

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

**Seventy-Seventh Session
April 29, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:05 a.m. on Monday, April 29, 2013, 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 nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senatorial District No. 17
Senator Tick Segerblom, Clark County Senatorial District No. 3

Minutes ID: 1012



Senator Greg Brower, Washoe County Senatorial District No 15
Senator Debbie Smith, Washoe County Senatorial District No. 13

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Linda Whimple, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Michael Beam, Chief Probation Officer, Department of Alternative Sentencing, Douglas County
Rory Planeta, Chief, Carson City Department of Alternative Sentencing
Joe Ingraham, Chief, Washoe County Department of Alternative Sentencing
Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety
Mercedes Maharis, Private Citizen, Las Vegas, Nevada
Pat Hines, Private Citizen, Carson City, Nevada
James "Greg" Cox, Director, Department of Corrections
John T. Jones, Jr., representing Nevada District Attorneys Association
Jennifer DiMarzio-Gaynor, representing XL Steel
Brian Connett, Deputy Director, Prison Industries, Department of Corrections
Bonnie Polley, representing Hope for Prisoners
Dennis Benedict, Private Citizen, Las Vegas, Nevada
Donald Moberger, Private Citizen, Las Vegas, Nevada
Jim Henry, Private Citizen, Las Vegas, Nevada
Danny Thompson, representing the Nevada American Federation of Labor and Congress of Industrial Organizations
David Stevens, President, XL Steel

Chairman Frierson:

[Roll was called. Protocol was explained.] Good morning, folks, and happy Monday. We have four items on the agenda today, and we are going to make it through them. We have two senators here, so I want to get to those bills, since I know that Senate Judiciary starts at nine o'clock. We are going to go in order, and I will open the hearing on Senate Bill 101 (1st Reprint) and invite Senator Settelmeyer up to introduce the bill.

Senate Bill 101 (1st Reprint): Revises provisions relating to departments of alternative sentencing. (BDR 16-464)

Senator James A. Settelmeyer, Senatorial District No. 17:

I have included a walk-through for you ([Exhibit C](#)) in the Nevada Electronic Legislative Information System (NELIS). It goes through every section of change that we are seeking to do to *Nevada Revised Statutes* (NRS) Chapter 211A and the explicit reason why we are changing that particular section of NRS.

The gist of the bill today is to allow for pretrial sentencing to be done by the Department of Alternative Sentencing. When this concept was discussed in the past, some indicated that the State should be doing it. As you know, the State does not have the monetary means to do this, so the counties are currently doing it. This bill is codifying the practice that they are doing at this point in time. The bill is enabling legislation with the word "may", so no fiscal impact should occur from the bill. It will be up to the counties' discretion to do this. The reality is that there are often conditions of bail that the court will stipulate, such as a temporary restraining order, temporary protection order, cannot purchase a firearm, or the use of controlled substances. These departments can and do provide a viable societal need.

With that, if it pleases the Chairman, I will have Michael Beam and others come up and they can talk about the bill in more detail. Hopefully you have the point, and if there are any problems with the bill. Currently in some counties, it is being handled this way. As I said earlier, this bill seeks to codify those practices. With the Chairman's indulgence, I can either run through the walk-through so I can explain every change in NRS, or we can just go to the testimony.

Chairman Frierson:

Senator, I think it would be helpful to the Committee if you could briefly walk through the bill.

Senator Settelmeyer:

Section 1 is the definition that is being added into NRS, which is the definition of supervised releasee. Section 1.7 is the addition of gross misdemeanors or felonies to the ability for them to look over. Section 3 is the supervision according to the court's instructions. All of the other sections are adding the wording "supervised releasee" to the appropriate places within the statute. Section 7 has discussion of violation of the conditions of alternative sentencing: Item (a) modification of conditions, (b) revocation of that release, and (c) consideration of the sentencing. The only other real change is section 9, which is the effective date.

With that, I will gladly entertain any questions, or I can go to testimony at the Chairman's discretion.

Chairman Frierson:

I think at this time Mr. Beam can go ahead and offer his introductory remarks, and that may answer some questions before we even get there.

Michael Beam, Chief Probation Officer, Department of Alternative Sentencing, Douglas County:

I am here to support this bill. In essence, this bill corrects what we currently do for district courts, justice courts, and specialty courts, being driving under the influence diversion and also drug court. We have been doing this for at least the last decade. Chief Planeta has been doing this for over a decade, and also Chief Ingraham in Washoe County has been providing the same services for Washoe County. It was a long process, it was very helpful for Senator Settlemeyer to assist us with this, and we ask for your support to correct what we are currently doing. Again, I support this bill, and I thank you for your time.

Chairman Frierson:

Are there any questions of the Committee? [There were none.] I have a few questions. I vaguely remember addressing departments of alternative sentencing legislatively back in 2009, and I think that we deferred the supervision and the running of these departments to the cities, and from what I recall, quite frankly, I was surprised. The counties at that time had no interest in running a department of alternative sentencing. I can see Senator Settlemeyer nodding. If you could give some background on that, because I remember it, but I do not think the other members of the Committee were here.

Senator Settlemeyer:

I think what it comes down to is exactly the example of the state of Nevada. It is done differently in each jurisdiction. Some areas do have the counties currently doing it, some areas actually have the sheriff's departments and so forth doing it, and other counties have cities doing it. It varies, depending on your location in the state of Nevada. Again, all this bill seeks to do is codify an existing practice. In my district, because I have smaller counties, it was always felt, "Well, rather than creating a whole new department, we will go ahead and have the people who are in charge of supervising people on probation." It just seemed logical for our counties. So we need to bring that forward.

The bill you are talking about, Senate Bill No. 84 of the 75th Session, came forward in 2009. It was to allow the city itself—I think it was the City of

Henderson—to do it themselves as a city. Again, in my communities, it evolved through the process where the judge came forward and said, "You know what; I really do not want to put those people in jail and keep them here until the trial; why do we not look at the idea of an alternative pretrial sentencing thing and while we already have a division that does that, and since I have no problem as a judge making them do more, I will just let them do it." That is how it evolved in my communities, and that is exactly as you indicated. Different communities came about this in different ways.

Chairman Frierson:

In layman's terms, it looks like the bill proposes to expand statutorily the kind of charges for which folks are able to access diversion programs, so we give discretion to the local authorities to provide diversion for all offenses, not just the misdemeanors.

Senator Settlemeyer:

In section 1.7, yes, we are adding gross misdemeanors and felonies to that discussion of crimes which would be able for them to supervise as an alternative sentencing for pretrial.

Chairman Frierson:

Are there any questions of the Committee? [There were none.] I believe the alternative sentencing is extremely important and a key to decreasing recidivism and protecting the public, and the fact that a few years ago the counties deferred it to the cities was a little bit frustrating to me. I am all for giving whoever is running the department the flexibility to do what they need to do. I wish that everyone did it.

Senator Settlemeyer:

I appreciate that, Chairman Frierson. The reality is that none of my counties have cities.

Chairman Frierson:

Are there any questions of the Committee? [There were none.] Seeing none, I will invite any other comments in support of the bill.

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

Carson City is a city and county, so we covered both at once with that legislation four years ago. I was here for it, and I testified for it. Part of the reason for it was that not all counties have to do a department of alternative sentencing. Some have pretrial sentences already in place, so smaller cities such as Henderson were left out. They did not have a pretrial, so they opted for a department and came and requested it at that time. The original bill got a

lot of alternative sentencing; it was a county-only type bill, so we were able to fix that with your help four years ago.

Currently for this bill, it is something I have worked on for a few years now. Pretrial and presentence are allowed by statute in NRS 178.484. Judges can put certain conditions on people to release them or reduce their bail, but we also want the citizens protected from certain kinds of people, and certain things need to be taken care of, such as no alcohol, drugs, firearms, or things like that. So we are asking that the department of alternative sentencing be allowed to do that with this bill. Currently, my department also handles all the court securities, so we are pretty diverse anyway. As Senator Settlemeyer said, we are often asked to do things by judges, so we have taken on those tasks as well. This bill is very important to make sure that the community is safe and our jails have fewer people in them. It also gives some of these people an actual start towards their probation. If we can get them on the right track, get them into counseling, and help them along their way prior to being sentenced in a district court, then we have already taken a step towards rehabilitation.

Chairman Frierson:

I am trying to remember the details of the legislation four years ago. I believe that—at least the original proposal was—if a city had a department of alternative sentencing, then the county had to defer to the city's existing program. Am I remembering that correctly?

Rory Planeta:

Actually, some of the cities did not have a pretrial, presentence, or any supervision for people in municipal courts—the counties are basically justice courts—so with that issue, they decided that they would like to start an alternative sentencing for the municipal-type courts.

Chairman Frierson:

I am looking at section 4, subsection 5. Is a key provision of this bill the ability to collect and disperse any money in accordance with the orders? Is that a key provision of it, the ability of a department of alternative sentencing to be able to collect fees to run these programs? I just want to make sure that there is also a mechanism in place to acknowledge indigency and some folks' inability to pay and still be able to participate.

Rory Planeta:

Yes. We do collect fees on probationers only. We do not actually collect them on pretrial at this point in time, and that is currently allowed by statute. The minimum fee is \$20; most charge \$40 or \$50. I would like to say that we were able to run our department, but those fees are pretty minimal and when

you consider we currently have about 2,200 people on our caseload in Carson City, about 350 are actually fees payors. Those can be waived. If a person is indigent, we let them do community service in lieu of fees, so it pays back the community as well without actually getting into their pocketbooks.

Chairman Frierson:

You said \$20, and some charge \$40. Is that a one-time fee, weekly fee, or monthly fee?

Rory Planeta:

Ours is a monthly fee. We have different levels of supervision. Pretrial all the way up to informal probation do not pay any fees. Only for people on formal probation where we are actually going out and checking their houses and doing a lot of drug testing and things like that do we charge fees. It is monthly. We charge \$50 a month in Carson City.

Chairman Frierson:

I guess I was thinking more of the pretrial as far as diversion or alternative sentencing goes. I am trying to figure out between actual probation and this. What is the difference?

Rory Planeta:

We do not charge on pretrial. Pretrial is someone who is arrested and the judge wants to release them with certain conditions, but they are not convicted of anything. That is why we do not charge them fees. We just maintain the conditions that the judge has requested us to do, such as drug testing, or making sure that they do not have any weapons, or if they commit another crime we take that into consideration. They could be rearrested. Often it is a modification of their conditions since they are not convicted of anything. That is why we describe them as supervised releasees, not probationers per se. Probationers have been convicted of a crime.

Chairman Frierson:

Right. So for the probationers, if they are on probation and being supervised by a probation officer, what is the department of alternative sentencing doing? Is that substituting for formal probation or are they working in conjunction—I mean, if they are on probation, then what is the department of alternative sentencing's involvement?

Rory Planeta:

We are the probation office for misdemeanors. Until they get convicted of a felony or gross misdemeanor, then they would go to the State, but any misdemeanor crimes—we are the formal probation officers for those people.

This would include people who are not convicted yet, and that is the purpose of it.

Chairman Frierson:

I see. So for the gross misdemeanors and felonies, that would only involve the folks who have not yet been convicted. Once they are convicted, those individuals, if they were convicted of a gross misdemeanor or felony, would then be supervised by their probation officer.

Rory Planeta:

That is correct. They would then be transferred to the supervision of the State.

Chairman Frierson:

Thank you.

Assemblyman Ohrenschall:

Say someone is charged with stealing a very expensive electric guitar, and it is a felony because of the value of the electric guitar, and the guitar is gone. They take a deal and perhaps plead to a misdemeanor with certain requirements, including paying back the guitar store for the value of that guitar. While they are on supervision from your office—they are the supervised releasee—do you drug test them and if they tested dirty for marijuana, could that land them back into custody, even though the original charge had nothing to do with drugs? It was a theft charge. Would you talk about that?

Rory Planeta:

Basically, we enforce whatever conditions the judge puts on them, so for a simple theft charge—if they did not have any drugs or history of that, probably they are not going to have a condition of no drugs, so we would not test them. If the judge said that he finds that they have a drug issue, maybe the reason for stealing the guitar was to purchase drugs, then he might put in a no drugs or alcohol clause, and then we would enforce that and we would test those people for it, and we would also make sure that they paid their restitution.

Assemblyman Ohrenschall:

If that supervised releasee, who is trying to pay back the value of the guitar, tested dirty, could that land him back into custody?

Rory Planeta:

Yes, it could. We would most likely take him into custody, he would go see the judge again, and the judge could modify the conditions. Often, if it is a first-time offense or first-time violation, they do not tend to extend their time too much. They will probably extend their conditions, but probably not give

them a lot of jail time for that kind of thing. The purpose of probation, obviously, is to make sure that they are working, back in their families, and being productive, so we do not really want to take them out of that on a minor violation. If it is a major violation, they may put him in custody for the entire time, or if it is multiple violations, maybe they should have gone to jail for a stretch in the beginning. They would still owe that restitution, but it is totally up to the judge's discretion.

Assemblyman Ohrenschall:

Do most of your supervised releasees on this misdemeanor-type of probation succeed, or do you find most of them winding back up into custody with new charges because they have somehow messed up?

Rory Planeta:

Our recidivism rate is very low. It is about 5 percent or less, so we do really well with those people by giving them probation. Actually, we have to stay on them a little bit—that is why we have formal probationers report to us every month. We want to see them. We run their criminal histories again sometime during probation. We have gone to their houses to make sure they are complying and that their family is involved with their probation. An important factor is making sure the family is involved in this process to get these people to be good members of society.

Chairman Frierson:

Is the department of alternative sentencing's purpose a preprobation-type situation where it is providing additional ways for someone to screw up, or is it an opportunity to provide some structure to help that individual show their readiness for probation, or is it a combination of both?

Rory Planeta:

Our main focus is rehabilitation. That is our main purpose. The other part is if we are not able to help with every rehabilitation, then we have to put them back into jail.

Chairman Frierson:

Are there any questions from the Committee? [There were none.] Thank you, Mr. Planeta. That was a concern of mine, even four years ago as well, and I am happy to hear that that is the purpose of it. At the end of the day, I think we are trying to save money and protect the public.

Rory Planeta:

That is our main purpose. Protecting the public is our main thing, and rehabilitation. If we cannot do those things, then maybe they do need to be in jail.

Joe Ingraham, Chief, Washoe County Department of Alternative Sentencing:

I would like to address my support for this bill. I can bring a little clarity to the prior bill which allowed the cities to conduct alternative sentencing also. I am in a county which was a big supporter of allowing the city to create its own alternative sentencing department. We are a rather small department in Washoe County. The City of Reno has had the opportunity to assist in getting more boots in the field for the probationers out there. In Washoe County, we have a court services department and this is going to allow additional tools to ensure that these folks comply with their conditions of release.

I wanted to touch on one of the things that Chief Planeta was talking about. Probation means to prove oneself. The court has given these folks the opportunity to be out in the community and to try to rehabilitate themselves. The only other option prior to probation is jail time, so we are trying to get these folks back in compliance, and we are rather successful at that.

Chairman Frierson:

Are there any questions of the Committee? [There were none.] Is there anyone else who wishes to offer testimony in support of S.B. 101 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in opposition to S.B. 101 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in a neutral position? [There was no one.]

Senator, if you have any closing remarks for any clarification that you wanted to provide, you are welcome to do so.

Senator Settlemeyer:

This bill seeks to codify existing practice. These individuals to my right have no discretion. They are only following the judge's orders. The judges tell them what to do and they follow it. This allows individuals to not be in jail the entire time waiting for their trial. It gives them the ability to get out, maintain their lives, continue to be with their family, and hopefully if they did do something wrong, realize the error of their ways and get that corrected.

Your other concern on section 4, subsection 5, the concept of the collecting of the fees. It is already done. We are just saying that they shall collect them as well. Again, only as directed by the court. That is what I keep coming back to.

These people do not have any discretion on their own in all reality. They are told what to do, and they do what they are told by the judge. Thank you kindly for hearing this bill today.

Chairman Frierson:

Thank you, Senator Settlemeyer. I will close the hearing on S.B. 101 (R1). I will open the hearing on Senate Bill 104 (1st Reprint), and invite Senator Segerblom and Ms. Bisbee up to introduce the bill.

Senate Bill 104 (1st Reprint): **Revises provisions governing parole.**
(BDR 16-241)

Senator Tick Segerblom, Clark County Senatorial District No. 3:

Senate Bill 104 (1st Reprint) deals with what are called the psych panels. Under current law, before the parole board is allowed to consider releasing them, sex offenders have to be screened by a three-member panel which is composed in the statute. There have been some problems with the three-member panel. I do not think it is intentional, but they are not trained in evaluating the risk of a sexual offender repeating, so their decision is somewhat arbitrary, or at least appears to be arbitrary. This concept was brought to me by one of my constituents, Mercedes Maharis, who will testify in a moment. When I brought it to Ms. Bisbee, she, to her credit, acknowledged the issue and said that she would like to work with me. I come before you with an agency that actually supports change. With that, I would like to turn it over to Ms. Bisbee, and since I have my own committee, I would like to be excused before the real hard questions start coming.

Chairman Frierson:

Thank you, Senator. I believe Ms. Maharis has contacted me as well over the interim, so I am glad to see this issue being brought. I think the members of the Committee have received a couple of emails recently regarding psych panels as well.

Senator Segerblom:

We are not showing it today, but because the psych panels are public record, she took portions of it and put it into a ten-minute DVD, which is, to say the least, kind of horrifying from my perspective. I am sure there is a lot of good stuff that happens, but some of the questions were pretty asinine. We are not going to make you go through that, but anyone who wants to see it, it is very instructive.

Chairman Frierson:

If any member of the Committee would like to see it, let me know. We can certainly coordinate with the Senate to make it available to you.

Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety:

Senator Segerblom and I discussed this months ago where he was concerned about the whole concept of the psych panel, and for those who have been around for a while, it has been a concern for many years. For the sake of new members, I want to briefly tell you a little bit about the history of the psych panel. The psych panel was developed because many years ago we did not have a professional parole board. That is not the situation today. We have an extremely highly educated parole board and I do not think there is a member with any less than 20 years' experience in their particular discipline that sits on the board. It has been so for about the last ten years.

The original problem of having a nonprofessional board making decisions as to whether or not sex offenders were a risk to return to the community was originally what brought the concept of a psych panel around. Even if you look at the existing statute today, you will note that the members of the psych panel are the Director of Health and Human Services, which is Mike Willden in this case. They are the Director of Corrections, which is Greg Cox in this case, and a single psychologist or psychiatrist licensed to practice in the state of Nevada. Somewhere along the line, people started getting very confused because the Department of Corrections realized a long time ago that the people they had as their designees, which were typically caseworkers or associate wardens, did not necessarily have any training to make that determination any more than an unprofessional parole board. When I say unprofessional, I do not mean they acted unprofessionally. They just did not have particular statutory requirements in order to serve. You had caseworkers and associate wardens determining whether or not sex offenders were a risk to reoffend sexually, which made no more sense than having a parole board who was not trained determining whether or not someone was a risk to reoffend sexually. So the Department of Corrections determined that their designees would be two additional psychologists. Not only have we had the one mandatory psychologist or psychiatrist who has always been the designee of the Health and Human Services director, but we have had two additional psychologists over the years serving on these panels.

For the whole history of it, there has been an argument about, "Well, one of those psychologists is not licensed." They are not even required to be a psychologist. So we have had a Department of Corrections that recognized a problem and made the people on the psych panel even more qualified than the

statute requires. That is the quick background on it. Just bear in mind that there has been a lot of testimony over the years about one of the particular psychologists not being licensed. He was never required to be.

In September 2011, I was invited to go to Washington, D.C., to attend a conference of the National Institution of Corrections. I was invited there to present a problem that we saw dealing with the board relative to Nevada and whether or not they felt the problem was worthy of giving us a technical assistance grant. At that conference, I presented issues regarding sex offenders, and it covered a wide variety of things—psych panels, tier reconsiderations, and lifetime supervision. As a result of that presentation, they did indeed give the parole board a technical assistance grant. Dr. Mary Perrien was awarded that grant and spent considerable time in the state of Nevada looking at our sex offender issues. Last week I sent you a copy of her final report, "Risk Assessment for Sex Offenders Paroling From Nevada Corrections," and hopefully you have it ([Exhibit D](#)). It is very interesting if you have been able to take the time to read it. The bottom line is that she determined something that we all pretty much figured out a long time ago, it was not necessary to have a psych panel review. What you really needed to do to determine whether or not someone was at a high risk to reoffend sexually was to use the most current risk assessments that are available, to have the person who is conducting that risk assessment be trained to conduct it, and that you report those results to your parole board. Those are the recommendations she made.

Then it just happened that Senator Segerblom was unhappy with the statute as it existed and allowed the board to use Dr. Perrien's report to come up with language that actually meets the needs of what the board needs to see in order to determine whether or not they feel it safe to parole someone who is a sex offender. So if you look at S.B. 104 (R1), you will see the changes that have been made. The original S.B. 104 just struck the entire section altogether and left it with nothing, and that is where Senator Segerblom allowed us to come in and write the language that would meet the needs of the board, to be able to be reviewed and make sure that the people conducting it are qualified to do so. Look at section 1.5, page 2, lines 41 through 45, and on page 3, lines 1 through 18 have been struck. Those are all the things it is talking about with the actual configuration of a psych panel, and what it is replaced with is that the Department of Corrections ensures that each of these offenders is assessed using a currently accepted standard of assessment. Now what is being used right now is called the Static-99. Those of you who have anything to do with the mental health profession realize there is a Static 2002 out there. Dr. Perrien recommends continuing to use the Static-99 until there are some longevity studies on the 2002. The Static-99 has been used a lot longer and she is more comfortable with the validity. That is why we have not put Static-99 or the

Minnesota Sex Offender Screening Tool (MnSOST) or any other particular sex offender risk assessment specifically in there because that allows us to be fluid and go with what is currently the best. They happen to have one at the Department of Corrections. Dr. Darcy Edwards, who is a best-practices expert, is currently looking at all of these things and ensuring that people are trained as is required by this new statute and will be providing oversight.

Just as an aside, I have been contacted by Dr. Robert Schofield who has—I do not know if he has officially chaired the psych panel, but he certainly has administratively done an awful lot of work for the psych board over these past years, and they are already working on the hopes that this bill is passed. They are already working on how they will get that training done, who will be doing the actual assessments, and how they will get them to the board. It would become part of the regular board report—it would not be anything big and mystical or fancy or anything else—in addition to producing the board reports for us. That is what exists now in lines 18 through 35. It allows for corrections to be made. One of the things the board uses is a risk assessment that is for those other than sex offenders, and you can appeal it. If there is something wrong on that risk assessment—we go over it four times with the inmate, by the way, so if there is an appeal it is something very rare. But if there is a problem, they can let the Department of Corrections know, "I was scored this, but here is the evidence that that was incorrect." It is a very easy fix that way. You are only dealing with one person. You are dealing with a person who is assessing it, they are qualified to assess it, the training is intensive but not difficult, and they are already set for their mental health professionals to do these Static-99s or whatever is going to be considered the most current.

If you go to page 5, line 16, the board will continue to consider the assessment as part of the decision as to whether to grant or revoke the parole of a person. Here is a huge thing. For as long as I can remember, we have been using three psychologists or psychiatrists that the state is paying to work every day. Unfortunately, because of the way the psych panel is set up and that the study shows is really an unnecessary step, we have locked up three solid weeks of three psychologists or psychiatrists to just do these psych panels where those psychologists or psychiatrists at Lake's Crossing could be working with those folks, and the psychologists at the Department of Corrections (NDOC) could actually be doing patient care versus psych panels. I will never bring anything to you or sit at this table unless I have looked at it in the big picture, unless I have looked at it in terms of "is this good for the state of Nevada? Is this good for the clientele? Is this good for public safety?" I can tell you that this meets all of those criteria, and it takes away a big headache from a lot of years.

I appreciate Senator Segerblom allowing us to participate, and I am more than happy to answer any questions that you may have.

Assemblyman Carrillo:

On page 3, lines 28 through 30, are they going to require them to meet certain criteria to be considered "properly trained"?

Connie Bisbee:

You do not have to have a particular degree to be properly trained. The trainer has to be qualified to be a trainer, and then you just have to make sure that you train this person properly, that you continue to supervise them to make sure that the information is correct. I will use the example of the other than sex offender risk assessment that the board uses. The first person who does that risk assessment is the intake caseworker when they enter the Department of Corrections. The second person who reviews it is the caseworker that is assigned to the inmate. The third person who looks at it is the hearing representative who is assigned to the board, and the fourth is the parole board, and they also go over every single part of that with the inmate. There are many opportunities to make sure that the information is correct. It does not require a particular degree or experience to be trained to do that. As it stands now, the mental health professionals in the Department of Corrections have been doing that Static-99. The director of the Department of Corrections will ensure that they are properly trained and that they follow the guidelines. The manual is very specific as to how you will do this. You could train caseworkers, you could train the mental health technicians, the mental health professionals, and the psychologists to do it, but it does not require a particular person to be doing it as long as they are trained.

Assemblyman Carrillo:

Will there be any reassessments for any individuals who have already gone through some type of psych panel prior to passage? Let us say that this bill passes. Would this be something that you have to reassess anyone who has already had an evaluation to see if there may be a different outcome from the assessment?

Connie Bisbee:

No, there is no retroactivity where you have to go back and redo all of them. They already have an MnSOST. Static-99 is already done. The mental health professional has already completed that before the information goes to the psych panel. The psych panel would make an independent decision as to whether or not they felt they were a low, moderate, or high risk, aside from the actual risk assessment. So it cuts that piece out. In fact, the original psychologist who was reviewing our things—we had to switch because of some

personal reasons; one had to drop out of the grant—came to me and said, "They are essentially doing a parole board hearing, and I do not know why that is happening." So what was happening was the psych panel was acting in the way they felt that the statute told them to act, and it is an unnecessary step. No one will be reassessed—come July 1, 2013, if this is passed—who currently has an assessment. When they come to the board, it is with a fresh assessment that has been done sometime in the last 120 days. If we are going to see someone in July, they will have gone through the psych panel. If we are going to see someone in August, we will just be getting the actual report of the assessment at that point. It will not change anything and it will not make people have to go through an assessment again, but each and every time they come to the board, a new assessment is done.

Assemblyman Carrillo:

What is the acronym MnSOST?

Connie Bisbee:

It is the Minnesota Sex Offender Screening Tool. It does not have as high of validity as the Static-99, so I think we will see that we are not doing MnSOST anymore.

Assemblyman Thompson:

I have a question on section 1.5, page 5. I would like to talk about that a little further where it says, "The Board shall consider an assessment prepared pursuant to this section before determining" Currently does everyone that is being considered for release or parole who is a sex offender get an assessment, or is it discretionary to the panel?

Connie Bisbee:

Everyone is assessed.

Assemblyman Thompson:

Okay. So the way in which I read this is that it is now discretionary?

Connie Bisbee:

It is just putting in statute that we will consider it. We always consider it. That is the practice. Frankly, if you do not consider it, and you get a risk assessment that says someone is a high risk to reoffend sexually, you are a fool. So it puts it in the *Nevada Revised Statutes* (NRS) that the board acknowledges that they will consider the results of those risk assessments.

Assemblyman Thompson:

Would you explain to me what are all of the factors? I know there are a lot of factors that are considered for a panel, but how much is an assessment weighted, character letters, their behavior while they were incarcerated, and so forth?

Connie Bisbee:

We look at all of it. We look at every single piece of it. We get letters of support, we get letters saying, "Please do not do this," we have the criminal history that we can consider, we have the facts of the incident offense, and we have the risk assessment whether they be a sex offender or not a sex offender. They are all weighed. Now sometimes there are crimes that are just so horrific that you have to wonder whether that person is at any point safe for the community. Sometimes the victim impact is so horrific. Sometimes you have something that by the nature of the title of the crime, you think, "This is not going to be a good person to put out," but then you look at the actual facts of the crime and you look at the fact that there has never been any history before that, they have done everything they possibly could while they were incarcerated, and they have a safe plan for the community. We do, believe it or not, have victims that come in and say, "I think it is in our best interest that this person be released." So all of the factors are considered. Sometimes some of them weigh more than others.

Assemblywoman Spiegel:

Using the method that you have been using currently, what has the accuracy rate been and the assessments relative to the performance that has been experienced? Also, do you have some data for the Static-99 and how effective that has been in places where it is used?

Connie Bisbee:

I know that at this point, the Static-99 is considered to be the most valid of the sex offender risk assessments, but in reality, you could find a group that totally disagrees with it. In general, in the mental health community and in the sex offender treatment community, the Static-99 is considered to be the most valid. One of the things in the report that Dr. Perrien talked about is, in reality, sometimes just flipping a coin. The huge value of the Static-99 personally in over ten years of experience and getting the results of it, is when someone shows up as a high-risk to reoffend. Personally, that is where the lights go off and I say, "I am really concerned that we would put this person out." You have a lot more to consider when they show as a moderate risk or a low risk to reoffend. You are going to find studies on both ends of the spectrum when it comes to the Static-99, but in general, it is considered the most valid assessment at this time.

Chairman Frierson:

Are there any questions of the Committee? [There were none.] I have a question, and it is really more of a clarification. On page 3, line 21, you referenced "a currently accepted standard of assessment." Your example was the Static-99. I want to make sure that it is clear, because it does not say, "accepted by whom," and I think that I get it is a currently accepted standard of assessment in that field or nationally accepted. It does not bother me that it is not; I just want to make sure that it is clear for the record that we are talking about a nationally accepted—I do not know if there is an organization that acknowledges the Static-99 as the most studied and confirmed method of assessment.

Connie Bisbee:

You are absolutely correct. That means the currently accepted standard assessment in assessment communities. It does not have anything to do with whatever the Department of Corrections wants to use. It has to be the accepted standard of assessment nationally or internationally, and I think that it is made very clear in the report from Dr. Perrien also. I understand your concern from the reading and the way you are asking the question, but it is typical language.

Chairman Frierson:

Are there any other questions of the Committee? [There were none.] Thank you, Ms. Bisbee.

I would like to acknowledge Ms. Maharis in Las Vegas, since the sponsor of the bill had referenced Mercedes Maharis.

Mercedes Maharis, Private Citizen, Las Vegas, Nevada:

Please vote yes on S.B. 104 (R1). It may not be perfect, but we need it now. I am asking you to vote yes for three basic reasons: (1) the extensive research that I am sure Senator Segerblom has provided you from Dr. Nancy Steele and the National Institute of Corrections, United States Department of Justice report ([Exhibit D](#)). These reports basically reveal that, unfortunately, the Nevada Psychological Review Panel was founded upon and operates on a faulty paradigm of risk assessment. (2) The elimination of the panel will streamline and add dignity and fairness to the parole process as the parole board members come to honor the new and hopefully error-free, more objective, risk assessment data, and (3) the elimination of the panel will initiate a new era of much-needed and improved mental health care policy and practice. It will save needless effort, as pointed out, and it will also save a tremendous amount of money at the same time.

In closing, if you are indecisive, please watch the DVD. Thank you for your sacrifice to public service, and for helping to make our beautiful state a better place to live. Please vote yes on S.B. 104 (R1).

Chairman Frierson:

Thank you for your commitment. You have been committed to this issue for a long time, and I remember conversations with you even last session. I appreciate your persistence and your commitment, especially to this issue. Are there any questions of Ms. Maharis? [There were none.] I will invite anyone here who wishes to offer testimony in support of S.B. 104 (R1) to come forward.

Pat Hines, Private Citizen, Carson City, Nevada:

I am a Nevada citizen, a taxpayer, and I have been a devoted advocate for change in the psych panel since 1985 after I learned in 1984 what my son was going through as being called a sex offender. I have agonized over what to say to this, because there is so much to say. I am so thankful to Senator Segerblom, Mercedes Maharis, and anyone else who has taken the time to research this like they have and come up with a change in the psych panel. It took me nine years to get the psych panel to allow family members to come to their so-called psych panel hearings. They were done in a manner that no one could say they were objective. It was all very subjectively done, and if you were there and you listened, you thought it was an interrogation. I could say a lot. I am so thankful that there are some changes being made, and only time will tell how well it is going to do.

I am concerned about the duties given to Director Cox on this. There is a whole section in the bill that speaks to the director's duties. He is a busy man. He has not been involved in this very much, and so I wonder if we should put too much of a burden about this on him. I have probably studied 11 different risk assessments. I have asked that the risk assessments for the last five years be utilized in ours instead of all the subjective material being used by the psych panel. As I say, time will tell, and I appreciate all you do. I am in support of the bill, although I have changed my mind on it, I would like to say I am in support of the bill, but not completely as it is written. I got a paper in late about amendments that I would like to see done, but I was not sure if they got in or not. I brought some and put them on the table, and if you are interested, I would appreciate your using them. I will be glad to answer any questions. I have been an advocate for this since 1985, and I am just delighted with what is going to take place. I just hope it goes as well as I want it to go.

Chairman Frierson:

So that I am consistent, support means that you support the bill as it is, meaning you are okay as it is.

Pat Hines:

Yes. I am supporting the bill as it is written.

Chairman Frierson:

Thank you, Ms. Hines. Are there any questions? [There were none.] Is there anyone in Las Vegas wishing to offer support for S.B. 104 (R1)?

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

I want to be on record supporting this bill and the work that Chairman Bisbee has done along with bringing in a group of people to take a look at our risk assessment and also Dr. Perrien for the work that she has done.

Chairman Frierson:

Thank you, Mr. Cox.

Assemblyman Duncan:

Up to this point, were we utilizing the MnSOST and the Static-99 to do risk assessments? I have heard conflicting testimony here that it was more subjective. I would like your perspective on what sort of risk assessments were being done up to this point.

Greg Cox:

Yes, sir. We were utilizing the Static-99 instrument. Two psychologists from NDOC were on the panel along with a psychologist from the Department of Health and Human Services.

Chairman Frierson:

I will say that in my experience—and Mr. Ohrenschall is not here right now, but I think he probably shares the same experience—there are times where things that have very little to do with an offender's risk to reoffend become considered because they might represent a low risk, but they have a really bad attitude, or they are really angry. I think this is an effort to focus on what level these individuals represent a risk to reoffend. I had a client who engaged in conduct with someone underage two days after his eighteenth birthday. Of course, he did not have that great of an attitude, and I think that what we need to be doing is focusing on whether or not these individuals represent a risk to reoffend and not some of the other things that I think end up coming into play. I certainly appreciate trying to take out a lot of the technical aspects of it that did not really provide the results that I think we were going for.

Are there any questions for Director Cox? [There were none.] Is there anyone else wishing to offer testimony in support of S.B. 104 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in opposition to S.B. 104 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in a neutral position either here or in Las Vegas? [There was no one.]

Ms. Bisbee, there has been nothing to contradict anything to what has been said. Ms. Hines, I want you to know that we did get a copy, and we will make sure that what you have provided to us gets circulated through the Committee. I will now close the hearing on S.B. 104 (R1) and open the hearing on Senate Bill 347. Welcome, Senator Brower.

Senate Bill 347: Requires the Advisory Commission on the Administration of Justice to consider certain matters relating to parole. (BDR S-1050)

Senator Greg Brower, Washoe County Senatorial District No 15:

As you can tell, Senate Bill 347 is a very simple bill, and its genesis is the realization on the part of the Senate Judiciary Committee, and I am sure this Committee, that parole is a very complicated issue. There are many different ways that the states and the federal government deal with parole. It was my suggestion to the Senate Judiciary Committee that rather than dive into trying to tweak or reform our system of parole in a significant way, it might make more sense to study the issue in the next interim in a comprehensive way, and then, should any ideas for reforming our system come out of that, the next session would be the proper time for introducing actual legislation. So the Senate Judiciary Committee agreed, and that brings me to you here today.

As I am sure many members of the Committee know, there are a variety of different ways in which the various states and the federal government deal with parole. At least 16 states have eliminated parole altogether. Maine was the first in 1975. The federal system eliminated parole in the 1980s, and there are as many different ways of dealing with parole or the absence of parole as there are states. Essentially, what the states that have eliminated parole have done is they have gone to a determinate system of sentencing, much like the federal government, where, upon conviction, it is the judge who decides how much time or no time the convict will serve, ranging from probation, which of course means no time in prison, to a definitive definite term of incarceration, removing the indeterminate or range of time that characterizes our system today.

The problem, frankly, is that with our current system where sentences are a range, no one really knows how much time the convict is going to serve, including the convict himself. The victims do not know and the prosecutors do

not know. It can make it difficult, as the Chairman knows, to negotiate plea deals, and there really is no truth in sentencing in that sort of system. That is not to say that we should necessarily abrogate or eliminate our system of parole, but it is my thought and my suggestion that the situation is such that we probably should take a comprehensive look at our system of parole, evaluate the way other states do parole or do not do parole any longer, and take a look at the federal system. I think that the Advisory Commission on the Administration of Justice (ACAJ) in the next interim would be the perfect place to conduct such a study. Simply put, that is what this bill proposes. The Chairman and I both serve on the ACAJ. Our portfolio in the commission is very broad, and a lot of different issues compete for our attention. I would respectfully submit to the Committee that this is one that deserves some study and that is what this bill proposes. I would be happy to answer any questions.

Chairman Frierson:

Are there any questions for Senator Brower? [There were none.] There are several matters that are already proposed to be referred to the Advisory Commission, but one of them dealt specifically with sentencing. There have also been discussions about this whole notion of either moving Parole and Probation in its entirety out from under its current scheme and putting it under either the courts or in a different direction. There are also discussions about splitting Parole from Probation. Was it your intention with this bill—because it does not expressly mention it—for it to direct the Advisory Commission to look at that issue as well?

Senator Brower:

It was not, although I am aware that those issues are out there and I think are also worthy of study. When you look at S.B. 347 and in the rush to draft this bill at the very end of the process, it is not entirely clear as drafted that a review of states that have eliminated parole should also be part of the study. That could be fairly captured by the current subsection 3, but I just offer that to the Committee to clarify on the record that it would be my intent for the ACAJ to look at every aspect of the system in every alternative, ranging from modifying our system to eliminating our system of parole in accordance with what other states have done. These issues you raise are not contemplated by this bill itself.

Assemblywoman Diaz:

My question is the first point under section 1, "A survey of the parole systems of this State and other states and territories of the United States." I think it is very broad. I think there is probably a purpose that we want the Advisory Commission on the Administration of Justice to come back with certain recommendations. Do we really want to leave it as broad for them to analyze

50 states, or do we want those states with the most efficient parole systems, the ones that have proven that they run the most efficient and cost-effective parole systems? If I were on this Commission and I were reading this, it just does not really give me very much direction as to what we are looking for. If we look at 50 states and then we change our system in Nevada to one that is being carried out right now in Arkansas, what is the reasoning behind what they are going to be looking at? I want to hear thoughts and guidance in this area for this Commission.

Senator Brower:

I think the idea would be that within the discretion of the ACAJ's members and certainly the chair of the ACAJ that the scope could be defined and narrowed as the Commission sees fit. The Legislative Counsel Bureau (LCB) has already done quite a bit of work. This is just one memo that LCB has provided for me which includes a very brief survey of each of the 50 states' systems. I would not expect that the ACAJ would want to spend hearing time delving into the details of each of the 50 states' systems. I think what would probably be more likely—the goal of the ACAJ is to segregate the states into those states that have eliminated parole altogether, those states which have some kind of modified system albeit different than ours, and then states which have a system similar to ours and compare and contrast the three general categories and decide whether or not our system could be improved. I think the idea behind LCB's drafting of the bill is just to make it as broad as possible to then give the ACAJ the opportunity to narrow as it sees fit.

Assemblyman Wheeler:

Would the ACAJ not have this discretion anyway? Is that not exactly what they do is study?

Senator Brower:

It could, but of course it would not have to take up this issue unless the Legislature instructed it to do so. Even if everyone in this room today believed that this was an appropriate topic for the next ACAJ, the ACAJ is made up of people—some of whom are in this room and many others who are not. The point of the bill would be to express a legislative intent for the ACAJ to include this on its agenda in the next interim.

Assemblywoman Spiegel:

Is there a reason why you did not include a request for recommendations or any action steps that would come about as a result of the review?

Senator Brower:

No, there is no reason. This was literally drafted in the waning hours of the last night for drafting. In the Senate Judiciary Committee, I think this bill had the shortest hearing—at least in my experience—in the history of the Senate Judiciary Committee. We were running out of time on the last day. We literally heard it and passed it out in 30 seconds, so I would offer to this Committee the opportunity to change or amend it in any way that you see fit.

Assemblyman Frierson:

Are there any other questions of the Committee? [There were none.] I will now invite those here to provide testimony in support of S.B. 347 to come forward, either here or in Las Vegas.

John T. Jones, Jr., representing Nevada District Attorneys Association:

I appreciate Senator Brower bringing S.B. 347 forward, and I am here today to provide support for that bill.

Chairman Frierson:

Are there any questions of Mr. Jones? [There were none.]

Mercedes Maharis, Private Citizen, Las Vegas, Nevada:

I support Senator Brower's bill.

Chairman Frierson:

Are there any questions? [There were none.] I will invite those wishing to offer testimony in opposition to S.B. 347 either here or in Las Vegas. [There was no one.] Is there anyone wishing to offer testimony in a neutral position, either here or in Las Vegas? [There was no one.] Senator Brower, do you have any closing comments? It does appear to be fairly straightforward.

Senator Brower:

I would simply again thank the Chairman and the Committee for hearing the bill this morning. I think that the topic is worthy of study. I would suggest there have been some egregious cases recently where the parole system does not seem to work. I think in other respects it works well, but I think it is worthy of a more careful study by the ACAJ to decide just what the system should look like going forward for our state. Thank you for the time today.

Chairman Frierson:

Thank you. I will close the hearing on S.B. 347. I see Senator Smith, so we can move on and open the hearing on Senate Bill 478 (1st Reprint).

Senate Bill 478 (1st Reprint): Revises provisions relating to the employment of offenders. (BDR 16-1202)

Senator Debbie Smith, Washoe County Senatorial District No. 13:

I am here this morning to present to you Senate Bill 478 (1st Reprint). This bill is about prison industries, sometimes called prison labor, and it aims to fix three significant issues that we have learned about over the course of the last interim and during our budget hearings this session. We think these are things that are wrong with the current system and need to be fixed.

I got involved in this issue because of those interim and budget hearings and a number of news stories that went along with them. I want to get right to the point that currently our prison industries—that is, prisoners working full-time jobs and getting paid for it—are costing the state more money than they are bringing in, and they are taking jobs away from Nevadans who are not in prison, and we are letting contractors currently get away without paying us. Before I get into the details, I want to say that I do not necessarily think these problems are the fault of any people or any persons in particular. I am not trying to say that anyone at the Department of Corrections or anyone else is doing anything that is disingenuous or unscrupulous. I am just saying that our current system is not working. It is costing the state and it is costing our private sector jobs. What is really happening is a problem with the law, and that is what I am trying to change.

The three major issues that this bill addresses are these: It sets up safeguards to ensure that prison labor is not taking jobs away from nonincarcerated citizens. I think you will probably hear more about that from other testimony. It sets up clear guidelines as to what must be done if the state-sponsored prison industries is losing money, and it sets up mechanisms for the state to ensure that we will get paid by outside companies who use our prisons' labor and our prisons' industries facilities. As you know, we have a prison industries subcommittee, the Committee on Industrial Programs, within our Interim Finance Committee, and they have identified significant problems. Your colleague, Assemblyman Ohrenschall, has been chairing that Subcommittee.

First, I want to talk about the three changes in detail. I will start with the jobs aspect. It is pretty clear and falls squarely into the common sense category that our prison industries are not supposed to be competing with private industry and taking jobs away from our law-abiding citizens. Unfortunately, at times this has been the case. To help mitigate the possibility of this happening, subsection 7 of section 1, beginning on page 4, lays out a number of basic steps that an outside contractor must take before they can enter into a contract

to employ prisoners. The contract must provide a detailed written analysis that must include the number of other private companies in the state that offer the same types of products and services that are proposed, the number of Nevadans currently employed by these private companies, the number of prisoners who would be employed, the skills the prisoners would gain from the contract, proof that the contractor has provided notice in an appropriate trade journal or publication to companies that may be impacted by their intent to use prison labor, and written assurances that the contractor has met with local companies and labor organizations that may be impacted.

I want to note for the record that for the most part, these are not additional requirements. They are things that a company would typically do anyway, see who else is out there providing the same service, plan how many people they would expect to hire and what skills they would need to have, and what they would need to learn, and then meet with local organizations. This is not an undue burden on legitimate businesses and it gives us more pertinent information when we are looking to approve or deny these contracts.

Lastly, the bill requires that the director of the Department of Corrections needs to send a report every five years, starting January 1, 2014, to the Legislative Counsel Bureau (LCB) and our Committee on Industrial Programs, analyzing existing contracts and their potential impact on the private industry.

Next, I would like to talk about the new provisions in the bill regarding the state and our prisoners getting paid for their efforts, for our efforts. If a private contractor uses our prison labor or facilities, there is not much currently in the law to make sure we get paid. In other industries, with contracts of this size, some sort of bond or guarantee is typically signed at the outset. This has become a problem. We found one high-profile instance recently where a company was over \$400,000 in debt to the state—and I am sure you have seen this in the news; there has been quite a bit of information out there about this—including being almost \$80,000 behind on salary payments to workers at the end of 2012. I find that completely unacceptable. I am purposely not saying the name of the company because this is not an attempt to attack a company or any individual. It is about evaluating what we do and then trying to make it right. I do not want us to be faced with this problem ever again.

To that end, subsection 7(a) of section 1, beginning on page 4, line 10, requires that the state get a personal guarantee, a surety bond in an amount fixed by the director for each contract but not less than one-half of the amount of the contract, or a security agreement to secure any debt, obligation, or other liability of the private employer under the contract, so we will not put ourselves in this situation again where we have a large debt that we have not been able to

collect. This is to secure any debt or obligation the contractor may owe the state, including wages, lease payments, or other compensation. That this is not less than 50 percent of the contract value for the surety bond is the one change that was made in the Senate. This was an amendment which was worked out with some of the contractors who worked with prison labor to address their concerns that the original surety bond amount was too high.

Finally, this bill says that the state should not subsidize prison industries that lose money, and if an industry in our prison system is not profitable, we should fix it or get rid of it.

Subsection 5 of section 1 requires that if a state-sponsored program incurs a net loss for two consecutive years, the director has to explain to the Committee on Industrial Programs why we have a loss for two years running and provide a plan to fix it. If the program loses money in the third year, the director must take appropriate steps to fix it.

Starting on page 5, line 29, the bill requires the Committee on Industrial Programs to recommend a change or termination of a program that still has a net loss after that third year. The director must either accept that recommendation or submit a written report as to why he did not.

In conclusion, I would like to simply reiterate the three reasons I am bringing the bill forward. I want to make sure that we protect jobs for our law-abiding citizens, I want to make sure that the state gets paid the money it is owed by private companies who use our prison labor or facilities, and we should make sure that businesses we run do not perpetuate or operate at a net loss of money, which we then have to backfill from other state dollars. Thank you for your time and consideration, and I am happy to answer any questions.

Chairman Frierson:

Are there any questions for Senator Smith? [There were none.] My question is more along the lines of the sections dealing with whether or not there is a net loss, I believe on page 3, subsection 5, and then the call to action on page 5. My question there is whether or not we can accurately assess the value that some of these programs provide in giving the inmates some skills that we might not be able to put to a real clear dollars and cents figure, but are still valuable. The value to the community may be there, but we cannot exactly calculate it because it might affect recidivism or that person's reentry into the community. I would hate to see us reduce it only to whether or not it makes money, if it does have some intangible value, that is just a cost of ensuring safety to the community.

Senator Smith:

I absolutely agree with your concern about the training aspect of this, and what the tangible value is, which is one of the reasons I think the director has the ability in this program to explain why he thinks the contract should be terminated or not. I agree also with the fact that they have three years to do better or for the director to make a response one way or the other. The training that our offenders receive is critically important, but I think there has to be a balance. Most of all, there just has to be some accountability and making sure that we are not incurring debt that is owed to our prisoners that the companies are not paying. There just has to be some responsibility taken by the private companies who engage in these contracts.

I think this system will lay out a plan to get them on that track. I am assuming there should also be some constant evaluation of whether the industry that they are working in is the most appropriate industry? Is it the best training that is being provided? I would think, with the director's assessment, that would be part of the consideration. Perhaps it is the wrong training that they are providing. Perhaps the industry that they are working in is not the best industry if they cannot make money using prison labor.

Chairman Frierson:

Thank you, Senator. This Committee toured the prison and toured the facilities and saw the furniture, mattresses, and the auto shop and had some conversations with those responsible for running that program about the training they are providing and the certification the inmates are getting. I do not know if we received answers regarding how many of those actually translated into jobs once they left. I think that would be something valuable for the Committee to assess whether or not they are actually putting it into use.

Senator Smith:

As I was looking at this, I thought of the similarities between this and our career and technical programs in our high schools as an example. Over time, we have had to change those to meet the needs of our current economy, and I am assuming that that is something that needs to be done in this constant reviewing of the programs. Are they the best programs? Are they the programs that will get our offenders jobs when they are released? I do believe that this will allow that to happen and it will always allow the director to come back and make a case for retention.

Assemblyman Carrillo:

Is there going to be anything in place, like a check and balance? If there is anything that is being audited after a fiscal year—to make sure that they do not have what they did have with that one that owed over \$400,000? If there are

monies that are set up—and I do not know how long that took to get to that amount, unless there is just one period of time that the monies were all set and boom, you owe the state this amount of money. Is there any check and balance that will be put in place so we do not have a situation where people come and say, "Hey, even though we put all the surety bonds and everything else in place, what is the check and balance for this stuff?"

Senator Smith:

I think this will do that, and to some degree it has been happening. We do have the ability to audit, which we have done. We do have the subcommittee of the Interim Finance Committee, and the Committee on Industrial Programs. I think where we have sort of missed the boat is we have not put in the front end of what happens and the back end of what happens. We have had this sort of middle ground of what we take a look at, but I do not think we have built in the protections on either end. I think we should be looking at, if we have a contractor using labor who is out there, we should have the ability to lien a project. I do not think we have taken advantage of any of those situations, so what this is going to do is build those front-end and back-end provisions to protect the state and protect our offenders who are in the program.

Assemblyman Wheeler:

On section 1, subsection 7(c), page 4, lines 31 and 32, you are asking for proof of publication to be put in a trade publication. It seems to me that you are looking for someone to put their business plan out in public before they actually implement it. I know as a private company and as someone who formerly ran a private company, I certainly would not want my business plan out for my competitors to look at and give myself a disadvantage. I was hoping you would explain that to me.

My other question is, do we not have a civil court system to take care of this when people owe the state money?

Senator Smith:

The answer to the first question may be a bit philosophical, but I happen to believe that when you are talking about government and tax dollars and the ability for others to either use the tax-sponsored system, or actually get tax dollars, I think there is a higher level of accountability and openness that needs to be used. I think the intent to provide products and services to the state prison system—I do not know that we are asking for a business plan. I think we are asking for an intent to use the services and I suppose that could be further fleshed out. I really believe that when a private business is going to use our offenders and theoretically use tax dollars to do so, there is a higher level of openness that needs to be required.

On the civil side, there is always the ability for us to go to court and try to collect money that is owed. I am trying to prevent us from having to do that so that we have built-in protections. I am not saying that that will never happen in this. We still may end up having to go to court to collect money that a business owes prisoners or the state, but my preference is that we do not have to go to court and that we do not have to spend our precious tax dollars on litigation when we can set up a system of accountability and openness that will avoid some of that. It is probably not a perfect system, but an effort to do better.

Assemblywoman Cohen:

Are there certain industries that we have seen that are profitable, like the mattresses are profitable, or the air brushing is not profitable? Is there any kind of feeling for that?

Senator Smith:

I cannot tell you that today. I cannot give you that accounting today. I can certainly ask for it, but I do not have the answer for it to you today. I had mostly focused on not who is profitable or not, but who can pay their bills and who cannot.

Chairman Frierson:

Are there any other questions of the Committee? [There were none.] Thank you, Senator Smith. I am assuming you have to go back to the Senate Finance Committee. Once you get wind of any other concerns that were raised or responses you may have, let us know.

Senator Smith:

Absolutely. Thank you.

Chairman Frierson:

I will invite anyone who would like to offer testimony in support of S.B. 478 (R1) to come forward both here and in Las Vegas.

Jennifer DiMarzio-Gaynor, representing XL Steel:

We are in support of S.B. 478 (R1). As Senator Richard Bryan, my colleague, has testified in earlier hearings on this bill, our client has lost out on some business to prison industries in the past. We are not opposed to the prison industries program and have no intent to eliminate this program. We are simply looking for more transparency, and we feel that this bill helps to achieve that. We want prison industries to reach out to private industry if the goods or services it will produce move into the realm of private industry. We support this bill as it is currently written, and we have a few additional recommendations to enhance the transparency of it.

Federal law already has certain requirements for prison industries that create goods and services that move into interstate commerce and we suggest the same guidelines for goods and services that move into intrastate commerce as well. These recommendations include written assurances that prison industry operations will not result in the displacement of employed workers or be applied in skills, crafts, or trading in which there is a surplus of available and gainful labor in the locality or significantly impair existing contracts in the locality.

There also needs to be comparable wages. Inmate workers must be paid at a rate which is not less than that paid for work of a similar nature in the private sector employers in the locality in which the work is performed. There needs to be consultation with local private industry, and that would be written proof of consultation with representatives of local businesses that may be economically impacted by the prison industry program prior to initiation of any prison industry program. Finally, there needs to be consultation with labor organizations, and that would be written proof of consultation with local labor organizations prior to initiation of any prison industry program.

Following these recommendations, which we already see on the federal level, will create a process that will allow private sector groups, businesses, and employees a chance to be heard and register any concerns before a prison industries contract is awarded. I would like to reiterate again that we fully support the bill as it is written, and Senator Bryan and I would be happy to work with Senator Smith if she has interest in adding any of these recommendations as a friendly amendment. Thank you for your time.

Chairman Frierson:

Are there any questions of Ms. DiMarzio-Gaynor? [There were none.] I have a few questions. The issue of paying wages to inmates similar to that of the private industry—I think it is fairly obvious that that would decimate prison industries. If that is part of the support, that would be tantamount to me just getting rid of it altogether. I am trying to contemplate some type of cost-benefit analysis. The way that that works, because that is the motivation, it seems to me, you get to save some money on behalf of the state, but you are also training people for jobs that they might be able to get when they get out. I think that is the trade-off, so that motive would be gone if we had to pay the same. I guess this is not really a question, but making a point.

My question is, has there been a contemplation that if we are going to make some of these changes, that there be an agreement with these private companies to hire some of these inmates that are trained on these jobs so there is some benefit? The whole point of the inmates getting this training is so that they do not return to prison and they are productive members of society.

If they get out and they cannot get jobs anyway, we simply shift it into private and we are going to incur the \$30,000 to \$50,000 incarceration cost per inmate. I do not know if that has been discussed or contemplated. I think it might be a worthy part of this discussion.

Jennifer DiMarzio-Gaynor:

I am not aware if that has been contemplated. It sounds like a good recommendation, and I know the intent with the comparable wages is not to decimate the prison industries program. It is just to make it so that private industry contracts can compete fairly with the prison industries program. Perhaps some of the other considerations that we are looking at is that the prison industry program would not compete in an area where there are private industries in the locality. The wages issue may not come up. I think that it is something that could be considered.

Assemblyman Wheeler:

When you figure comparable wages, do you also figure room and board? It costs.

Jennifer DiMarzio-Gaynor:

I agree; there is a cost. I am not sure how that would be calculated.

Assemblyman Hansen:

The entire purpose of the program is not to produce goods and services for profit in the economy; it is to basically allow inmates to develop some skill. To what extent is there, in fact, competition in the prison industry for outside firms? Apparently your firm has had that experience. I am wondering, is that an unusual thing? Are we in effect providing for private companies some exceptionally low-cost labor that are then being used to undercut companies like yourself trying to employ local people at comparable wages? What is the extent of the problem and what is the purpose of the prison industries program?

Jennifer DiMarzio-Gaynor:

Let me see how I can best answer your question.

Assemblyman Hansen:

How much competition is there created by the prison industry? How many outside firms are being impacted in not being able to hire people because they are basically being undercut by people using prison labor?

Jennifer DiMarzio-Gaynor:

On a national scale, I cannot speak to that. I know that in this state, my client's industry was steel fabrication, and there was direct competition with

their company, and they did lose out on some projects because the prison industry obviously could significantly underbid their costs. I do not know what the extent of the problem is, but I think we are looking at avoiding direct competition in areas where Nevada does have trained workers and does have industry that is losing out on this kind of work that they would otherwise be doing if they were not being so severely undercut.

Assemblyman Hansen:

If I can get the details, that would be wonderful. Obviously, you want to minimize using basically slave labor to undercut people in the private sector.

Jennifer DiMarzio-Gaynor:

I will work with Senator Bryan, who has been working with the Majority on this bill on getting the information to you in the Committee.

Assemblywoman Spiegel:

Do you know if your client has hired or hires people who have been incarcerated and trained in prison industries and then released into the private sector?

Jennifer DiMarzio-Gaynor:

I am not aware if they had or not. I do not know if the prison industries program has been around long enough that prisoners who have been trained have come out into the workforce, but that is something I can follow up on for you.

Chairman Frierson:

Are there any other questions of the Committee? [There were none.] Is there anyone else wishing to offer testimony in support of S.B. 478 (R1) either here or in Las Vegas? [There was no one.] Is there anyone in Carson City wishing to offer testimony in opposition to S.B. 478 (R1)? [There was no one.] Is there anyone wishing to offer testimony in opposition in Las Vegas?

Brian Connett, Deputy Director, Prison Industries, Department of Corrections:

Prison industries is a self-supporting program that does not take any general funds whatsoever. It does not impact the General Fund in a negative manner. In fact, we support, through room and board from the inmate wages, about \$400,000 each year back to the Department, which then reduces the Department's need from the General Fund. Also, through inmate wage deductions, they take and support the Victims of Crime Fund about \$80,000 per year. It is a self-funded program. We are extremely concerned that the unintended consequences of this bill will impact inmates, both at Casa Grande Transitional Housing and in the Northern Nevada Correctional Center, whereby those inmates go out into the community and contract with private sector

companies for employment. I do not see any employer where these inmates go to work desiring to comply with these changes that are being reflected.

Prison industries inmate workers are able to save money, they send money home by working, and they have a much lower recidivism rate than inmates not working in prison industries. That is true across the country. They actually reduce the cost to the state. Nevada releases approximately 6,000 inmates per year, and that from a total inmate population of roughly about 12,500. About 96 percent of all of our inmates one day will be released, so we prefer these inmates to be released with a work skill, be employable, and not revert to crime, thereby creating new victims and overtaxing an already overstrained criminal justice system.

If prison industries goes away, which we see in the legislation that is before you, it is very, very shortsighted in that long-term it will have a devastating impact. If prison industries is not available, inmates will not receive work credits, thereby staying in our prisons longer, and thereby costing the State much more. Prison industries will probably end up laying off staff. We have a little over 20 staff members that would be severely and negatively impacted along with their families in the communities.

Prison industries is a time-tested model that is used by every single state in the country and the federal government. Prison industry work programs are also used as a management tool by the institutions and the Department of Corrections in every single state to help maintain control of the inmate population. Inmates assigned to the prison industry work programs certainly tend to be less likely to be involved in negative activities, and the reason for that is that we control inmate applicants to the prison industry program by saying that they have to be discipline-free for a certain amount of time before they can even apply to come to work in prison industries.

Prison industries are 13 very small, very diverse companies or little industries that we have. There are currently three levels of oversight on prison industries. We have the Interim Finance Committee and the Committee on Industrial Programs, which meet quarterly, and we basically accomplish in those quarterly meetings most everything that this new language for this bill that has been proposed, all of that is done in those quarterly meetings. We also have the Board of Prison Commissioners, which has oversight, and the Board of Examiners for any resulting contract. Also, this last legislative session, this Legislature was able to take about \$948,000 out of prison industries capital improvements fund to help balance the budget. There was mention earlier of a state audit. There were ways that needed to be found to expand prison industries because of its benefits. We certainly are working as many inmates as

we can. It is in the *Nevada Revised Statutes* (NRS) for the director to work the maximum number of inmates. If there are any questions, I will certainly be glad to answer them or defer to the director.

Assemblyman Thompson:

What is your employment success rate? When they are released from Casa Grande or the facility in the north, would you give me a snapshot of the last fiscal year? Also, what were the retention rates?

Brian Connett:

We have our operations manager for the Casa Grande facility here, and I am sure he would be glad to answer that question. In regard to the success rate for prison industries, the normal recidivism rate, which is what we go by for our Nevada Department of Corrections, is about 26.9 percent. Prison industries recidivism rate for our ranch, for example, is about 15 percent. Each one of those inmates that we can keep from coming back into the system, means creating a new victim, and keeping that cost out of our General Fund. I certainly would be more than happy to show you that in our neighbor to the west, California, close to 70 percent of their inmate population is due to recommitments and recidivism. It has a large impact, and through prison industries we are attempting to do that.

Chairman Frierson:

You indicated there is a 15 percent recidivism rate for those who are part of prison industries?

Brian Connett:

Yes, sir. We did a study and the rate for inmates working through prison industries at our ranch operation was 15.3 percent.

Chairman Frierson:

How does that compare?

Brian Connett:

To our state of Nevada, it is 26.9 percent. The national recidivism rate is somewhere between 50 and 60 percent, depending upon the standards used.

Chairman Frierson:

Did you say you can provide to us the number of individuals who obtained training in prison industries and then went on to work in employment in those areas that they obtained training?

Brian Connett:

We have the corrections manager for the Casa Grande facility and certainly he would be more than happy to address that issue.

Chairman Frierson:

You had mentioned at the outset that this is self-funded. Would you elaborate on where the money comes from that funds current prison industries and then the savings it has provided and where the revenue, if any, from that money goes? It just seems to me there is a notion that we are losing money, so if you are saying that it is self-funded and actually provides money back to the Department of Corrections, would you elaborate on it so we have that information?

Brian Connett:

Prison industries has 13 industries whereby we manufacture goods. We have the ranch operation where we provide services to the community, and through that we have inmate wages that we charge. We also have to charge for security staff. There are a lot of extra costs for a private company to be able to come in and do work inside the prison. Those fees that we charge are put in as revenue. We have costs that are associated—such as inmate wages, security staff, prison industries staff—and through those revenues and following the formula that is laid out in NRS Chapter 209, it shows that we do make a profit—a very, very small one because it has been a very difficult past four years. Through inmate wage deduction, when an inmate has an hourly wage or a wage based on productivity, there are certain deductions taken from that inmate's wages for room and board that go back to contribute to the Victims of Crime Fund.

Assemblyman Hansen:

As a contractor, if I am bidding a project, there is never going to be a time where I would be bidding against the prison work crew, is there? How does it work? Let us say I am a plumbing contractor, can I come to you and say, "Do you guys have five good plumbers that I can pick up? I want to bid this job outside the prison system. You supply the labor and the security," and then I bid against other contractors? Where does the competition factor come into play here?

Brian Connett:

There are two different kinds of programs that we operate. One is that we operate internally ourselves with our own staff and inmates where we produce products and services. A private company could come to us and ask us to produce a product or provide a service. There is that kind of operation. The second model is where we would have a private company that would

operate inside the facility. All of our prison industries currently operate inside the facility, so they do not go outside our fences at this time. So a company would come to Silver State Industries and say, "I would like to set up an operation inside your prison." We release the facility to them, and then we charge them for the inmate labor, security staff, workers' compensation on the inmates, and a management fee on top of that as well as a lease. So they would then take that and use the inmate labor and then primarily build that into whatever cost structure they have and then go out and get work. To specifically answer your question, I do not know that I am aware that someone would come to me and say, "I need five plumbers," and we would send five plumbers outside the fence to work on it. That would not happen.

Assemblyman Wheeler:

How do you set your pricing for the prison industries, or how does the company that contracts with the Silver State Industries set their pricing? Is there any control of their pricing to the outside world so that they are competitive with local businesses?

Brian Connett:

What we set up with a private company is our cost structure. What they do with that cost structure and whatever and however they price that to the outside world is certainly up to them and their needs as a company.

Assemblyman Martin:

One of the earlier points made by Senator Smith was getting paid for all of these efforts. You mentioned the audits, and I am wondering when the last comprehensive letter had actually been completed, and whether or not it revealed a collections problem, whether or not the entity making the audit had actually made recommendations for debt collections, and whether or not those have actually been followed. If you would comment on all that, I would appreciate it.

Brian Connett:

Yes, an audit was done last calendar year. The audit did pick up on collections, so we showed them the collections processes and procedures that we have in place, and that was brought out in one of the things in the audit. We have agreed with all of the audit findings.

Assemblyman Martin:

What efforts are you actually making to collect? Are you hiring a debt collection agency or are you making phone calls yourself? In relation to the debt collection issue, most audit reports would indicate an analytical review that

the problem would either be increasing or decreasing. I wonder where we are with that.

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

I can answer those questions. In regard to debt collection, we worked with the Attorney General's Office in drafting a forbearance agreement. Again, per Senator Smith, not to discuss the company in general, but they are current in paying. They have paid all of their inmate wages. They have not been working in our system since December 21, 2012. They shut down their operation at High Desert State Prison. Through the forbearance agreement, it specifically outlines the payments. I can tell the Committee as of today, they have paid all of their inmate wages and are currently paying down the money that they owe the State.

In regard to the bill itself, as the Director, I certainly appreciate comments from members of the Committee. Businesses and people who are currently working in our system in prison industries have several issues. I have discussed the surety bond with some of the businesses who are currently working in our system. We certainly would like to work with the bill and have some friendly amendments if possible concerning the amount of the surety bond being 50 percent. We are being told repeatedly that if it is at that level they probably would not have come to our department and established a business there. As relates to the business plan—as Assemblyman Wheeler referred to—that is exactly what our business people are telling us. Their business ideas, plans, their entrepreneurial ideas and aspects of the businesses, they certainly would not want to share them with their competitors. Anything concerning wages, as was referred to by the Chairman, I would certainly agree that any reflection of wages that would be paid in the community would actually kill the program long-term.

I have looked at the bill and I would agree with a number of aspects of it. In fact, I am the person who brought forth the issues associated with prison industries and the process. At a State Board of Prison Commissioners meeting, I told them that I think in the past the Department clearly did not follow the statute in regard to bringing new industry and programs in. I am the person who identified that. There are a substantial number of NRS statutes in regard to prison industries in our state currently. I have said repeatedly that I do not want to start businesses or jobs in our operation that affect the employment of our citizens in our communities. That is not what we are talking about. I certainly agree with Senator Smith in regard to that aspect. I am very concerned, however, about three issues. The surety bond being as high as it is, I have been told by our businesses they would not have come in. Sharing the business plan is not something these businesses or companies would do. Certainly

anything talking about the wages again would put prison industry out of business. I would hope the Committee would consider those issues and step forward in regard to this bill. We would certainly want to work with a friendly amendment to these issues associated with the bill, and hope we would be allowed to do so.

Chairman Frierson:

Are there any questions of the Committee? [There were none.]

Bonnie Polley, representing Hope for Prisoners:

I am here today to represent Hope for Prisoners. What Deputy Director Connett and Director Cox have already covered is so very important, and it was part of my testimony; however, I will not say that again. But I do want for a minute to speak about reentry and the importance of prison industries inside, making reentry happen. As Deputy Director Connett shared with you, Nevada releases close to 6,000 inmates per year, and 96 percent of Nevada inmates will one day be released. Approximately 75 percent of these released inmates return to southern Nevada, and we want these inmates to return with a skill that will assist them in gaining employment. Employment is one of the biggest barriers to an offender's successful reentry into the community.

For the 30-plus years that I have been involved in prison work in Nevada, reentry has not been a priority. The attitude has always been, "Lock them up and throw the key away." The inmate is left on the yard with little or nothing to do except kick rocks, and when they get tired of kicking rocks, they begin to throw them at each other. This raises the danger to officers, thereby increasing the need for more security staff. The good news is we now have an administration that has vision and goals. They get it. Their focus is to get incarcerated men and women ready to reenter society from the first day that they enter prison. The goals of this administration are for the inmates to receive vocational training and therefore be employable upon release. They want their reentry to be successful. The prison industry program provides real-world usable skills that are transferable to community employment and provides an advantage when seeking work once released from the Nevada Department of Corrections. These inmates are provided with training and skill sets that are useful and beneficial, both while they are in prison and then once they are released. In addition to teaching skills to the inmates, they are also learning inventory, quality control, and how to show up for work each day.

Mario Taylor was one of these inmates. Mario was 16 years old when he was sent to prison for murder. He served 16 years and, while he was incarcerated, he became a licensed welder through the prison industry work program. Upon his release, he was able to gain full-time employment as a welder thanks

to the skills that he obtained while in prison. He has been employed full time since his release and is self-supporting with an apartment, a vehicle, and has advanced in his work. He was recently able to leave his job for a better paying job using the same skills that he learned through prison industries. May I refer you to an article in the November 18, 2012 issue of the *Las Vegas Review Journal* so that you can read Mario's story?

The prison industry work program is also a management tool to help maintain control of the inmate population, because the inmates who are involved in the prison industry programs are less likely to be involved in negative activities within the facility. I urge you, please do not tie the hands of Director Cox and his staff, or we will see an increase in recidivism as a result of inmates not being able to acquire the necessary skills to gain employment once released. Hence, they will return to criminal activity. They will impact more victims and strain an already overworked law enforcement system. Thank you very much.

Chairman Frierson:

As a point of personal privilege, both as a prosecutor and a public defender, thank you for everything that you have done over the years to humanize the experience that so many inmates have. I think that Clark County is blessed to have you as part of the detention center.

Are there any questions for Ms. Polley? [There were none.]

Dennis Benedict, Private Citizen, Las Vegas, Nevada:

I am against S.B. 478 (R1), although some of it I kind of like and would agree with some of it, but overall I am against S.B. 478 (R1). I am retired from teaching approximately seven years. My background is secondary business education. I was a teacher for 31 years, and of those 31 years, I taught in Colorado, Arizona, and Nevada. Of those 31 years, I spent 20 years in vocational education. I worked with students, for one reason or another, who were disadvantaged whether it be at a regular high school setting, students on court probation, or at a prison for teenage students. I cannot tell you how many stayed in school, graduated, used their training to get jobs, or stayed in their vocation for their adult life. What I can tell you is that I have heard from some of these students over the years, and because of their training that they received, they are extremely thankful for being involved in vocational education, learning a skill, and graduating from high school. I know some of what is being offered in the way of vocational training at the Auto Restoration Program at the prison. I do know that this program rehabilitates, changes attitudes, develops pride, discipline, and offers hope to those who had never had the opportunity to work in a positive way. Working with one's hands and mind is a tremendous positive therapy.

My wife and I currently have a 1935 Chevy pickup out at the prison, and approximately seven years ago, when we were getting this project underway, I consulted all over the western United States. I found one person in Las Vegas, I found another in Kearney, Nebraska, I found another one in Texas, and two in California who were willing to take on what my wife and I had envisioned for this truck. Wanting this project done, I wanted it to be done locally, and after consulting with the person here in Las Vegas, he could not do what I wanted. There are no catalogs to buy these sheet metal parts for this truck. They have to be found from the junkyard, which are few and far between for a 1935 Chevy, or they have to be made from scratch, or they have to be modified. The instructor at the prison, with the expertise that he had already accumulated, has done a most commendable job to date. He has been able to teach these techniques to the prisoners. All you have to do is follow a picture history of this pickup with explanation and realize what the prison industries offers is truly unique.

Yes, there is auto restoration in a private industry, but—and I will leave it at that. Thank you for this opportunity to state my opinion on a very valuable resource for the rehabilitation of incarcerated people.

Chairman Frierson:

Are there any questions of the Committee? [There were none.] My question is—and I would ask that the folks who are here to testify in opposition would address this as we go through it—whether or not your opposition is based on the entire bill or the net loss provision. So whether or not your opposition is based on that, the first portion dealing with the surety bonds, or everything.

Dennis Benedict:

Generally speaking, I would be opposed to the bill, but if there were specifics of it, then I would have to come back and address that. I do not know the entirety of the bill at this point. For its entirety, I would be against it, but I am for some of it. Thank you.

Donald Moberger, Private Citizen, Las Vegas, Nevada:

I am founder and president of Southwest Prison Ministries located in Boulder City, Nevada. I have been involved in corrections for 45 years, 35 years in Massachusetts and the New England states, and as of June it will be 10 years out here. I work in the Clark County Detention Center as one of the chaplains under Bonnie Polley, and I develop volunteers for work around the state. In developing chaplains, we brought five chaplains out to both the State and county prisons and a little over 100 volunteers, men and women working in the prisons and then working with reentry and aftercare.

I strongly oppose this bill being passed. This should not be done. Do you want to be the only state in the United States that does not have a prison industries program? I cannot imagine that. This should be enhanced. So much more could be done. The things to do with the finances obviously need to be dealt with, and the Director and others are dealing with it. They are great people to work with. Incidentally, you should think of things, like reentry and all of these things that we are strongly working with, think of the people who are in this room this morning. Just look at the three directors from the Department of Corrections and then three of us chaplains. That alone is over 100 years of prison ministry working in the prisons. I am just humbly saying to you that we know what we are doing, and we know what is going to bring success to men and women staying out of the prison system.

At any of the good, solid programs that we have worked with over the years—halfway houses and so forth—back East and here, recidivism rates are generally below 10 percent. I can give you many examples of that from back East. The point is that the prison industry system just adds to it. Back East and around the country, recidivism rates usually run 50 to 70 percent—I think as Director Connett mentioned. Look at your own recidivism rate out here. Fifteen percent? That is amazing. We are dealing with people. I do not think there are too many more beds in the State system available. What if you have to build another prison? Talk about the money it would cost to build another prison here in Nevada? What a shame that would be. The work that is going on with prison industries—much more could be done. Back East we did a lot with people going to work with these programs where they are actually going out in the day and back in again. Possibly those things could be done out here, as they are through Casa Grande. I just really encourage you, do not pass this bill, please. Do not destroy your system. You have a good one, you have good people running your system here in the state of Nevada, and much, much more could be done. We are here to help, and we are here to be a part of it. Please defeat this bill.

Chairman Frierson:

Are there any questions of the Committee? [There were none.]

Jim Henry, Private Citizen, Las Vegas, Nevada:

I am a lay prison minister at the Clark County Detention Center. I work under Bonnie Polley, and I am a volunteer for Hope for Prisoners. I concur with the witnesses that have presented testimony against this and with Director Cox. Not only is complying with S.B. 478 (R1) an undue burden, but it will kill prison industries in the state of Nevada. I think when we are looking at a program like this, we have to look at the big picture. Just like the casinos might not use the sharpest pencils when they are pricing some of their amenities because they are

looking at the big picture, it is incumbent upon us that take so much pride in the reentry program. It is important for us to look at the big picture as well. Nevada is becoming a model state for reentry, and let us not do anything to go backwards in that regard. Thank you very much.

Chairman Frierson:

Quite frankly, it is a little challenging on our part because we are trying to look at the big picture as well, but folks are not giving us details on their opposition. I see some folks up here who can probably provide some insight on the surety issue, which I do not think has been quite fleshed out. If it is simply a concern about anything that would jeopardize prison industries, we certainly hear those concerns. We just need to be able to get into the weeds of some of those issues.

Danny Thompson, representing the Nevada American Federation of Labor and Congress of Industrial Organizations:

If I may ask your indulgence, I was in another meeting and was not able to be here for the proponents. I am actually a proponent of this bill. I can tell you the whole story if you would like to get it on the record.

Chairman Frierson:

Thank you. I will indulge you. I kind of had a feeling that that was the case. I want to make sure that there is no one else that has not had an opportunity to testify in opposition.

Danny Thompson:

Let me say that we support some parts of the prison industries program and have over the years. We have programs in our apprenticeship programs where we will help people. In fact, the ironworkers specifically had a program that tried to deal with and help offenders once they were out of prison. We do not discriminate against people as far as membership because they had served in prison and we care about this issue; however, this issue came to a head for us when a particular steel company bid on and got work.

Initially, there was a lawsuit that was filed by former Senator Richard Bryan's firm on behalf of another steel company that he represented that lost the bid to this prison industry company. In fact, the work that they did—the pile columns over the Fifth Street bridge on Interstate-15—was a prevailing wage job. These people were paid minimum wage or less. They are also doing work at the Wet'n'Wild Park in Las Vegas at a time when I had 300 ironworkers out of work who were taxpayers who did not break the law. We had talked with Senator Bryan about coming to the Legislature; in fact, we went to the Senate money committees with this issue and brought it forward. The fact is, this

company while competing and building things and bid on—it is unclear whether they got parts of the Ferris wheel on the Strip—but they were doing steel work on the Wet'n'Wild Park. We went to the committee with Senator Bryan and presented our case during the budget for the prison and prison industries. We then went to the Prison Board and lodged our objections. Our contractors cannot compete against slave labor or minimum-wage labor on a prevailing-wage job. It turned out that this contractor that runs this steel company owes the State money. Now in a normal course of business, if you are a contractor who owes someone money, the job gets liened. I do not know how that would look if the State liened their own job, because it is your job. I do not think that plays very well in the press. So this bill was introduced by the Senate money committee as a way to prevent this from happening again. At the Prison Board, we had all assurances from the Governor that this kind of practice is not good and that they would be looking at this as they went forward.

We understand the need to have prisoners work. Idle hands are the devil's workshop, and certainly in prison this is probably even more true. But at the same time, I cannot have taxpaying members sitting on their bench losing their job to someone making minimum wage on a prevailing-wage job that my contractor cannot even bid that job for that kind of money. It is impossible. So this system needs to have some changes made with some assurances that this kind of thing will not happen or continue to happen. The surety bond provision was put in by the money committee in an effort to ensure that they get their money back. It is the State's money. For us, while we support prison industries, it has to be the kind of industry that is not a direct competition with someone who cannot compete. I will tell you, in the case of Senator Bryan's client, he lost a job and could not compete against people who were making minimum wage or less.

Further, our apprenticeship programs are trained to the highest level possible. If you are a welder, certainly on a bridge over a freeway, these certifications have a chain of custody where if something happens, I guarantee you if there is a lawsuit, they are going to want to see those certifications and see who welded on those things and see if they were qualified. I asked for those certifications at the original hearing. To date, I have not received any of those. This bill is really an attempt to get this thing under control and not with just a promise from the prison administrators that they will not do this anymore, and a mechanism to ensure that the State does not lose their money in these kinds of operations.

Chairman Frierson:

I am assuming that the bulk of your support—at least for this notion—is based on the surety provisions. The concern that has been expressed—at least some members of the Committee deal with—the issue surrounding how to deal with a net loss and the fact that you cannot really quantify the value of over a 10 percent change in recidivism rates and the savings to the state of not having that number of inmates return to prison. Is your position based exclusively on the surety bond provisions, or are you also supportive of the net loss provisions?

Danny Thompson:

We are supportive of the entire bill. I think that most of these suggestions were from a letter that was given to the Board of State Prison Commissioners by Senator Bryan, who I think, ironically enough, set up prison industries in the state when he was the Governor. So we support the concept, intent, and content of the bill.

Assemblyman Carrillo:

You were telling the Committee that that job was a prevailing wage job and the prisoners were getting a minimum wage scale. What happened to all the rest of the money? Does that go back to the contractor and not to the actual prisoner where they were getting the minimum wage?

Danny Thompson:

That is a good question, because I do not think it has ever been answered. We have programs for victims' restitution which I think needs to be done; however, I cannot answer that question. I do not know.

Assemblyman Thompson:

You gave the scenario about the steel industry. From the presentation, it sounded like there are 13 industries that are represented with the program. Are there any industries that you think could remain in the program, or do you think in its totality it would need to be eliminated? It is, of course, important for inmates to get skills, but of those 13 industries, do you think any could remain?

Danny Thompson:

We are not against prison industries, and we think prison industries is a good thing. With no mechanism to determine whether or not it competes unfairly with taxpaying citizens, that is what this bill is about. There are plenty of things. The car restoration example is one that you cannot find people who do that work on a routine basis that make a living at it. I know there have been different kinds of things done there, but when there are no checks and balances and you have the situation where the steel company is literally putting

taxpaying citizens out of work, it is hard to draw a line on some of these things, but there is a direct line on this example. We do support prison industries, and I think there are plenty of things that could be done, but within these parameters.

Assemblywoman Spiegel:

If prison industries is being used on a job and they are not being paid at the prevailing wage level, do those wages then go into a recalculation of future prevailing wage and bring it down?

Danny Thompson:

The way prevailing wage is calculated is any work that is done by a contractor, their hours are compiled by the Labor Commissioner by county each year. The wage having the most hours prevails—so theoretically, yes, that could happen.

Assemblywoman Spiegel:

The other question I have goes back to earlier—I am not sure you were in the room at the time, but there was a discussion about training that goes on for prisoners who then go on to work in prison industries. Some of the questions that came up were talking about the viability of these folks to then, once they are released, be productive members of society. Have there ever been any discussions about labor coming in and running some of those training programs so that those folks would then be able to perhaps enter into an apprenticeship program having some baseline skills?

Danny Thompson:

We train our apprentices to the highest level to the standard of the industry. We do not discriminate against someone. In a building trades-type of union, you join the union and the fact that you are a felon does not equate to whether or not you go to work. You go to work when your name comes up on the list and you are sent and the contractor—who is then signatory to us—takes the person. There is no discrimination against someone who has been convicted of a crime. We have not been asked to do training programs like that; however, if someone can prove to us that they can meet the standard and pass the test, then that counts for their status.

Assemblyman Ohrenschall:

I think we all recognize that there is a need for training. We do not just warehouse folks who are doing a long stretch of time, be it a year, two years, or three years. Have any of the ex-offenders who worked in prison industries been able to take those skills and find a home and an apprenticeship in one of

the locals that are part of the Nevada American Federation of Labor and Congress of Industrial Organizations?

Secondly, what do you think the balance is between training programs, through a prison industry program and having it work so that it does not unfairly hurt the private sector, so we do not have a situation like we had with the steel company. I was wondering if you could give me your picture on that and wondered if anyone had successfully used the skills that you know of and gotten into one of the trades.

Danny Thompson:

I cannot quantify a number, but I have personal knowledge of people who went to prison, came out of prison, turned their life around, went through a program, and whether or not they used skills acquired in prison, I do not know, but I know of people who have had a problem—in fact, we started a works program called Build Nevada during the boom of everything where we collaborated with the school district in Senator Horsford's district to do this program to give people a leg up. We put the notices out and the children did not apply. Their parents applied. We found that people had issues. They were being discriminated against because they were ex-felons, so we ran them through this program that did give them a leg up. I have personal knowledge of people who went through that program and then got into the apprenticeship program and succeeded.

The whole idea that someone has committed a crime and went to prison, they did not just go to prison—there is a reason. There is a reason they are there. If you look at the state of Nevada, at the time that this steel company was doing its work, we had the highest unemployment in the nation. Clearly, a system without any checks and balances was broken and what happened, happened. I think this bill sets out parameters where if you meet these parameters, then you can have the program. That was the whole intent. Basically, most of this came from the suggestion of Senator Bryan and was presented to the Prison Board.

Chairman Frierson:

Are there any questions of the Committee? [There were none.] I hear everything that you are saying, and the concerns, especially given the high profile case and the state's inability to collect. I also have a concern about—there is such a tremendous reduction of recidivism that we not discount the savings to taxpayers of the decrease in incarceration based on the folks that participate, and that is why I asked you about the surety issue versus the net loss issue. I think there are some intangible values that we cannot really quantify that might be disregarded if we simply look at net loss of programs like

the vehicle program or the furniture program or things of that nature. I do not know the answer, but we certainly do not want to deprive workers of jobs. Obviously that is something that has implications on the economy long-term, but just trying to find a way to make sure that folks have some skill when they get out of prison and that we are not paying for them to go back is also a concern.

Danny Thompson:

I will tell you a story. When this building was being built out the State Office Building used to be a bank. The building next to it, which is now a parking lot, was an apartment building and apartments that were built probably in the 1960s sometime. When I was here as a legislator, I passed a bill that said, "If you want to do asbestos abatement, you have to be certified." I set out the criteria for certification of asbestos removal. Workers were already protected by the Occupational Safety and Health Administration, but the general public was not protected in a case where I went through the airport and they were moving this stuff. So this bill passed. So we have people who are asbestos-certified removal workers. I left the building one day to go across the street to get my car where the apartment building was being torn down by the State. Inside the building were prisoners who were being paid minimum wage—or whatever they were being paid. Now that clearly is a public works.

When I went to then Director Crawford and complained, she told me basically what you said. So as a solution to that, I bought all the furniture for my office from the prison industry furniture factory. This problem has been going on for some time. Those workers then left that apartment building because I bought the furniture, and they moved them to Winnemucca to do something else there on a State project. It is a problem. It does need to be addressed. I do not think this is overly broad; however, we will go back and talk with the parties about the surety portion of this. I agree with you. Clearly, there is a savings when you have people who are abiding by the rules and not becoming management problems behind bars.

Chairman Frierson:

Are there any other questions of the Committee? [There were none.] Just so that the Committee is clear, and I want to make sure my secretary is clear as well, Mr. Thompson asked and I obliged with indulging him to provide testimony in support, because I knew he had somewhere else to be. So that it is clear, we can file that in a supportive category.

David Stevens, President, XL Steel:

I came up here anticipating the neutral position opportunity to speak.

Chairman Frierson:

Okay. Before we go there, is there anyone else wishing to offer testimony in opposition, either in Carson City or Las Vegas? [There was no one.] We will now invite those wishing to offer testimony in a neutral position.

David Stevens:

We had Jennifer DiMarzio-Gaynor speak on behalf of the company, but I wanted to make a couple of comments based on what I have been listening to. The recidivism statistics that are referred to again and again during this session were specifically stated by Deputy Director Connett regarding the wild horse program at the Stewart Conservation Camp, if I understood correctly, and I do not think that they represent the actual recidivism benefits associated with other parts of the program, including the steel business. I would welcome any further clarification of that. I wanted to make sure that that was clear, because it was a specific program of wild horse training where those statistics were thrown out, but I do not think that they apply to the entire program.

In general, I am very supportive of prison industries and see a need for it as a citizen of Nevada. The problem that occurred within the steel business—and it is not just XL Steel that is opposed to it, but there are six other steel companies who have provided letters and petitions to the Governor that have also been affected. Of course, the companies that went out of business during the recession that could not compete with the subsidization that occurred from the State government to a particular steel company, those people are not even available to speak in opposition or it would be pointless for them to do so, but that is what happened.

The problem is that you mix the government with private business and you give a particular advantage in the form of what I categorize as a subsidy to a particular company that competes in the local market. It is impossible to compete when the undercutting is going on at 25 to 30 percent below what the other companies have to bid while they pay law-abiding citizens to do the work. The four points that Jennifer DiMarzio-Gaynor brought forward which Senator Bryan has been advocating, those may sound strict right now to you, but actually, they are in the federal law. That is the law of the land now for 20 or 30 years under what is known as the prison industry (PI) program. The PI program requires those four concepts of nondisplacement, comparable wages to be paid, notification to labor unions prior to the beginning of a prison industry program, and notification to private industries that will be competed against. This law came about 30 years ago when competition from one state's prison industry caused the dumping of cheap products on other states, thus affecting their industry in the other states adversely. The law was designed and has been in effect all this time, and it is specifically to prevent interstate dumping of

prison goods. The federal government limited their legislation only to interstate commerce, as they typically would. We are advocating simply adopting those same standards that are currently in place in Nevada under several of the prison industry programs that do interstate business. Those must comply with the prison industry program rules, and we have been advocating to adopt those same principles to protect Nevada's citizens and Nevada businesses as much as the federal government requires people in other states be protected from this very same activity.

Although the people who are advocating or opposing this bill—which I am not necessarily supporting in its entirety—those people are rushing to the statement that prison industries will be destroyed, that it will be devastated and ended. Actually, there currently exists in Nevada prison industry programs under the federal program that comply with exactly those same rules. Now whether or not the surety bond should be at the level it is at or exist at all, that does seem to be a reaction to a particular case that got out of control where one company racked up hundreds of thousands of dollars in debt to the state, which I view as a subsidy from my state while I pay taxes here, a subsidy to a competitor. It was not just 90 days overdue. It was four years. Rents have been paid at about a third of the rate of what similar facilities would cost and rent on the outside. These are clear subsidies.

So the question is, "Should the State subsidize a particular company while it competes with other companies that are in the private sector employing law-abiding citizens?" We are all for training and rehabilitation. We can all agree that that needs to be done. But there are ways to do it without having an adverse effect on people in the private sector. Every job that is given to a prisoner in a steel fabrication business is one job that will not be in the private sector for a law-abiding citizen in Nevada because that job will be done by the prisoner instead of someone in the private sector, so it is a direct trade-off. XL Steel lost about 20 jobs in the recent projects that Senator Bryan pointed out. It is a significant effect, because for those 20 families that do not have those jobs and are either on unemployment or maybe their unemployment has run out, if you asked each one of them, "Would you give up your job so that a prisoner could have it so he could benefit from training," I would guarantee you those people would say, "No, do not give my job to a prisoner." I am available for any questions.

Chairman Frierson:

You mentioned recidivism. Are you aware of the recidivism rates for the other programs?

David Stevens:

I do not have the statistics, but what I really wanted to point out—because, Chairman, you have mentioned a couple of times during this discussion, and if Deputy Director Connett could clarify this—the recidivism rate that he specifically talked about, the 15.3 percent was solely on the wild horse training program.

Chairman Frierson:

So you do not know. It could be the same. I guess that is my point.

David Stevens:

It could be less; it could be more, but I am guessing it is more. I am guessing that what was brought forward was the most favorable statistic that could be found out of the 13 programs. Let us hear what the gross recidivism rates are for prison industries.

Chairman Frierson:

I appreciate that, but I need you to understand. We get to ask the questions, so we will certainly do that. It sounds to me like you are primarily responding to the testimony of those who testified in opposition; however, a great deal of the questions from the Committee dealt with that net loss provision, which I do not think you really provided a position on and I do not know that that is part of the prison industries configuration or the considerations federally. Are you aware of whether or not a requirement that they consider net losses is something that is looked at federally, or is that separate from the other considerations federally?

David Stevens:

You are correct; I do not believe it is part of the prison industries program. I am neutral on that issue, as I am neutral on the bond and security agreement. I think that that particularly addresses a single case which occurred that should not have occurred, but I am not sure if that should be applied to all.

My advocacy is for transparency. Simply that businesses that can be competed against should be notified. Again, the opposition has gone to the extreme with this idea that a business plan will be laid out for the study of the competitors. That is not what is being said. All they are saying is that they have to be notified, that there will be such an industry proposed, so they have a chance to express their opinions about it.

Chairman Frierson:

Are there any other questions of the Committee? [There were none.] Is there anyone else who wishes to offer testimony in a neutral position to S.B. 478 (R1)? [There was no one.]

If there is someone available who could provide information regarding recidivism, I will just say that I think it will be helpful to the Committee to get information regarding the recidivism difference with all of the programs within prison industries. We have the state and national recidivism rates, and it would be helpful to get some clarification on the change between that and all of the other programs as well.

With that said, I will close the hearing on S.B. 478 (R1) and briefly open it up for any public comment. [There was no one.] Seeing none, I will now adjourn today's meeting on Assembly Judiciary [at 10:57 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 29, 2013

Time of Meeting: 8:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 101 (R1)	C	Senator James Settelmeyer	Proposed Amendment
S.B. 104 (R1)	D	Connie Bisbee	Nevada Risk Assessment