the overcrowded jail and prison conditions and eases the financial burden placed on the state's correctional system. Second, it helps to reduce recidivism by targeting the behaviors of the defendants that led to the crimes for which they were found guilty. With that, I will answer any questions, and I hope you will act favorably on A.B. 93.

Chairman Horne:

Thank you, Senator Parks. Mr. Daly.

Assemblyman Daly:

I heard the testimony. I read the bill. I just want to make sure I understand. Can you give us an example of a person that goes through sentencing under the current deal without this option, and then what the outcome would be? He ends up as a felon, et cetera. If we have this intermediate sanction process, what would happen? I understand that cost savings may result from people not being in jail, but I want to understand. So, if you could, give me an example. With plan A, which is what we have now, versus plan B, which you propose in this bill, explain the difference in the outcome and the steps in the process.

Senator Parks:

I think we are going to have other witnesses come forward who can give you firsthand experience. I think it is sufficient to say that we certainly can save tremendous numbers of dollars both now and in the future by implementing such a program. The system that we have at the moment is basically a warehousing situation. We find somebody guilty, we send him to prison, and we offer him very limited amounts of rehabilitation treatment programs. He serves his time, and he is no better than when he went in.

Chairman Horne:

Ms. Diaz.

Assemblywoman Diaz:

Thank you, Mr. Chairman. I am not very versed in the legal rhetoric. It says in section 3 that the probationer will be allowed to enter one of these intermediate sanction facilities if he "committed only a technical violation of his or her

probation." Can you shed light on what that is? What is a "technical violation?" Can you give me some examples?

Assemblyman Segerblom:

Essentially, a technical violation occurs when you have to report at a certain period of time, and you missed your reporting deadline. Or, you are supposed to take a drug test, and you flunk your drug test one time. You do not commit a crime or do something serious. Probation says you have to do "x, y, and z." Some things are deemed to be technical; some things are deemed to be serious. If it is just one of the technical ones, like missing a deadline or a particular test, then that would allow the person to go back into one of these programs. Right now, many times if you violate parole or probation, you go right back to prison. That is one of the big reasons why people are in prison for quite a while.

Chairman Horne:

Are there any other questions? Mr. Frierson.

Assemblyman Frierson:

In reading the criteria for qualifying for the program, it talks about a crime or an offense involving the use of drugs or alcohol. Is that contemplated to include maybe other conduct that does not directly involve the use, but is a consequence of the use? Maybe they stole a carton of milk from the store, but it was because they were on drugs or supporting a drug habit. Is the intention of the bill to incorporate that conduct as well, or are we, at least at the start, focused primarily on drug-related offenses?

Assemblyman Segerblom:

As a sponsor of this bill, that would be my intent. It would include crimes which are related to drugs, as opposed to strictly drug crimes. The carton of milk would fall into that category.

Chairman Horne:

If I understand correctly, this is not going to be in statute. This is going to be a pilot program. Is that correct?

Assemblyman Segerblom:

That is the intent. Also, with the amendment, this would allow them to phase it in, so that it would not be a huge burden on the system immediately. Start up cost was one of the problems we had two years ago.

Chairman Horne:

Mr. Sherwood.

Assemblyman Sherwood:

Thank you, Mr. Chairman. Certainly, this is a big deal to have people stay out of prison. I know it is frustrating when you are trying to change your life and you cannot because of an addiction. My concern would be on the back end for expunging the record. I am thinking of a case that I am familiar with, where a CPA embezzled money because he had a drug addiction. As a potential client or an employee, not knowing of his crime would give me pause. Under this bill, in that real life scenario, can you see where somebody would be unable to make an informed decision on which CPA to hire?

Assemblyman Segerblom:

A prospective employer would not know if the person was sentenced to one of these programs, and he would not know whether there was a felony conviction, because there would not be a felony conviction. I am assuming that the professional licensing process may address that. That is one of the issues you face in these kinds of situations, where you can either "tag" people with felonies which follow them for the rest of their lives, or allow them to show that they are able to perform in society and go forward without that label. That is a policy decision that this Committee has to make. From my perspective, everybody should be given a second chance or more, and that is what I would do in that situation. The CPA hopefully would have malpractice insurance and other things that would cover the situation you are talking about, but you could not go to a record and see that this person has a felony for embezzling money.

Assemblyman Sherwood:

There are two issues. One is getting treatment for the addicted person. The next issue would be making private the information that the person committed a crime. Are those, in your mind, two separate issues? If the bill were to come through as just "We have the treatment, but you still pay for your crime . . ." Part of paying for your crime is its presence on your record, right? If those were separated, would this still be a good bill in your mind?

Assemblyman Segerblom:

Yes, absolutely, but to me, one of the main benefits is the fact that you do not have the felony on your record, which you carry for the rest of your life. The CPA that did that would go before his licensing body, and he would probably lose his license. In that sense, there are other civil protections for the future client. The CPA could explain to the board that this was a one-time thing. There are lots of productive members of society, such as members of Alcoholics Anonymous, that have come back and are productive. They are lawyers, CPAs and doctors. I would envision if you could do that, you should be given a second chance.

Chairman Horne:

Part of the reason for that is providing that incentive. Am I correct? You have a person who has committed a crime, and you provide that incentive by telling him that if he jumps through various hoops and is successful in doing that, this is his reward at the end. Is that correct?

Senator Parks:

Yes, that is very much part of the program. The program allows you to put your life back together again and to become productive once again. I think we might have some people testify on this bill who could probably give a better answer to Assemblyman Sherwood's question. I know of only one case, but the individual was never again allowed to put the CPA after his name. However, he was able to restore his life and to practice accounting.

Chairman Horne:

One more question. Mr. Hansen.

Assemblyman Hansen:

Thanks, Mr. Chairman. From what I can tell, your proposal is the same as Spending and Government Efficiency (SAGE) Commission Recommendation No. 31, which has a startup cost of \$6 million. However, they do say that in the first year, the state would save over \$50 million and \$280 million over five years. While there is an initial cost, it is a fantastic program from what I can see. I think all the people who are worried about the state's financial situation should see this as a fantastic investment with tremendous potential returns.

Senator Parks:

I believe that this is certainly a program that has been talked about for a number of years, and I am sure that the SAGE Commission saw that this has a potential savings in reducing our incarceration costs. My presumption is that they borrowed it. As far as the fiscal numbers go, there have been a lot of numbers that have been bounced around, and there are a lot of premises under which they were calculated, but I would not discount that estimate brought forward by the SAGE Commission, only from the perspective that it is extremely expensive to build prison housing. The savings there alone are tremendous. Thank you.

Assemblyman Segerblom:

I think what has happened is that in the 1990s there was the effort to put everybody in jail and throw away the key. Now we are starting to realize that is actually costing us as taxpayers and citizens. We have kind of shot ourselves in the foot. Now we are trying to go back and look at this again and ask what is the best way for society to deal with the criminal, the victim, and society itself.

Many of the expenses are just outrageous, and if we could get rid of that, it will be a savings for everybody.

Assemblyman Hansen:

Thanks. I am on board.

Chairman Horne:

I see no further questions. I will open it up for others who are here to present. Does anyone here wish to speak in favor of A.B. 93? I have Wesley Goetz and Ms. Gasca. Please proceed, Mr. Goetz.

Wesley Goetz, Private Citizen, Incline Village, Nevada:

I am a concerned citizen. I have been doing a lot of research. I have been listening to a lot of your Senate bills. I have listened to Harry Reid talk about Nevada becoming a leader. I have a plan that will make Nevada a leader in rehabilitation for both substance abusers.

[Mr. Goetz read from a prepared statement ([Exhibit C](#)).]

I was talking to Dr. Earl Nielsen last Friday. I gave him an idea of how sex offenders, since their crimes are related to substance abuse, could be treated in the prisons. I think all this relates to alcohol and drug abuse. I wrote this in 2006.

I have done quite a lot of research on professional intensive in-prison sex offender treatment programs around the world. Since Dorothy Nash Holmes' policy was instituted, sex offenders cannot attend the Sexual Treatment of Offenders in Prison (STOP) program until one year before they are released from prison.

[Mr. Goetz read from a prepared statement (page 5 of [Exhibit D](#)).]

I believe you have a legal obligation to find, create, and develop adequate, standardized sex offender treatment programs that are meaningful, effective, and efficient in order to lower the tier levels of Nevada's sex offenders to where society will feel a lot safer when Nevada's sex offenders come to live in their communities.

[Mr. Goetz read from a prepared statement ([Exhibit E](#)).]

Chairman Horne:

Mr. Goetz, may I interrupt you for a moment? I see you have quite a bit left to read. For brevity, could you wrap it up? We can enter your remarks and printed material into NELIS. We have some others to testify, and we have another bill.

Wesley Goetz:

I will skip a couple of paragraphs, but when I talked to Earl Nielsen about this, he is willing to teach these classes and have interns and sex offenders from the colleges from this videoconferencing.

Chairman Horne:

The Committee has gotten the gist of your testimony. You mentioned a proposed amendment in which you would like this pilot program to include sex offenders to be eligible for this program for technical violations. Is that correct?

Wesley Goetz:

I was a sex offender, and I was on probation. I got revoked and sent to prison. To me, this relates to it because I was on probation.

Chairman Horne:

I understand. That proposed amendment will be placed in the record for consideration during a work session.

Wesley Goetz:

May I finish one more paragraph?

Chairman Horne:

Yes. Take a minute and finish up. Thank you.

Wesley Goetz:

A program that I develop that will be part of the sex offender treatment in order to continue extra therapy for sex offenders in the Nevada Prison System, in order to bring in extra time

[Mr. Goetz continued to read from page 5 of [Exhibit E](#).]

Basically, Earl Nielsen and Robert Hemingway are behind this. If you need to talk to them, I can give you their phone numbers. They can explain more in a more professional way, since they are licensed psychologists and each has a PhD.

Chairman Horne:

Thank you, Mr. Goetz. Are there questions for Mr. Goetz? I see none. Thank you for your testimony.

Wesley Goetz:

I wrote these letters back in 2005 and 2006. I actually did a grievance on this in 2007 in the prison, so a lot of the prison administration back then had these letters and my ideas, but they never took effect to try to get them into the statutes.

Chairman Horne:

Thank you. Ms. Gasca.

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

The American Civil Liberties Union (ACLU) of Nevada wholeheartedly supports this bill. We heard testimony last session on a very similar bill in the Senate Finance Committee, and, following the testimony and during the interim, in the Advisory Commission on the Administration of Justice.

Overcrowding of prisons is a serious issue faced not only by Nevada, but the nation. Intermediate sanctions is one of the best proposals to help with population draw down and easing the burden on the criminal justice system, while allowing the state to be more responsive to the needs of people on probation. We really appreciate the work that both the Assemblyman and the Senator have put in towards bringing forward these recommendations supported by the SAGE Commission. I want to echo the comments of Assemblyman Hansen that the fiscal note will quickly make up for itself, insofar as cost savings in the long and short term.

I also want to iterate for the record that the ACLU has long been a watchdog of the prison system and most recently released a report regarding prison conditions. Something like an intermediate sanctions facility will help the Department better use its resources to address some of the other underlying issues that are present within the system as a whole. Thank you much for your consideration of my comments, and we hope that you move forward with this.

Chairman Horne:

Thank you, Ms. Gasca. Are there any questions for Ms. Gasca? I see none. Does anyone else here in Carson City wish to testify on A.B. 93?

Larry D. Struve, Advocate, Religious Alliance in Nevada (RAIN):

This bill was also considered in the 2009 Session, and RAIN supported this bill in 2009. We would like to state on the record why the five denominations of RAIN are in support of legislation like this.

The prison chaplain for the Nevada Prison System for several years was one of our board members. Her name is the Reverend Dr. Jane Foraker-Thompson. She produced two papers for the RAIN Board. One is titled "How to Reduce Prison Population: Avoiding the Waste of Millions of Taxpayer Dollars." The second paper involved creating a humane criminal justice system. These documents involve too many pages, which is why I have not offered to put it in the record, but I want to highlight one piece of it that relates to A.B. 93.

As prison chaplain, the Reverend Dr. Foraker-Thompson got to know the demographics of our prison population fairly well. She did a very concise summary for the RAIN board that I think shows why these faith communities are supportive of this type of legislation. She writes, "Eighty-five to ninety percent of inmates have drug or alcohol addiction problems as a basis for their criminal history." She believes that tough, effective treatment programs would last no more than 18 to 24 months and that these treatment programs, on average, cost about ten percent of the cost to keep someone in institutional care after being sent back to prison for a technical violation involving their drug or alcohol addiction. The recidivism rates for those who go back to prison are about 65 to 75 percent, whereas those that come out of treatment programs have a failure rate of between 18 and 30 percent. This is based on national statistics, not Nevada statistics. Those numbers were very compelling, as was all the other material that she provided.

As we testified in 2009, we feel that Nevada cannot go down the path of just warehousing people by building more prisons. We simply do not have the money. That has become especially true in this particular session. If there is some way to find the up-front money, we think that the cost down the road will be paid many times over by adopting a program like that in A.B. 93. Thank you.

Chairman Horne:

Thank you, Mr. Struve. I see no questions.

John Cracchiolo, Executive Director, Nevada Catholic Conference:

I also want to reiterate, in working with RAIN and Larry Struve, that we are in full support of this bill. The Catholic Conference is in the business of redemption, and anything that can be created in lieu of reincarceration, especially at the cost of over \$20,000 per annum, I think is a good opportunity

to save the state some significant money. We are in full support of the bill. Thank you.

Chairman Horne:

Thank you, sir. I see no questions. Is there anyone else here in Carson City wishing to testify in favor of A.B. 93? In Las Vegas, I have Brad Glover, Lieutenant James Scally, and Sam Bateman. We will start with Mr. Glover.

Bradford Glover, Re-Entry Coordinator, Department of Corrections:

The Department of Corrections fully supports the concept of this bill and currently has a pilot program called OPEN, which is Opportunity for Probation with Enforcement in Nevada. We provide very similar functions to the bill proposed today. I will defer to Lieutenant Scally, who is also here in support of the bill and who will talk about that more in depth.

There are several provisions within this bill that could be very costly to implement, or to which we need more clarification at NDOC before we could fully support this bill's passage. However, NDOC is willing to work with Assemblyman Segerblom, Senator Parks, and any other Judiciary Committee members on this bill to make amendments.

This bill is very exciting because it is moving towards community corrections, which we currently do not have here in Nevada. In short, NDOC and I fully support this bill. Thank you.

Chairman Horne:

Thank you, Mr. Glover. Mr. Frierson has a question.

Assemblyman Frierson:

Thank you, Mr. Chairman. Mr. Glover, I would encourage you to contact the sponsors of the bill. You and I have had extensive discussions about some of these types of diversion programs, and I believe you would be a great asset in coming up with something. It would be really productive for the state.

Bradford Glover:

Yes, sir. I will do that.

Chairman Horne:

Thank you, Mr. Frierson. We will go to Lieutenant Scally.

James Scally, Lieutenant, Department of Corrections:

For over a year, we have been doing a pilot program, and it parallels a lot of things that this bill proposes. During that time we have had numerous

offenders that were sanctioned by the court to participate in an intermediate sanction program for various reasons, either for their drug abuse or for lack of education. We have had 11 graduate since we opened. We have had nine graduate from an intensive drug treatment program through the Salvation Army. Three of them have received their GEDs. A total of twenty-three were placed throughout the year. We currently have three in our housing facility. Eleven of them were convicted of gross misdemeanors, while 25 were convicted of felonies. Four were drug-related, 12 were violent, and 20 involved property crimes. When we started, only seven of them had jobs. Now, 19 are employed.

Chairman Horne:

Are there any questions for Lieutenant Scally? I see none. Thank you, sir. Mr. Bateman.

Sam Bateman, Nevada District Attorneys Association:

We are generally supportive of the bill. This was a bill we came to the table on in 2009. I have some initial concerns, about which I talked to Assemblyman Segerblom. I know that he is willing to give me an opportunity to work on some of the language. If I could, let me identify for you my understanding of what the bill does, and what we need to change.

It appears to me that we are essentially addressing two different categories of defendants in the bill. The first are those defendants who have not yet been adjudicated and want to take advantage of a deferment program or a diversionary program. They are called "offenders" in the bill. It appears that it refers specifically to areas in which they have not been able to take part in a diversionary program. This bill sets this up in those areas. Those are the ones who have the opportunity to avoid a conviction on their record. We already have those types of programs in Clark County. That is one set of people I think this bill addresses.

The other set of people are those who have been adjudicated and sentenced, had their sentence suspended, were put on probation, and then violated probation. Maybe they had a dirty urinalysis or did not go to a drug counseling program as required by the court.

Those are two very separate groups of people in the criminal process who are in completely different positions. The bill, as written, tends to conflate the two. I offered my services to try to rework the language to make sure that we are very clear about who is a probation violator versus an offender not yet convicted. I want to offer our Association's help with the drafting if this were to move forward. I did not want to do any significant amendments for today's hearing, because it is going to require some adjusting of the language, but

I know Assemblyman Segerblom was open to our services. I would be happy to answer any questions about that.

I do see, on the flip side, where oftentimes probation violators come back with a dirty test on drugs, and judges sometimes actually are not willing to revoke them. What ends up happening with some of those violators is that they do some short period of time in our local detention center, and then they are back out on probation and they have not actually received any treatment at all. You end up with a revolving door where they keep coming back. I know that makes it difficult for probation officers to supervise. In some respects, I think this is helpful to get those individuals off the street for some period of time and get their issues addressed through a program, rather than having them continue to be placed back on probation and reoffend. I would be happy to answer any questions.

Chairman Horne:

We have a question from Mr. Kite.

Assemblyman Kite:

I think my question might have just been answered. If they complete this program and their record is expunged or sealed or something, and they do recommit the crime, can that file be opened and used against them for the next trial?

Chairman Horne:

Mr. Segerblom, how do you understand that to work?

Assemblyman Segerblom:

That is one of the questions that we are trying to work out. But, all things being equal, if you successfully completed the program and you were not given the conviction and a certain period of time went by, then no, it would be expunged from your record. It would not be a conviction.

Chairman Horne:

How I understand it, at least for gross misdemeanors and felonies, is if they pick up another charge, say, a couple of years after they have completed this, and are convicted, there is a presentence investigation that is generated. Usually, in that investigation, a number of arrests will be shown. In this bill, I doubt whether that arrest would be expunged. Mr. Frierson.

Assemblyman Frierson:

Thank you, Mr. Chairman. I was thinking about the same issues. In my reading of the bill, an expungement of a record is different than a dismissal of charges,

which this pilot program seems to contemplate. By virtue of participating in a program, a conviction could be avoided. That is different from sealing of records, which is a whole separate process. I was somewhat comforted by the notion that if they completed the program, the charges would be dismissed. In my reading of it, they still have access to the arrest information of the underlying case.

Chairman Horne:

Are there any other questions? Thank you, gentlemen. I see no one else in Las Vegas. We will move to opposition. Is there anyone here in Carson City in opposition of A.B. 93? How about in Las Vegas? Does anyone here in Carson City wish to testify in the neutral position for A.B. 93?

Who is going to start? Director Cox.

James "Greg" Cox, Acting Director, Department of Corrections:

I totally support the concept. In fact, we have been doing this for approximately one year now, in collaboration with P&P and District Court Judge Jackie Glass. We have had extensive conversations with Judge Steven Alm in Hawaii prior to this about intermediate sanctions in Hawaii's Opportunity Probation with Enforcement (HOPE) program. That has been a very productive program.

We are also receiving support from Deborah Shaffer with the University of Nevada, Las Vegas, in tracking the progress of our program and its participants. We are all looking at data to support it in the long term. There is value and merit in these programs. We knew this some time ago. Our staff has used approximately 30 beds that we had available at Casa Grande in Las Vegas to implement this program.

Judge Glass has been a key component of making it a successful program from the start. We want to work with Assemblyman Segerblom, and I appreciate his support for the Department. Senator Parks has always been a proponent of intermediate sanctions and community corrections. We do appreciate the fact that many people are as interested in this as we have been over the years. I agree that it is moving forward at a quicker pace now. With Assemblyman Segerblom, we are looking at expanding it and how to approach it. Thank you.

Assemblyman Daly:

Thank you, Director Cox. Have you visited Hawaii's HOPE program?

James Cox:

Mr. Chairman, I have not been to Hawaii yet. Everybody has looked to Judge Alm and the Hawaii HOPE program as a model. In a discussion with him last week, I asked how the program is doing. He said he is gathering data. He is very data driven. These programs have been expanding across the country, so our state is being looked at as a model because of what we do at Casa Grande. That said, my staff has done a fantastic job of doing this with very few resources.

Chairman Horne:

Are there any questions for the Director? Mr. Segerblom.

Assemblyman Segerblom:

I do not know whether you have had a chance to look at the amendment that we proposed, but would taking out the mandate for 400 beds and indicating that you can do up to 400 beds help you in reducing the fiscal note?

James Cox:

Yes. I can have Deputy Director Mohlenkamp talk about the fiscal issues with you.

Chairman Horne:

Director Mohlenkamp.

Jeff Mohlenkamp, Deputy Director, Support Services, Department of Corrections:

We have been working with staff for a few weeks now to try and identify ways to bring the cost under control. We understand that was one of the reasons it did not succeed in the past. I think that a couple of the major provisions that needed to be amended have been amended, and that is the language regarding 400 beds. Now I am hearing language that it would be within the Department's means. We would like to work with you on that language. Even "up to 400 beds" still gives us a little bit of pause, because it is hard to budget with that kind of number. The Department should operate within its available means, or something along those lines. It is a pilot program. We would be more than happy to work with you to expand the program, but we would have to be able to make sure that the expansion did not cripple our financial capabilities.

The significant component that needed to be adjusted was having individuals participating in this program completely segregated from our other population. If that were in place, it would be cost prohibitive, because we would essentially have to staff an entirely different facility. Our minimum security facilities are not set up such that we can entirely separate one population from another. We

house people separately, but the facilities are not designed so we can guarantee complete segregation. We understand that has also been removed as a provision of the bill.

There are a number of provisions on which we need clarification: The role of P&P; our responsibility for medical care; civil commitment as opposed to our standard protocol of criminal conviction and how that distinguishes our cost requirements; our responsibility to maintain the inmate's property, manage his funds, and things of that nature. There are a variety of details that need to be worked through, and we would be more than happy to work with your staff to do that.

Chairman Horne:

Are there any questions? Mr. Sherwood.

Assemblyman Sherwood:

By point of clarification, when it says in here "the court," that means any court; so any judge could institute this and we would not limit it just to one specific judge or one specific court, correct?

James Cox:

That was some of my discussion with Judge Alm. Judge Glass is the key component of this program in the District Court in Las Vegas. She and I have discussed expanding the program not only in Las Vegas, but also into northern Nevada. I would say that Judge Glass would be the person to talk to about expanding the program's jurisdiction to other judges. She clearly knows the process and the program. What I want to do is ensure the vitality, value, and merit of the program in the future, that we do it correctly, and that we have effective communications between Judge Glass and the judges being trained.

Assemblyman Sherwood:

This is a great principle, and it has been proven, apparently, that it is. At some point, we need to take the training wheels off and train the trainers and keep it away from one specific court or judge who may not always be able to service everyone.

James Cox:

I would agree. It is very critical that we have the research and the data to back the program in the long term. I support the concept and the future of the program, but I want to make it clear to the Committee that the data and the resources are valuable in the sense that we can evaluate it correctly to maintain the program. Deborah Shaffer is gathering that data for us now. We made that

happen through the University of Nevada, Las Vegas. The university has been very cooperative partners with us.

Jeff Mohlenkamp:

Mr. Chairman, may I make a couple more comments?

Chairman Horne:

Yes, Mr. Mohlenkamp.

Jeff Mohlenkamp:

I want to address the overall fiscal discussion, because there has been some discussion about significant savings in NDOC. I want to make sure nobody leaves here with the thought that they can take a lot of money out of NDOC if a program like this passes. We are talking about future cost avoidance. That is where the big savings come in if this pilot program ultimately becomes a more significant program.

Chairman Horne:

Are there any further questions? I see none. Mr. Woods.

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

We remain neutral at this time. I just want to echo what the Director and the Deputy Director said about their concerns with the specifics of the program. The program OPEN is working very well in Las Vegas. Our biggest concern is the role of P&P if it goes statewide. When I heard you mention the word "pilot," we felt a little bit more comfortable. With some adjustment, we can make it work in the Reno area, but we are concerned with places like Ely, Elko, and Pioche where these offenders are. The basic question of who is responsible for getting them from point A to point B has to be asked. We felt, in dealing with the sponsor of the bill and NDOC, we can work those things out, with the idea that this will start as a pilot. Thank you.

Chairman Horne:

Thank you, Mr. Woods. Are there any questions? I see none. Is there anyone else present to testify in the neutral position on A.B. 93?

Harold Cook, Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services:

[Mr. Cook presented to the Committee [Exhibit F](#) and [Exhibit G](#).] We fully support the concept of this program. We would like to provide you with some information as to what a program like this would cost and what the \$500,000 appropriation in the bill would buy. We were under the impression

that, ultimately, the program would consist of 400 beds. We are pleased to hear that that may not be in the final bill. We will provide you with information on what a 400-bed program would cost as well. Deborah McBride can provide you with that information.

Deborah McBride, Agency Director, Substance Abuse Prevention and Treatment Agency, Division of Mental Health and Developmental Services, Department of Health and Human Services:

Good morning, Mr. Chairman and members of the Committee. I am here to provide testimony on A.B. 93, which provides for the establishment of intermediate sanction facilities within NDOC to provide treatment for alcohol or drug abuse to certain probation violators and offenders.

Assembly Bill 93 provides that the Department of Health and Human Services (DHHS) will be responsible for administering the evaluation and treatment of any probation violator or offender who is placed in an intermediate sanction facility. The program responsible for executing this program will be the Substance Abuse Prevention and Treatment Agency (SAPTA), and this is within the Division of Mental Health and Developmental Services of the DHHS.

The bill proposes that the NDOC establish the intermediate sanction facilities, provide a healthful diet, secure and sanitary housing, and necessary medical and dental services. After review of the bill, we have some suggestions for changes.

Section 6 of the bill, addressing the potential for a probation violator or offender to pay the cost of his or her treatment and supervision, needs further definition as to how this is to be determined. In addition, separate facilities need to be provided for the separation of men and women.

We believe the bill also needs further clarification on initial screening of offenders with sexual offenses, history of violence, severe mental health conditions, et cetera; and who should be allowed into this type of facility. Full disclosure of the criminal and family history is needed for treatment counselors conducting an assessment.

Assembly Bill 93 provides for a \$250,000 appropriation to the DHHS each fiscal year for evaluation and treatment. It was determined that this level of funding will only allow one men's facility site, which can be located in southern or northern Nevada with the NDOC. It is estimated that with this amount of funding 20 beds could be supported with an estimated total of 150 clients each year. One SAPTA staff member would be assigned to provide oversight of this program, and that would comprise about 10 percent of his or her job duties.

For the \$250,000 appropriation, SAPTA could provide the following: One dual-licensed clinician for one location; two counselors; travel; insurance; licensure; expenses needed; 150 evaluations; and the supplies, materials and computers needed to support this. We anticipate that this program could be operational by October 1, 2011 if the facilities are readily available.

If 400 beds were provided as outlined in the bill—250 beds in the southern region and 150 beds in the northern region—it is estimated that it would cost SAPTA \$2,380,701 in fiscal year (FY) 2012; and \$2,370,421 in FY 2013. This proposal will require contracts or sub-grants to include 2 program directors; 14 contracted and licensed alcohol and drug counselors; 4.5 contracted, dual-licensed counselors; and 4 administrative assistants.

We would be pleased to answer any questions.

Chairman Horne:

Thank you, Ms. McBride. Are there any questions? Mr. Sherwood.

Assemblyman Sherwood:

Thank you, Mr. Chairman. When you talk about 400 beds, that sounds like civil commitment. We are working on a couple of civil commitment bills. Is that what this is?

Chairman Horne:

If you will remember, Mr. Sherwood, we have amendments to this, and we are not going to do the 400 beds. They were just providing that information because when the bill initially came out, that is what was proposed. Am I correct, Mr. Segerblom?

Assemblyman Segerblom:

Yes. The amendment in NELIS ([Exhibit H](#)) indicates that it will be up to 400 beds, but the Department is allowed to use whatever number is practicable.

Assemblyman Sherwood:

And if we had the beds, would that be, by definition, a civil commitment?

Harold Cook:

Our understanding of the bill is that someone committed to this program would be committed under the civil commitment statutes. Our staff would not be there 24/7. There would be treatment staff that would come in on a daily basis.

Chairman Horne:

I see no further questions. Thank you very much. Is there anyone in Las Vegas wishing to testify neutral? We will close the hearing on A.B. 93. To those persons who offered their assistance to work with Assemblyman Segerblom and Senator Parks, make sure you get in touch with them. I am sure they are more than willing to work with everyone to get those amendments completed. When those are done and I get the okay from Mr. Segerblom, we will put it on a work session document.

We will open the hearing on Assembly Bill 196.

Assembly Bill 196: Revises provisions governing the collection of fines, administrative assessments, fees and restitution owed by certain convicted persons. (BDR 18-557)

Good morning, Justice Hardesty.

James Hardesty, Associate Justice, Nevada Supreme Court:

I appear before you today in my capacity as Vice-Chairman of the Advisory Commission on the Administration of Justice. As some of you may know, I had the privilege of serving as chairman of that Commission during 2008 and 2009. It is gratifying to hear testimony on A.B. 93. Our Commission had recommended that to this Legislature and to the criminal justice system. We have spent a lot of time dealing with the HOPE court subject. It is the state's opportunity to be smart about crime, as opposed to being expensive and foolish about crime.

I am here today in connection with A.B. 196, which is also a subject that was raised in the Advisory Commission between 2008 and 2009. It was raised again in the current Advisory Commission. This bill is another example of improving our capability to be smart about the criminal justice system. Coincidentally, on the front page of *USA Today* just two days ago, there was an article dealing with the federal government. This statement was quite interesting: "During the past decade, federal judges have ordered hundreds of the nation's biggest swindlers to repay millions of dollars they stole. So far, the government has collected about 2 cents on the dollar."

I am informed that all of you have been provided with a rewrite of A.B. 196, which I undertook within the last couple of days ([Exhibit I](#)). This bill is intended to address a problem that exists in Nevada. There is a hole in our statutes, as to who has the responsibility for the collection of court-ordered fines, fees, restitution, and assessments.

I am also informed that you have been provided with a copy of a PowerPoint presentation that I presented to the Advisory Commission on the Administration of Justice in March 2010 ([Exhibit J](#)). As that PowerPoint makes clear, when a person is convicted of committing a criminal offense in Nevada, the sentence that is imposed often includes a fine, always includes an administrative assessment, and should always include court-ordered fees and restitution in cases in which victims have been harmed and restitution has been ordered during the sentencing hearing. Despite all of these judgments and orders, no single entity in Nevada is responsible for the collection of court-ordered fines and fees.

The fines, administrative assessments, fees, and restitution are included in the final judgment of the court. However, these funds are directed to different state and local agencies. As a consequence, no single entity is responsible to deal with this subject. Fines, for example, are payable to the Permanent School Fund under Article 11, section 3 of the *Nevada Constitution* and the *Nevada Revised Statutes* (NRS) 176.265. Administrative assessments, under NRS 176.059, are spread all over the place from a variety of people who receive the benefit of those administrative assessments as part of their budget. Public defender fees are to be ordered by the court, along with biological specimen fees in cases in which that is appropriate. The same is true for DNA fees and chemical analysis fees. Those fees are intended to reimburse local governments for the cost of handling the criminal justice system. Restitution is to be obtained to reimburse victims of crime.

Our record in Nevada over the past ten years in collecting all of these court-ordered fines, fees, assessments and restitutions is abysmal. I submit to you that it is almost worse than the *USA Today* article that I just described to you.

I would direct your attention to the last four pages [of [Exhibit J](#)]. In October 2006, the Nevada Supreme Court ordered all district, justice, and municipal courts to follow a minimum accounting standard principle. I chaired that committee, and we established accounting standards for all district courts in the state. The purpose of that was to make an assessment as to how the courts were handling their fiscal affairs. The first such audit report was done in Washoe County in the Second Judicial District. One of the subjects of that audit report covered collections that had been received on judgments entered from 2000 to the time of the report, which was approximately the end of fiscal year 2008. As you will see from the third to the last slide, it indicated that:

- \$350,000 had not been collected from court-ordered administrative assessment fees of \$25 per case.

- \$6,684,000 in public defender fees had gone uncollected.
- \$285,000 of reimbursement to the county for chemical analysis fees had gone uncollected.
- DNA fees had gone uncollected in the sum of \$1,182,000.
- Fines of \$10,749,000 had gone uncollected during that time frame.
- \$26,000,000 in restitution had gone uncollected in the same period.

The Advisory Commission had recommended to the Legislature in 2009 Assembly Bill No. 271 of the 75th Session. It is probably best that the bill did not pass at that time, because it unnecessarily conflated the role and function of the Division of Parole and Probation (P&P), with collection activities that were associated with these court-ordered fines and fees. Since that time, the Advisory Commission revisited this subject, and the product is A.B. 196. It has been simplified significantly.

The bill submitted to you yesterday does the following: It requires the district court, upon entry of judgment, to deliver to the county treasurer a copy of the judgment of conviction that contains the court-ordered fines, fees, restitution, et cetera. It also requires the district court to deliver four pieces of identification information about the defendant to the county treasurer. The county treasurer has the responsibility for effectuating collection efforts pursuant to existing statutory provisions, which by the way does not result in a significant fiscal impact because there are collection agencies all over the place willing to engage in contracts with local government to effectuate these collections by simply taking their fees from funds collected.

If those efforts are unsuccessful after 60 days, the bill provides that the county treasurer can refer these matters to the State Controller for further collection efforts. Part of what you have received is an amendment to NRS Chapter 355C, submitted by the Office of the State Controller. That bill enables the State Controller to enter into local government contracts and interlocal agreements that would allow him or her to effectuate collection on behalf of all of the governments.

If you pass these two measures, for the first time we will have an identification of source and accountability for the collection of these amounts. I also submit that for the first time we will have an effective method to assure that there is collection of these sums, documentation associated with them, and that the funds are returned to the agencies where this could be accomplished.

I have one example of what could have occurred when we were involved in all of this. The report in Washoe County indicated that through 2008 there were over \$1,182,000 in DNA fees that had gone uncollected. Mind you, DNA fees

are now required in every felony and gross misdemeanor case. I believe it is a \$150 fee, and it is used to reimburse for the DNA tests that are done. For some of you who reside in Washoe County, you will recall the unfortunate killing of a young lady in northwest Reno. I cannot talk about that case because the defendant's case is currently pending before the Nevada Supreme Court. You might recall that in the search for the defendant, it was discovered that at that time there were 4,000 DNA tests in Washoe County that were backlogged. The Washoe County Sheriff's Office reached out to the community to obtain contributions to update and bring current all of its DNA testing. Over \$300,000 was contributed from the community to do that. Over time, that backlog was significantly reduced. I submit none of that would have been necessary had we collected the money owed for all of the DNA tests over the past nine years.

This is important because I think it affects the efficiency of government. We should be paying as much attention to the money that we are entitled to collect as we do on the amount we spend. I urge you to adopt A.B. 196 and pass it on to the Senate for its consideration. I am happy to entertain any questions. I think the fiscal impacts of which you previously have been notified have all been removed. I think the parties are here to tell you that is the case.

Chairman Horne:

Thank you, Justice Hardesty. Are there any questions for the Justice?

Justice Hardesty:

By the way, Mr. Chairman, you might have been out of the room when I mentioned A.B. 196 was submitted a day or two ago with a complete rewrite to address some of the previous concerns. You should have in front of you a complete rewrite of A.B. 196.

Chairman Horne:

I have one question concerning the procedure and the scope when it gets to the Controller. The Controller is able to enter into these contracts and negotiate these outstanding fees et cetera, but to what extent is the Controller able to negotiate? You have a judge's order, and the Controller would be negotiating what a judge's order would be.

Justice Hardesty:

The rewrite on the bill empowers the Office of the State Controller to compromise in what is being referred to the Controller, such as fines, administrative assessments, and fees. No restitution is being referred to the Controller under this bill. All restitution collections remain under current statutory authority with the P&P.

Secondly, those adjustments are prescribed in the statute, so those adjustments can be made by the Controller, who can make whatever adjustments or negotiate whatever settlements he or she chooses to make under that authority.

As the prior advisory commission reports have shown, about 30 percent of the defendants who go through our criminal justice system in felony and gross misdemeanor cases are incarcerated in prison. Seventy percent are put on probation. It is always a condition of probation to pay court-ordered fines, fees, and assessments. Yet, oftentimes the period of probation expires before the defendant gets a job or sufficient revenue to be able to pay those. These judgments are good for six years, and they are renewed for another six years. You have a long time to collect this money. In the case of an administrative assessment, it is \$25. In the case of court-ordered public defender fees, it is usually, at least in Washoe County, about \$250. In Clark County, it is about \$500. You are going to get the money back. You just have to start the process.

Chairman Horne:
Mr. Daly.

Assemblyman Daly:
Thank you, Mr. Chairman. I am looking at two amendments, one by the Controller ([Exhibit K](#)) and one by the Nevada Supreme Court ([Exhibit I](#)). Are those supposed to work in tandem?

Justice Hardesty:
Yes. I spoke with Ms. Wallin last evening. I think it would be very helpful to have both of those amendments enacted.

Assemblyman Daly:
I am looking at the proposed amendment by the Controller's Office, specifically where it reads, "The State Controller may, through interlocal agreement, collect on behalf of any governmental entity." It causes me concern, knowing how many local governments are out there throughout the state, and that there are going to have to be negotiations, agreements, approvals, et cetera. I am concerned that that is not an efficient way to get started. Arguments between governments we see all too often, as you may well know.

Justice Hardesty:

You might want to take that subject up with the state. The reason that I urge the passage of A.B. 196 is that it requires our court system to comply with this procedure. That was the principle concern of the Advisory Commission. I think the Controller wants to have the capability to enter into local agreements with a broader spectrum of governmental agencies. I suspect that our courts have different procedures and mechanisms, and that all of those may have to be accommodated in order to effectuate collection efforts. I imagine that is why the discretionary language is in there.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

Thank you, Mr. Chairman, and thank you, Justice Hardesty. You mentioned a *USA Today* article about federal collection rates of outstanding debts of defendants and suggested that ours is probably worse. Clearly, some of the indigent are less able to pay, but the point of this bill is to provide a more efficient way to do it and at least collect on more than we are currently collecting on, but not all of them. Is that the effort of the bill?

Justice Hardesty:

Of course. You are not going to collect on all of them. Let me give you an example of fines, and I will throw in my three cents on this subject. The Legislature repeatedly imposes \$50,000, \$100,000, or \$200,000 fines in drug trafficking cases. Well, congratulations to you. You just nailed a \$50,000 fine on a mule traveling from Sacramento to Utah, who has no money, is probably 20 years old, and stole the car to deliver the drugs. That is not collectible. People ought to be more serious about the kinds of penalties that they expect judges to impose in those areas, and whether they are real about that. Those fines were intended to go after the big person who has the money to pay those fines. There are a lot of fines being assessed against defendants who you could never recover from. If someone is convicted of first-degree murder and gets death or life without the possibility of parole, you may not collect anything associated with that defendant. In fact, there are lots of others from whom you may not get anything. I want to target the 70 percent who go on probation, who we expect to rehabilitate, who eventually will reenter the system and will have jobs. I can tell you that a lot of those folks can pay eventually. We do not even set up payment plans with those people.

Assemblyman Frierson:

It is my understanding that this is not related to incarcerating again for failure to pay. This is simply an effort to collect money that is owed.

Justice Hardesty:

That is the whole point in referring this to the county treasurer and the State Controller. As you know, Mr. Frierson, many times defendants are more concerned about collection agencies than they are about P&P officers. You will get the money; you just have to go after it.

Chairman Horne:

Mr. Hansen.

Assemblyman Hansen:

Your Honor, you talked earlier about \$150 DNA fees and over one million dollars owed in Washoe County. Typically, on those DNA fees, are they charged after conviction? If I am charged with a crime and I take a DNA test and I am exonerated, am I still required to pay that \$150?

Justice Hardesty:

Not if you are exonerated.

Assemblyman Hansen:

So, that \$1 million is from people already convicted?

Justice Hardesty:

Yes, sir, and that is ordered at every sentencing.

Assemblyman Hansen:

Again you have a six-year window after offenders are out, if necessary, to collect that.

Justice Hardesty:

You have a 12-year window.

Assemblyman Hansen:

We should do better. Thank you.

Justice Hardesty:

By the way, the judgment of conviction, under our current statutory scheme, stands as a collectible judgment. All the county needs to do is point to the judgment of conviction. You do not need any more court orders or paper. You have a document on which you can collect.

Chairman Horne:

Mr. Ohrenschall.

Assemblyman Ohrenschall:

Thank you very much, Mr. Chairman. Your Honor, I want to thank you and Chairman Horne for your pioneering work on the Advisory Commission in trying to reform Nevada's justice system. Having served two terms already, I have realized we cannot jail our way out of our criminal justice problems. I appreciate everything you have done.

On this bill, you talked about going after the monies that are owed by probationers. Is there a time limit, or can the state go after these monies in perpetuity?

Justice Hardesty:

The statutes currently allow a 6-year time limit to collect on the judgment, which can be extended to 12 years, but as you know, lots of times defendants are placed on probation for periods that may only be a year or two. Oftentimes, because their performance on other conditions of probation have been so successful, they get early discharges.

Do not make your Division of Parole and Probation a collection agency. That is not their job or their responsibility. Yes, restitution currently resides with them, and at some point I hope that we will come up with a much improved method of dealing with the collection of restitution for victims. What the P&P does in the restitution area right now is outstanding, given the resources they are provided. It is astonishing to me that the Legislature and the public and state government make it a point that we want to collect and reimburse victims, and yet we do not put very much money into the P&P to make that happen. I can tell you that there is a lot of restitution that goes uncollected that would benefit victims. That is not the Division's fault. They do the best they can with the resources they have. Fines, fees, and other things are separate. It is, in effect, a civil responsibility after the probationer has been discharged from probation. The problem is that the period of probation is usually much shorter than the period of time that the state can continue to pursue collections of those obligations. We hope that people succeed on probation, get jobs, and reenter society. If you assume that is the case, they can afford to reimburse the criminal justice system for the costs they incur.

There is one other point I would like to make about this issue. Although you have statutory authority for the district judges to order public defender fees in all felony and gross misdemeanor cases, the judges did not order public defender fees in Clark County until November 2009. When you are talking about building up budgets to improve indigent defense, particularly in that county, get the defendants who have the ability to reimburse for public

defender fees to pay, and you have a source of money that will strengthen the indigent defense system in that county.

Chairman Horne:
Mr. Brooks.

Assemblyman Brooks:

For clarification, you made a statement that some of these guys are fined \$100,000, and they are just mules going from point A to point B. Would this legislation, if enacted, allow a prosecutor, or whoever it might be, to go after somebody for that type of fine? I ask that because in section 2, subsection 3, paragraphs (a) and (b), the ability to be able to garnish wages, or even suspend a driver's license is discussed. I am wondering, if this bill is enacted, whether somebody could take advantage of someone that is in that particular situation to try to get fines from them.

Justice Hardesty:

I was distinguishing between what you can legally do and what is practical. The statutes currently obligate a district court judge in a drug trafficking case or in a DUI case to impose a fine. The judge has no choice in that matter, because you have directed the judge to do so. My comment was that oftentimes requiring the judge to do so is pretty impractical because the statutes of Nevada require the judge to impose a \$50,000 fine on a defendant who could never afford to pay it. With that said, that fine becomes part of the judgment of conviction. It is collectible. It will follow that defendant at least for 6 years, and maybe for 12.

Assemblyman Brooks:

In that particular case, or even in a case where the fine was \$10,000 on somebody who could make minimum wage, we have the ability to suspend that person's license and garnish his wages. Would we not be imposing an excessive punishment on someone who maybe could not afford to pay this type of fee?

Justice Hardesty:

The Legislature did that when it required the judge to impose the fine in the first place. When you take away judicial discretion on these subjects, this is what you end up with. You should allow judges to impose those kinds of fines in cases in which the judge understands the facts on a case-by-case basis. When you have a broad-brush approach and you impose a fine in every single drug trafficking case, or in every single DUI case, then the next question is whether to collect them. If they are court-ordered, I presume the Legislature wants us to collect the money. That is what this provides a vehicle for. What the bill also

does, though, is give to the Executive Branch the discretion to compromise on those. I cannot imagine that anybody is going to try to chase a 21-year-old kid, who is still in prison on a 10-to-life on a trafficking offense, for a \$50,000 fine. If he gets released, he is at risk of having that collection effort made. If he is indigent, I do not think the Controller's Office or the Treasurer's Office is going to pursue collection on those kinds of cases.

Assemblyman Brooks:

Thank you.

Chairman Horne:

Are there any further questions for the Justice? I see none. Is anyone else here in support of A.B. 196?

Kim Wallin, State Controller:

My office is very much in favor of A.B. 196 with the rewrite. The reason why we are in favor of collecting debts for the courts is because it is such a good idea, and I want to open it up to all governmental entities in the state. This would include higher education and cities and counties. It makes sense to offer the services of my debt collection department to other governmental entities. Often, agencies and other governmental entities do not have the dedicated resources that are necessary to collect debt as our office does.

As part of your handouts, you have a survey that was done by CGI Group, Inc. on government debt collection ([Exhibit L](#)). It found that many governments are decentralized in their debt collection, which leads to inefficiencies and low collections. The more successful debt collection programs have been centralized. By centralizing debt collections here in Nevada through the Office of the State Controller, our collections will be improved. Improving collections will help our much needed General Fund without having to raise taxes or fees, and we will only be collecting what we are already entitled to. Our office has the infrastructure in place and the tools necessary to collect the debt. Therefore, A.B. 196 as rewritten makes sense.

With the rewrite, we will be able to remove our fiscal note. I would like to offer an amendment ([Exhibit K](#)), which would add section 7. This amendment would allow us to collect debts for all governmental entities by using an interlocal agreement. We can accommodate the needs of the government entities and the Controller's Office. It will not be one-size-fits-all. It can be customized, which will minimize the impact it will have on other governmental systems. The new language will be as follows:

[Ms. Wallin read from [Exhibit K](#).]

Chairman Horne:

Thank you, Ms. Wallin. Mr. Hansen.

Assemblyman Hansen:

Thank you, Mr. Chairman. Do you have an estimate of the total possible debt you could collect?

Kim Wallin:

Higher education has something like \$30 million in there. These are professionals that we should be able to collect from. The City of Las Vegas has something like \$300 million in fines out there. There is a lot of money left on the table that we are just not collecting.

Assemblyman Hansen:

Would the bulk of what you collect go to the state's General Fund?

Kim Wallin:

A lot of the fines for the court systems go to different areas, such as victim's assistance and the Office of the Attorney General. Ten percent goes to the cities and counties. That, in essence, helps them because we give the cities and counties money, so that would reduce their need to get money from us. We do not have a whole matrix on it. We are in the process of putting together that matrix. Not every fine is the same. Collections for higher education would go into our education system, which is much needed. You talk about the General Fund, but it all gets down to the more money we collect for the other things, the less need they have for the General Fund. It is, in essence, putting money back into the General Fund.

Chairman Horne:

Are there any other questions for Ms. Wallin? Mr. Daly.

Assemblyman Daly:

I asked a question earlier about the interlocal agreement, but I think you were not here yet. Do you think you will be able to get however many agencies and governmental agencies out there to enter into an agreement with you? I know it is going to be difficult. Is there some way we can make it so they need to do it, rather than opt out?

Kim Wallin:

I think that as cities, counties, and local governments are struggling for funds, they will say that they will take all the help they can get to collect debt. A lot of these entities do not have resources. Debt collection is kind of a back office area, and whenever you do budget cuts, you always cut the back office. And

they find out all the things we can do. One of the bills that I have would allow me to do financial data matching so we can access bank accounts. With another bill, if you have a professional license and owe money, you would not be able to renew your professional license if you owe money. We have all these other tools that we can use. I think that if the cities and counties were part of it, they would see that they do not have these tools. You cannot have all these different entities saying, "Okay, you have to go here and there to see whether they owe money." They do not have that access, and banks are not going to allow several different entities to send them files to look for bank accounts and records. I think that with the economy the way it is, they will want to opt in. I know that higher education is supportive of my Senate Bill 81, because they want me to go and help them collect these debts. With it being an interlocal agreement, we can customize it and make it so it is not cumbersome for them to turn over the debts to us. I think it will be a win.

Assemblyman Daly:

In reading the Supreme Court's amendment ([Exhibit I](#)), it says you will take that on, provided you have the capability to do so. I want you to touch base on that and the other part about all government entities potential. There are uncollected debts, the Contractor's Board, the Labor Commissioner's Office, forfeitures, and other various agencies. I know the Labor Commissioner has that, and then the governmental entities have the forfeitures that they may not be collecting. Are all of those things, potentially, under these interlocal agreements uncollected debt?

Kim Wallin:

Right now, all state agencies are required to turn their debts over to me at 60 days, unless I have given them an extension. We are already doing it. This would just open it up to the ones like higher education. They wanted us to collect debts for them, and their attorney told them that we could not collect debts for them because they were not a state agency, or something like that. This would allow them to do it. We have some of the smaller cities and counties interested, too. I know that when I was talking about looking at doing this for the courts, Pahrump asked whether we could do it for the cities and when. One of the reasons we can do this is we have been automating our debt collection process. Because it is automated, our staff does not have to spend time in processing the reports.

Chairman Horne:

Are there any further questions? I see none. Thank you very much Madam Controller. Does anyone else wish to testify in favor of A.B. 196? Ms. Erickson.

Kristin Erickson, Nevada District Attorneys Association:

Thank you, Mr. Chairman and members of the Committee. On behalf of the Nevada District Attorneys Association, we applaud the efforts of Justice Hardesty and support A.B. 196.

Chairman Horne:

Thank you very much. Are there any questions?

Heather D. Procter, Deputy Attorney General, Office of the Attorney General:

The Attorney General's Office has worked closely with Controller Wallin, her staff, and Ben Graham of the Administrative Office of the Courts. We are supportive of the Controller's amendment so that the state can better collect monies owed to it and to other governmental agencies. Thank you.

Chairman Horne:

Thank you, Ms. Procter.

Elana Graham, Intergovernmental Relations Director, Eighth Judicial District:

I originally signed in as neutral, but we have some new information that, with the amendment involving the district court, allows us to now be in full support of this idea of the collections of money, despite a minimal fiscal impact to the district court of about \$46,000. With that, we are in support and look forward to the success of this program. Thank you.

Chairman Horne:

Thank you. Is that why Judge Gonzalez left the room?

Elana Graham:

Yes, Mr. Chairman. Thank you for reminding me. Judge Gonzalez, the presiding civil judge, was planning on being here. She extends her regrets. She is interviewing federal magistrate candidates in Reno.

[Ms. Graham presented a letter from District Judge Elizabeth Gonzales ([Exhibit M](#)) to the Committee.]

Chairman Horne:

Are there any questions for Ms. Graham? Is there anyone else in favor of A.B. 196? How about in Las Vegas? I see no one there.

We will move to the opposition. Is anyone here in opposition to A.B. 196? Please state and spell your name for the record.

Mark Teska, Administrator, Administrative Services, Department of Public Safety:

The Department opposed this bill as it was introduced. However, the amendments that have been discussed today appear to have addressed our concerns. The Department will review the amendments and may well be able to come back when this bill is heard again and withdraw that opposition.

Rick Gimlin, Administrative Services Officer, Division of Parole and Probation, Department of Public Safety:

The Division of Parole and Probation had also signed in opposing the bill as it was originally written, primarily due to section 1. However, the Division believes that the amendments heard today will alleviate most of those concerns. We look forward to seeing the amended version of the bill. Thank you.

Chairman Horne:

Okay. So, we can put the both of you down as "cautious neutrals" today. You will not get a chance to see that until we go to work session. Is there anyone else in opposition with a change of heart to go to neutral until I read the bill, when there might be opposition again? Is anyone here to testify neutral? Ms. Gasca.

Rebecca Gasca, Legislative and Policy Director, ACLU of Nevada:

We do not take a position on this bill. I just want to note that the amended version does require that the Social Security number of the person be included in the information necessary to collect the fine. As we have seen around the nation, states have been moving away from the use of Social Security numbers in statute being mandated because of its possible interplay with becoming a public record. We want to make sure that the privacy of individuals is protected and that, as a result of this, there is not a treasure trove of information or the ability for people to make requests to get people's Social Security numbers. We look forward to working with the sponsors of the bill to make sure that does not happen.

Chairman Horne:

Are there any questions for Ms. Gasca? I see none. Thank you.

Is there anyone else in the neutral position for A.B. 196? I see no one in Las Vegas. I close the hearing on A.B. 196. We will bring it back to the Committee for additional work. It will be on a work session document in the future.

As always, all the documents that are on NELIS become part of the record. Is there any housekeeping or any other business to come before the Committee? We are adjourned [at 10:08 a.m.].

[A letter of support ([Exhibit N](#)) was submitted for the record by Justice Connie J. Steinheimer of the Second Judicial District Court.]

RESPECTFULLY SUBMITTED:

Jeffrey Eck
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 9, 2011

Time of Meeting: 8:08 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 93	C	Wesley Goetz	Prepared Statement
A.B. 93	D	Wesley Goetz	Prepared Statement
A.B. 93	E	Wesley Goetz	Prepared Statement
A.B. 93	F	Mental Health and Developmental Services	Correctional Treatment Proposal
A.B. 93	G	Mental Health and Developmental Services	Correctional Treatment Proposal Cost Sheet
A.B. 93	H	Assemblyman Segerblom	Conceptual Amendments to A.B. 93
A.B. 196	I	Supreme Court of Nevada	Amendment Rewrite
A.B. 196	J	James Hardesty	PowerPoint Presentation
A.B. 196	K	Kim Wallin	Proposed Amendments
A.B. 196	L	Kim Wallin	Survey Report and Recommendations
A.B. 196	M	Elizabeth Gonzalez	Letter to the Committee
A.B. 196	N	Connie J. Steinheimer	Letter in Opposition