

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

**Seventy-Eighth Session  
February 3, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Tuesday, February 3, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/78th2015](http://www.leg.state.nv.us/App/NELIS/REL/78th2015). In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Ira Hansen, Chairman  
Assemblyman Erven T. Nelson, Vice Chairman  
Assemblyman Elliot T. Anderson  
Assemblyman Nelson Araujo  
Assemblywoman Olivia Diaz  
Assemblywoman Michele Fiore  
Assemblyman David M. Gardner  
Assemblyman Brent A. Jones  
Assemblyman James Ohrenschall  
Assemblyman P.K. O'Neill  
Assemblywoman Victoria Seaman  
Assemblyman Tyrone Thompson  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Diane Thornton, Committee Policy Analyst  
Brad Wilkinson, Committee Counsel  
Bonnie Borda Hoeffcker, Committee Manager  
Karyn Werner, Committee Secretary  
Lenore Carfora-Nye, Committee Secretary  
Nancy Davis, Committee Secretary  
Janet Jones, Committee Secretary  
Linda Whimple, Committee Secretary  
Cindy Southerland, Personal Secretary  
Elizabeth Saenz, Proofreader  
Jamie Tierney, Committee Assistant

**OTHERS PRESENT:**

James G. (Greg) Cox, Director, Department of Corrections  
Vanessa Spinazola, Legislative & Advocacy Director, American Civil Liberties Union of Nevada  
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office  
Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office  
Andres Moses, representing the Eighth Judicial District Court  
John T. Jones, Jr., representing the Nevada District Attorneys Association  
Kimberly Madris, Deputy Chief (South), Division of Parole and Probation, Department of Public Safety  
Pam Del Porto, Inspector General, Department of Corrections  
Chuck Callaway, Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department  
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office  
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association  
Elizabeth Hickman, Senior Deputy Attorney General, Office of the Attorney General  
Adrina Ramos-King, Government Affairs Officer, City of Las Vegas

**Chairman Hansen:**

We are going to start with rule number one, which is punctuality. We are going to start the meetings at 8 a.m. Welcome to the first meeting of the

Judiciary Committee for the 78th Session of the Nevada Legislature. We have 119 days to go. [Roll was taken.]

We will start introductions with the people who have been here previously. First, I would like to introduce the Vice Chairman of the Committee, Erven Nelson.

**Assemblyman Nelson:**

I am Erv Nelson and I represent Assembly District 5 in the western part of Las Vegas. I am a freshman and I look forward to learning and serving. I have practiced as a lawyer since 1983. I am excited about the issues that we have before us.

**Assemblywoman Fiore:**

I am Michele Fiore and I am excited to be here. I am the Assemblywoman from District 4, and this is my favorite Committee.

**Assemblyman Wheeler:**

This will be my second term on Judiciary. It is one of my favorite committees, other than the one I get to chair. I represent Douglas, Storey, and part of Lyon Counties, which is District 49. I have a bit of a law enforcement background. This is a great Committee, and I look forward to being on it.

**Assemblyman Ohrenschall:**

I am James Ohrenschall and I represent Assembly District 12, which includes the City of Henderson and the part of unincorporated Clark County on the east side called Sunrise Manor. It is a pleasure to serve with you again on this Committee. I have been practicing law for a little over four years. I am a deputy public defender in Clark County, and I currently work in the Juvenile Division where I work with children who have been charged with delinquency.

**Chairman Hansen:**

Is this your fourth term in the Legislature?

**Assemblyman Ohrenschall:**

I have been lucky enough to have served five terms.

**Chairman Hansen:**

Did you serve your freshman term with Mr. Bernie Anderson?

**Assemblyman Ohrenschall:**

I did. Yes, I got to serve under Chairman Bernie Anderson.

**Assemblywoman Diaz:**

I, too, am pleased to be back on the Judiciary Committee this session. This is my third session. I represent District 11, parts of east and north Las Vegas. I am excited to do the people's work.

**Assemblyman Thompson:**

I am really looking forward to this Committee because I feel this is truly the work of the people. There are many key issues that will be facing us. This is my first full term, but I was on Judiciary last session and I am looking forward to it.

**Assemblyman Elliot T. Anderson:**

I am happy to be here on the Judiciary Committee. I am looking forward to getting into a lot of fun bills.

**Assemblyman Jones:**

My name is Brent Jones, and I represent Assembly District 35, which is the most southwest you can go in Las Vegas. I am a businessman, and the company that I own is called Real Water. I was an attorney in California, but I do not practice law anymore. I look forward to working with you.

**Assemblyman Gardner:**

I am from Assembly District 9, right next to Mr. Jones' district. I am an active attorney who does mostly civil litigation.

**Assemblyman O'Neill:**

I am from Assembly District 40 in Carson City and the southeast part of Washoe County. After 40 years in law enforcement and five sessions, including being under the direction of Chairman Bernie Anderson, it is strange to sit on this side of the dais. I look forward to this. For all of those who will testify, I feel your pain. I look forward to being with you.

**Assemblywoman Seaman:**

I am a first-term legislator representing Assembly District 34, and I am happy to be here.

**Assemblyman Araujo:**

I am Nelson Araujo, representing Assembly District 3, which is in the northwest part of the Las Vegas Valley. I am very excited to be here and to be on the Judiciary Committee.

**Chairman Hansen:**

I represent Assembly District 32, that actually represents seven different counties in Nevada. It is 38,000 square miles. I actually have a little over two people per square mile in my district. This is my third term and my third term on Judiciary as well. My role models are William Horne and Jason Frierson.

I would like to introduce the staff for the Judiciary Committee. First, my personal attaché is Cindy Southerland. Cindy and I have been together since the beginning.

**Cindy Southerland, Personal Secretary to Chairman Ira Hansen:**

I started working here in 1989 with Marvin Sedway, who was on the Assembly Committee on Ways and Means. In 1997, I was the personal secretary for Chairman Bernie Anderson.

**Chairman Hansen:**

Next, we have Bonnie Hoffecker, the Committee Manager. We have a committee secretary for each day's meetings, and they are very busy people. The committee secretaries are Lenore Carfora-Nye, Nancy Davis, Janet Jones, Karyn Werner, and Linda Whimple. Our committee assistant is Jamie Tierney. They are the ones who do the real work behind the scenes.

The next person—who is extremely important—is Diane Thornton, Committee Policy Analyst. This is her third session. She worked two sessions staffing the Assembly Committee on Commerce and Labor. She has already been an immense help to me.

Our legal staff is Brad Wilkinson.

**Brad Wilkinson:**

I have worked here 21 years, and this will be my second session on the Assembly Committee on Judiciary. Before that, I staffed the Senate Committee on Judiciary for eight sessions.

**Chairman Hansen:**

Please note that we will start at 9 a.m. on Mondays and 8 a.m. all other days. We will try to be as punctual as possible. Your time is as valuable as everyone else's. We will try to end in time for us to get to the floor sessions. The start time will be critical.

Cell phones and other electrical devices should be off or silenced. For those who are following us over the Internet, the Nevada Electronic Legislative

Information System (NELIS) allows you to have access to all of the supporting documents and exhibits that we receive as handouts for the Committee. Be sure to pull up NELIS for this information.

Persons wishing to testify today should sign in at the table and present a business card to the secretary. When testifying, please turn on the microphone and clearly state your name and affiliation, if any, for the record. Turn the microphone off each time you are done speaking. Every time you start to speak, be sure to state your name. The reason is that it is difficult for the secretaries to figure out who was speaking when writing the minutes.

You must have 20 hard copies of handouts for the public. Electronic copies should be submitted to our committee manager by 3:30 p.m. the day before the meeting for members of the Committee. Handouts that came in today were not in time, so they were not placed on NELIS. We will enforce that rule. If I start allowing some to go on and not others, it could cause problems. We will be very strict about that rule.

**Assemblyman Thompson:**

Are we making an amendment to the rules? Rule 54 says 5 p.m. Are we changing it to 3:30 p.m.?

**Chairman Hansen:**

We will go with 3:30 p.m. since 5 p.m. is when the staff leaves and they would not have time to download it.

Our interactions during the meetings will be courteous and respectful, even if we disagree with another person's position. We do not want gasps or clapping or boos during testimony. We want to keep everything as professional as possible. This can be a very heated committee. There are a lot of very controversial issues that come before us, so we will do this with proper decorum. In the two sessions that I have served, I have never seen anyone actually be removed, but it could happen. We will keep it professional.

Per the agenda, we will now go through the standing rules. Diane Thornton will review them for us.

**Diane Thornton, Committee Policy Analyst:**

I will go over some of the pertinent rules. You should have "Excerpts of the Assembly Standing Rules" ([Exhibit C](#)), which you passed on the floor yesterday. Last session, and again this session, the Committee rules were imbedded in the Assembly Standing Rules. By virtue of passing these, you also adopted

the rules for the conduct of this Committee; therefore, we do not have to take any action on rules today.

We are going to go briefly over some of the pertinent rules, like Rule No. 47, which deals with committee chairs. It establishes the authority of the chair and the vice chair. The chair has all of the authority necessary to ensure the efficient operation of the committee, including preserving order, decorum, and determining which bills to hear.

Rule No. 48 deals with attendance and requires notification to the chair for any excused absences. Members shall advise the chair if he or she must leave the meeting early. Members not in attendance when a final action is taken on a measure will be marked absent for the vote.

Rule No. 53 deals with communications. It provides that lobbyists, the press, and members of the public not be allowed at the dais and requests certain conversations be held away from the dais. This is to preserve privacy for the members.

Rule No. 54 deals with testimony, witnesses, and exhibits. It sets forth procedures for testifying, including statements of support, opposition, or neutrality by persons testifying.

Rule No. 57 deals with committee action. It includes the quorum and voting requirements for action in committee, and prohibits a member from voting by proxy. This rule was changed yesterday on the floor. This is the only rule that changed from last session. This rule allows a waiver of the 24-hour rule with a unanimous vote of the committee. If a bill is a simple one, everyone agrees that it should be passed out of committee, and there is no testimony in opposition, the committee can decide by unanimous vote that you can vote on it the same day. Otherwise, it will be held for a work session.

The quorum for this Committee is seven. A simple majority of those present may move, second, or pass a motion. A majority of the entire Committee is required to reconsider an action.

**Chairman Hansen:**

We have three Committee bill draft requests (BDR) that we need to bring up.

**Assemblyman Thompson:**

On Rule No. 57, number 12, I have a question. I understand that we have to say "yea" or "nay" when we are voting, but is it understood that we can say that we reserve the right to change our vote on the floor?

**Chairman Hansen:**

Of course. That is something that we should bring up now. The way you vote in committee is expected to be the way you vote on the floor as well. If you decide to change your vote, you should notify the committee chair. You always have—even without saying it—the right to change your vote. If you want to say it formally on the record, that is fine. Please, if you plan to vote differently on the floor, let me know in advance.

I am ahead of myself. We are going to have a committee brief. Mrs. Thornton will provide a refresher on the session deadlines and a brief summary of the topics and activities of the Committee.

**Diane Thornton:**

I will cover a couple of sections of the brief ([Exhibit D](#)), which will be helpful to you. I will also talk about the jurisdiction of the Committee, statistics from last session, and some of the things that we will be covering this session.

First, the Committee jurisdiction is very wide. It covers everything from business associations, corrections, criminal procedures, crimes and punishments including crimes against decency, property, public health and safety, domestic relations, gaming, the Judicial Branch, legal proceedings, tort reform, property rights and transactions, homeowners' associations, and many other subjects. With all of these topics coming before you, the most important thing that I can impress upon the Committee is our workload. We are the busiest policy committee in the Legislature. Because of that, our workload is heavy.

During the 2013 Session, we had a total of 195 bills and 1 resolution. Compare that to 127 in Commerce and Labor, 120 in Government Affairs, and 79 in Health and Human Services. In addition, the workload is relatively stable, meaning that we will have about the same number of bills before first house passage as we will after the crossover. Last session we had 115 bills that were referred to our Committee, and we reported out 71. After the crossover, 80 bills were referred to us from the Senate, and 73 were reported out. It is pretty heavy.

There is a list of deadlines in your committee brief, so make sure you know those dates. Based on those, we are going to have to hear about four bills per meeting to get through all of them. The important dates that I would like to point out are March 16 and March 23. March 16 is the day when all of the bills requested by an individual legislator must be introduced. March 23 is the date when all of the bills requested by the standing committees must be introduced. Two and one-half weeks later, on April 10, all the bills must be passed out of



the committee of reference of the house of origin. This is the time period when we are really busy. It is long days and nights for legislators and staff.

Another item in the committee brief is a list of some of the things that you will see based on the bill draft request list. In the back, there is a link to the Research Division's web page with all of the policy and program reports and some of the fact sheets. All of this is good information for legislators to look at, and contains things that we will be going over this session.

**Chairman Hansen:**

We will now go into the Committee bill draft requests. This is a reminder that, when you support these, it does not mean that you will support the concept, but rather that it just allows it to get out of the Committee to become a bill.

We will start with BDR 5-444. I will entertain a motion to introduce.

**BDR 5-444**—Revises provisions governing juvenile records. (Later introduced as [Assembly Bill 113](#).)

ASSEMBLYWOMAN DIAZ MOVED TO INTRODUCE BDR 5-444.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chairman Hansen:**

The next BDR is BDR 14-560. Again, if you vote to introduce, it only allows it to move forward.

**BDR 14-560**—Revises provisions governing restitution. (Later introduced as [Assembly Bill 114](#).)

ASSEMBLYMAN WHEELER MOVED TO INTRODUCE BDR 14-560.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chairman Hansen:**

The last BDR is BDR 3-588. I will entertain a motion.

**BDR 3-588**—Revises provisions relating to constructional defects. (Later introduced as [Assembly Bill 125](#).)

ASSEMBLYMAN O'NEILL MOVED TO INTRODUCE BDR 3-588.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chairman Hansen:**

Next on the agenda is a briefing by Director Greg Cox from the Nevada Department of Corrections. He is in Las Vegas.

**James G. (Greg) Cox, Director, Department of Corrections:**

We have provided the Department overview as a snapshot of our Department ([Exhibit E](#)). Beginning on page 2 we list our Mission and Goals. We are a public safety entity and are committed to best practices. Our goal is to ensure the best use of Department resources, educate stakeholders, and improve communications.

For the interest of some of the members who do not know details about our Department, we have seven major institutions located in Clark County, White Pine County in Ely, Pershing County in Lovelock, and of course Carson City. We have two transitional housing centers, one in Las Vegas and one in Reno. In fact, at the facility in Reno we are working with the Reno-Sparks Indian Colony in constructing a new transitional housing center there. We currently have Northern Nevada Restitution Center across from the Grand Sierra Resort. Another important mission of the Department, which I am sure the rural lawmakers know about, is the conservation camps working with the Department of Forestry. We have nine conservation camps located throughout the state: Pioche, Tonopah, Ely, Wells, Humboldt, Stewart in Carson City, Carlin, Three Lakes Valley in Las Vegas, and Jean. We are throughout the state and page 4 will give you a picture of where we are. Several of the members have been to our facilities. On the left side of page 4 you will see the camps that I was talking about.

The Florence McClure Women's Correctional Center is in North Las Vegas. It is our female facility. Of course, High Desert State Prison is our largest facility on Cold Creek Road and has about 3,400 to 3,600 inmates at any given time. Southern Desert Correctional Center, right below it, has over 2,100 inmates. We also have Three Lakes Valley Conservation Camp and Three Lakes Valley Boot Camp on the same road, so we call it a complex. There are over 6,000 people on that road, plus staff.

Going to page 5, population forecasting is always a critical part of our mission and we try to keep everyone attuned to what we are forecasting.

Our forecasting comes from JFA Institute. They have had the contract through the Department of Administration for a number of years. They do forecasts for many states. I believe it is over 20 in our country. They are viewed as being the experts in this arena. That population forecast has always been fairly accurate when the state is not growing. When we are growing by leaps and bounds, which we are doing, it is not as close. We will share with you, other committees, and our stakeholders—including the Office of the Governor—what the population looks like and where we are going. The demand for beds is determined by the forecast, and our budgeting is tied directly to that forecast. The Department of Administration has that and the contract with JFA Institute, and we utilize them for all of our capital improvement projects. In other words, we start new construction according to our classification level. Not to get too much down in the weeds with that, but many of you know that we have a close-maximum custody facility in Ely; and medium custody facilities at High Desert, Southern Desert, Northern Nevada, and Warm Springs. Florence McClure contains all of those custody levels and is our only major female facility. Our only minimum custody facilities are our camps. Our community facilities are, of course, our transitional housing centers. There are a number of things that can impact the forecast. Again, state population growth has one of the most direct impacts on our population growth.

Unfortunately, as the state grows, sometimes our prison population grows. Crime rates absolutely affect it. Laws and proposed laws affect it. I have been very cognizant of the fact that we have had a lot of good bills come out of the Legislature that may increase the sentencing length. There may be a new bill regarding some specific crime. We are going to provide you with what we believe the cost of the bill will be, projecting the cost and the increase in population to the Department. Some Department people have historically not done that, but I have done that since I have held this job for the last four years. I think one of the reasons corrections has eaten up more of the General Fund budget is that we have not—not only in our state, but across the country—said when bills are passed we increase our population, so you have to increase our funding. We are usually rather reluctant to do that, but I am not. As members of my administration testify on certain bills, we may say that there is a fiscal cost to that because you are increasing our population.

The lengths of incarceration are very important. Parole grant rates are very important to Chairman Bisbee and the Parole Board. Court practices are very important regarding sentencing length and how the courts view criminal activity in our state.

**Assemblyman Ohrenschall:**

What data do you have right now regarding how many inmates in Department of Correction (NDOC) facilities there are for drug usage crimes—or other nonviolent crimes—as opposed to offenders who are there for violent crimes? If you do not have that data today, I will understand.

**Greg Cox:**

We have that data but I do not have it with me today. I will be glad to provide it to the Committee in the future.

Moving on to page 6, if you look at our yearly male admissions, you will see that our statistics go back to 2001. I think it is very important to have that level of detail. You can see the percentage of change there and see our growth. In 2003, we had 12.4 percent and then came down throughout the years. It lists the totals of the parole violators and new commits. I think it is sufficient detail to show you where we are and where we are going.

Going on to page 7, it is our female admissions. It is the same type of chart. You will see larger percentages on the side of the chart. In 2006, we had a 20 percent increase. That is alarming for us, but remember that our population is 1,200 to 1,300, so any significant growth there has a larger percentage attached to it. We have been growing again, and if you look at 2012 that rate is 4.88 percent and 2013 was 3.79 percent. I think that was attributable to a couple of things: violent crimes committed by female offenders and longer sentences because of that violent crime. That is what I believe is the cause. Living in Las Vegas as I do, we have seen an increase in violent crime and property crime by females. This is reflective of that and the courts' stance on it. What changes our admissions is their sentence length.

**Assemblywoman Diaz:**

I appreciate the data laid out in terms of the years and the new commits and violators so we can get a picture of the last several years and what the populations are in our correction system. There is, however, no breakdown of ethnicity and how many of them are African American, Hispanic, Latino, or Asian. In the schools, when we are looking at achievement, we normally have a breakdown. If you have one, it would be very informative to know what the population breakdown is.

**Greg Cox:**

Yes, we have that information and I will be glad to provide it to you. Generally speaking, we are about 46 percent white, 26 percent African American, 24 percent Hispanic—which is our fastest growing segment—1 percent Asian,

and 2 percent Native American. I will provide the Committee with that detail and ensure it is in our presentations in the future.

**Assemblyman Ohrenschall:**

How many juveniles are in the adult system? Can you please explain to the Committee where they are and how they are situated?

**Greg Cox:**

These are questions that we have been asked a number of times. We have an 18-and-under unit located at Lovelock Correctional Center in Pershing County. That facility currently houses ten offenders under the age of 18. We have been asked to find a location for them where we can provide for their safety and security. We have done a fairly good job of doing that. The historical numbers have been anywhere, at any given time, from 40 to 50, and we have seen that number stabilize anywhere between 10 and 13 through the last year. We spoke with the judiciary around the state and it seems pretty consistent at that number. We have 20 beds in that unit specifically dedicated for that population with sight and sound separation. One of the bills that we will be talking about refers to the Prison Rape Elimination Act (PREA). In order to comply with the federal law—and we support PREA—we are in the process of working with the PREA Resource Center. We looked at where we could establish that unit to protect the safety and security of those young offenders—kids—and also comply with the audit instrument and the audit questionnaire regarding youthful offenders.

We also have a youthful offender program at High Desert State Prison. We actually have an area where we conduct education that is separate from the major area in the facility. We have classrooms there with two areas that encompass education for the 3,600 inmates. We also have, through the Clark County School District, training in the vocational building trade and automotive trade, along with other programming specific for that age group and population. That has been there for a number of years. It is doing a fairly good job. It is a very young population there, up to the age of 25, depending on what program is accessed educationally. Now that we are not dealing with the 18-and-under age group, we can focus more specifically on the needs of the 18 to 25 age group.

**Assemblyman Ohrenschall:**

The youthful offender program is what we commonly refer to as the "boot camp program." How many young men do you have in that program right now?

**Greg Cox:**

In the boot camp program located at Three Lakes Valley, we have between 60 and 65 individuals. Generally, you are correct that they are younger. Some, however, are a little older depending on first-time offenders and the judge who sentences them. We have continual support throughout the state from the judges for that program. It is attached to the Three Lakes Valley Conservation Camp. There is a unit there where we have the boot camp inmates. Sometimes we push that population out to 75, but generally, we do not let it go beyond 75 for the program.

**Assemblyman Wheeler:**

Looking at page 6, I see population drops in 2008 and 2009 on the male admissions. I can probably attribute that to the population drop of the state during that time with people moving out of the state and, with the recession, jobs being hard to find, et cetera. Then I look down to 2012 and 2013 and see some significant population drops when we were actually adding people to the state as the economy recovered. Can any of that be attributed to the diversionary programs that you have, and specifically the one that we are going to be looking at in a moment?

**Greg Cox:**

I think the diversionary programs are important, but I also think it is reflective of the view of the individuals being sent to our Department. We have a lot of specialty courts in our state that are very important, whether it is a veterans' court or a drug court, or the juvenile justice court with Judge Linda Bell in Las Vegas. There has been a considerable amount of emphasis placed on the specialty courts, which has reduced our population. We have seen crime drop across the country and correctional populations drop for the first time in our country in years, I believe since the 1970s. Property crime is down in Clark County. Violent crime has increased by 12 percent, but I think what we are doing is reflective of a number of factors. The specialty courts give us the opportunity to place people in other programs instead of incarceration.

**Assemblyman Gardner:**

I was looking at pages 6 and 7 and wondered if there is a breakdown of the entire population in our correctional facilities; not just new commits but everyone. Is there a breakdown along racial and age group lines?

**Greg Cox:**

Yes. We can provide you that level of breakdown since we do have that for all of our facilities.

I am going to page 8 now, and you will see another chart on new commits for fiscal year (FY) 2013. New admissions were 5,753. It gives you a breakdown on where these admissions are coming from. New commits were 3,113: 23 percent were probation violators, 16 percent were from parole violations, and 7 percent are others. There may be some safekeepers or boot campers and other things that go into that 7 percent population.

Moving on to page 9, you see our major facilities and our camps. It gives the details that members were asking questions about. It gives you a population total and the changes that our budget is based on. If you look at the population forecast and go across the bottom of the chart to the total of all institutions, you will see where we are with the forecast and change. We will be up by 77 in 2016 and up by 143 in 2017 per the forecast. As I am sure everyone knows, we keep going back to our forecast model. If the population grows, I would expect that these numbers would also increase. Even though we are doing other programs, it is important that you have that piece of information since it has been true historically. The population forecast has been good the last few years, and we are looking at this forecast like we used to view our Department and its growth, based on the state population and that of Clark County.

**Assemblyman O'Neill:**

When you describe a new commit, it may be a returning inmate that had already flatlined or finished out his sentence and now has a new charge. You are not talking about a person who has never been previously incarcerated, correct?

**Greg Cox:**  
Correct.

**Assemblyman Thompson:**

Are these all unique violators, or would you be able to give us information on offenders and repeat offenders? Maybe they came in in January, were released in March, and came back in October. Do we have accompanying recidivism rate information?

**Greg Cox:**

We do have recidivism information, and we can provide that level of detail to you. Concerning the parole and probation violators, questions regarding why people are coming back could be better answered by the Division of Parole and Probation (P&P). I know there will be testimony from P&P in the future. We can break out the recidivism rate from our new commits. It is right around 30 percent now. The recidivism rate nationally is generally around 40 percent. California is somewhat of an outlier and, at one time, the largest department in

the country with a recidivism rate usually around 60 percent. They drive the average up. Some states sit at about 46 or 47 percent. We sit at 30 percent and I would like to be lower than that. We are doing a good job with the resources we have and how we approach our mission.

**Assemblyman Thompson:**

Thank you, because it is important for us to know where we measure up on the national baseline. When we say admissions of 5,753, we need to know how many of those are returnees to prison. If there were 300 inmates who have been in there twice, how does budgeting figure the cost per prisoner? I may be getting into the weeds, but I really would like to know that information sometime during the session.

**Greg Cox:**

I will get back to my staff and analysts and see if we can provide that information for you. The recidivism rate is calculated on a three-year return to the system. Looking at it from the standpoint of 30 percent, three out of ten would come back within three years. We can get some of the details that you are talking about because it is important. I do not know if we can do it, but I would like to see it myself.

**Assemblyman Araujo:**

I am looking at the transitional housing data. I am curious what the capacity is for both of these housing units. Are your strategies improving? I see there is a slight drop in population, so I wonder what strategies you are implementing to drop those numbers.

**Greg Cox:**

We want to keep our totals up in the Northern Nevada Restitution Center. We can be around 100 there. What drives that number, and that of the Casa Grande Transitional Housing in Las Vegas, is that we have our forestry camps. During the fire season, we keep those camps relatively full, which drives those numbers. We have the ability, and you will hear about it when we talk about the Opportunity for Probation with Enforcement in Nevada (OPEN) program at Casa Grande. That type of community correctional center environment is one of our missions and a facility that we need to have. Our classification instrument also plays into that, who you can place there, considering the nature of their crime and sentence length. Violent offenders do not go to either one of those facilities.



**Assemblywoman Fiore:**

As you are gathering all of the information that we are requesting, is it possible for you to give me the number of all of the current operating correctional institutions that have victimless crime offenders in them? I do not need specifics; I only need numbers of how many people are in prison for victimless crimes.

**Greg Cox:**

Yes, I think we can pull that out of our data and provide that to you.

Turning to page 10, you will see our activity budget. As you will see, we spend the majority of our budget on medium, close, and maximum security facilities. That is 62 percent of our budget as seen on the first line. As you look down, you will see what percentage we spend on general administration, human resources and training, fiscal services, inmate services of 6 percent, and programs at 3 percent. We are spending our money on housing inmates and providing for their safety and security. Our budget is focused on that activity more so than other activities. If you look at health care services, which is 15 percent of our budget, you will see that area of our budget has continued to increase due to medical inflation. Of course, the health care services and needs of our inmate population, who are getting older, will continue to increase. The administration of the Department is only at 1 percent. We are sitting pretty well for running a business and paying others to administer and manage the Department.

When looking at other areas, like 3 percent for programming and services, we hope that we will be able to increase that number in the future. However, we will not be able to do that in this biennium.

**Assemblyman Thompson:**

Is your programs line item where your diversion programs are housed? If so, that is only 3 percent of your budget.

**Greg Cox:**

That programming is actually our substance abuse program, the re-entry program, and other programs like that. It is 3 percent of our total general funding for those programs. At Southern Desert, we have a re-entry unit and a substance abuse unit. Those are the programs that staff is assigned to. You will see the programs' full-time equivalency at 99.51 on the left-hand column. The Department has 100 program staff for a population of 13,000.

**Assemblyman Thompson:**

Going up to health care services, with the passage of the Patient Protection and Affordable Care Act (Affordable Care Act), are you able to access the Affordable Care Act for your prisoners? If so, is that 15 percent more of a decrease than what you have had in previous years?

**Greg Cox:**

We have certainly seen a decrease. Our inmates and offender population can access the Affordable Care Act, basically for those in the hospital over 24 hours. Last session approximately \$7.3 or \$7.5 million was pulled from our budget for community hospitalization. The Affordable Care Act picks up the cost of those inmates. Historically, they picked up the cost of those inmates who were elderly offenders or the pregnant females who had been in the hospital. Now it picks up any offender at any age who is in the hospital for a period of 24 hours or more. Last session the Legislature provided two staff to apply for those types of benefits through Medicaid. We are doing a very good job of that and providing those benefits through the Affordable Care Act.

**Assemblyman Jones:**

Looking at these numbers for FY 2016, it looks like the budget is \$290 million. Is that correct?

**Greg Cox:**

That is correct.

**Assemblyman Jones:**

Then, with an estimated 12,816 prisoners, that works out to about \$22,650 per prisoner. Does that sound right?

**Greg Cox:**

Yes, that number is about right.

**Assemblyman Jones:**

Compared to other states, how do we fare with the cost per prisoner? Do you know?

**Greg Cox:**

I do and we can provide you with that level of detail. We are the most efficient and effective department of corrections in the western states regarding the annual cost. As an example of cost, the report released recently shows us as 47th in the nation for health care costs, comparable to surrounding border states. California has the third largest department—which used to be the largest—and they are sitting at \$44,000, about double our cost. Other states

are higher than we are. Generally, our border states, such as Arizona, are a little higher than we are. They are around \$24,500 or so. We will provide that level of detail to you. Again, we are the most efficient and effective department of corrections in the West. Our numbers reflect it across the board.

**Assemblyman Elliot T. Anderson:**

While we are on the subject of your budget, can you give us more historical context on where your budget has been from 2007, and how it suffered through the recession. Please talk about any increases since the recession on a percentage basis.

**Greg Cox:**

I can provide that; I have a document going back to 2008, because that is what my staff looked at when I said to do a snapshot since the recession. The Department has helped the state by reducing our cost during that period of time—from 2008 to 2014—by \$48 million. As many of you know, we closed the Nevada State Prison. In 2007, we closed the Southern Nevada Correctional Center in Jean. In the Carson City area, we closed the Silver Springs Conservation Camp. We have closed three facilities: two major ones and one camp.

Looking at the other things that we have done to decrease our budget, all of our staff have taken furloughs, as other state employees have. We have reduced the budget by not giving merit or step increases until last year. I am appreciative of the Governor and the Legislature for approving the return of the step increases.

We have made significant cuts to this Department. That goes back to the other question about our costs. We have done as much as we can, and we have done very well with what we had throughout this entire period. We have been very conscious of our operation. A number of the Committee members have been out to the High Desert State Prison and have seen the four units that were constructed to house medium-custody offenders. I appreciate what my staff has done for the State of Nevada and what this Department has accomplished during these times. I understand why there are times we are criticized; we consume a lot of the General Fund. I can present the numbers from our western states, and the state costs throughout the country, and you will find that we are very efficient and effective. This is not a department that wastes money. I know we can do better in certain things, but we are viewed across the country as being very efficient and effective in the delivery of our services. Maintaining the safety and security of our institutions is a tribute to our staff.

**Chairman Hansen:**

We should remember that we are a policy committee and the budget issues will be in front of the Assembly Committee on Ways and Means, so we should keep that type of question to a minimum.

**Assemblywoman Diaz:**

I want to know more about your staff, and how easy or difficult it is to maintain staffing in the prison system. I also want to know if they receive any kind of training. Is there any required training they have to get on a yearly basis, or every so often? Can you shed some light on that?

**Greg Cox:**

They do have required training. Our correctional officers are category III peace officers in our state. They go through an eight-week training through the Peace Officers' Standards and Training (POST) academy at various locations throughout our state: Ely, Carson City, and Las Vegas. We have 24-hour Correctional Employee Refreshers (CERs), which are refresher courses for all employees throughout the year. Focusing back on our POST category III training, it also includes weapons qualification. Specific requirements are set forth by the POST Commission in order to obtain a category III certificate in our state.

One of the challenges facing corrections throughout the country is not only the profession but also the pay issue. It is in every state. Benefits are also an issue. This profession—professional correctional officers—has to do a better job talking about our profession and how we do our job protecting the public. There are people who value this profession and our mission more than others, and I really think that we are probably to blame all across the country. Through the years, I could have done a better job of talking about what we do in corrections and what a difficult job it is. It is one of the most difficult jobs in public safety; I think the most difficult, although others may disagree. I have been doing this for 34 years, and I think our officers and employees do a difficult job every day. I am appreciative of the fact that we had our step increases back, and I think they did make a difference. I think the end of furloughs will also make a difference. I hope that this Committee and other members of the Legislature support the furloughs ending. I think it is important that our staff know that and have your support. They have done a very good job of supporting the state through this downturn. The employees of this Department absolutely have.

**Assemblywoman Diaz:**

I am very appreciative of all public employees of our state. I think they do a tremendous service to all of our constituencies. I was thinking about recent

incidents and that we have been dragged into litigation by inappropriate actions by staff members. For example, the one I am thinking of is the inmate who was giving birth and was still in shackles. How do we reverse those trends when these types of issues come up? What kind of training do we give employees to ensure this does not happen again?

**Greg Cox:**

That individual was trained but basically ignored that training. As part of the court process, we looked at our training again and emphasized the fact that, in that specific instance, you are not to shackle female inmates. When it comes to training, as you well know, certain legal cases may focus on the training more extensively. We had the training in that instance, and perhaps it was not shared as much as it should have been. That person was demoted as a result of it. When our staff commits criminal acts, they are terminated after going through the process. We do have administrative sanctions. We continue to hold our staff accountable and responsible. With saying all of that, the vast majority of our staff does their job very well every day, and we do not usually have those types of issues. We are viewed across the spectrum, especially by other public safety entities, as holding our staff accountable and responsible for their actions and behavior.

On page 11, you will see that we spend the majority of our money on our core activities. If you look at the blue part of the field, core activities are safety, securely confining convicted felons, and inmate health care services, which is 84 percent of our budget. Again, we spend our money very efficiently and effectively, and you will keep hearing me say that because it is the truth. If you look at other core activities such as programs, the Inspector General, inmate services, and prison industries, that is 12 percent. Four percent is spent on the Department infrastructure such as fiscal, human resources, payroll and training, IT, and administration. That is another reflection of how few staff we have and what a good job we do in those areas.

Page 12 shows that the General Fund primarily funds the Department. You can see that it is 89 percent General Fund and only 11 percent from other sources, such as federal grants and other grant funding that we may have.

Page 13 talks about the major issues for the Department this legislative session. While I have been talking to you about being efficient and effective, the Board of State Prison Commissioners—comprising the Governor, the Secretary of State, and the Attorney General—has asked me, as the Department of Corrections' Director, to find a group or individual to come in and look at our shift relief factor (SRF), which is a post and staffing analysis. The Association of State Correctional Administrators, which is a nonpartisan group,

came in and went through all of our facilities, except for two camps. They looked for staffing and post where the staff is assigned—the units, the towers, gun posts, and various areas of the facilities. They determined that we needed 100 additional staff for the SRF, which only affects our custody staff. It gives us additional staff to maintain an SRF. As an example, our SRF had not been updated since 1979. We had two holidays that were not included in it, which had a big impact on our Department. We did not have an SRF that would allow staff to take time off for annual leave, sick leave, or other things, so we are always operating at minimum staffing at many of our facilities. We have a minimum staffing procedure that has been very effective at managing our facilities when it comes to overtime in those situations. We need additional staff; we have for years. I do not believe we are asking for anything more than what we need.

The study itself has different priority positions that comprise an additional 400 staff. We are just focused on this relief factor at this point in time. You have to get to first base before you can get to second. We are not there yet. We need your help, and we will be explaining the SRF and what it means in detail to other committees. As an example, in 2005, Governor Kenny Guinn supported the Department, and so did the Board. They said that they had been hearing the questions for years from the Department director and to go ahead and get someone in there to look at it. Governor Guinn's proposal in 2005 was 250-plus staff. This in-depth look by correctional administrators and two members from our state, former director Robert Baer and Gary Ghiggeri, was very important. It was especially important to have two people from our state who understood the Department historically as did Director Baer and Mr. Ghiggeri, because Mr. Ghiggeri understood the financial and legislative process. I would like to thank Gary for his work. He worked many hours on this project with this group to develop an SRF for the Department. This has allowed us to be successful in moving forward with this number.

The first year of the biennium we are proposing 45 additional staff. The second year we are adding 55 additional staff. We have looked at moving forward with the additional 100 and want to do it this biennium since we know the state has a lot of concerns and issues. We, and the Governor, think this is important enough for us to move forward with it. I will be talking about this issue in all of our budget hearings.

The Federal Communications Commission (FCC) rule eliminating inmate telephone services commissions generally affects our inmate welfare fund. What that means, to generalize it, is that our inmates' family members are able to contact the inmates and talk to them on the phone at costs that are low enough for that type of conversation to take place. We have done some things

to reduce our costs even prior to the FCC rule. It is still to be litigated, so I do not want you to think that it has been resolved.

We do not have a hospice program, unit, or place to conduct this program. We have not historically had a hospice program. We will, hopefully, with the approval of the Legislature and the Governor, establish a hospice program at the Northern Nevada Correctional Center. Many of you know that that is where we have the True Grit Program, the Regional Medical Facility, and a large number of the older population—the average age is 47 or 48 years old.

Mental health is another big topic for us. We are asking for additional mental health counselors at Lovelock and Ely. One of the bills that I will be presenting is for the OPEN program and not letting it sunset.

Another struggle that we are having is inmates making public records requests. We will get more into the weeds with this. Our inmates, with the new public records law and transparency, have been asking for other inmates' records. We do not allow that for safety and security. Inmates have also asked for the cost of a copier and the electricity for one copier at Ely State Prison. Inmates have asked for the entire menu and the food products used going back to 2006. They not only ask the Department of Corrections for this level of detail, but they have asked many other state entities. Other states have limitations on upholding the constitutional rights of the inmates for public record requests. We are not going to deny them access to the courts; other states have not. Public records requests for laws that have been changed regarding the inmate population specifically have also been requested.

Changes are needed for compliance with the Prison Rape Elimination Act (PREA). For the record, we have eight facilities that have been audited by the PREA audit instrument; all of them have passed. I believe our Department is doing a great job. It is supported by the Governor and the Board of Prison Commissioners. We are moving forward and are doing a good job. We are recognized as one of the states that has taken that task on and has complied with the federal law. We will be talking about that later today.

We are looking at the women's population numbers. As you saw from previous pages, we are concerned about the percentage increase. That is something that we are going to keep our hand on and watch that population for any increase. We have additional beds there; we do not have to construct any new beds. We have the beds to put inmates in, we just do not have the staff to supervise them.

Regarding funding of equipment and building maintenance needs, all departments, including ours, have looked at exactly what we need and we are still looking. While looking at our building and equipment maintenance needs, we focus on what we call life safety issues, such as heating, cooling, refrigeration, freezers, sewage pipes, water pipes, and electrical. That is going to be our focus across the board in this session. I do not think we are spending money where we do not need to spend it. We are focusing on those types of activities.

As stated on page 14, we certainly appreciate all of your support.

**Assemblyman O'Neill:**

On the proposed FCC rule revision, you said it would impact your inmate welfare fund. What is the average cost of a ten-minute call, and what percentage of that goes over to that welfare fund?

**Greg Cox:**

I would like to get that information to the whole Committee in detail, and I will provide that level. We do have that information. There is an intralocal cost and an intrastate cost. It varies. I can share with the Committee that the Department heads and I reduced that cost prior to the FCC ruling. I believe that our inmate population and their families need to be able to communicate. We will provide that for you.

**Assemblyman O'Neill:**

Are those phone services outsourced or contracted with private agencies?

**Greg Cox:**

Yes, they are.

**Assemblyman Ohrenschall:**

As you will recall, there was talk of possibly transferring those children at Lovelock Correctional Center who have been prosecuted in the adult system to the Red Rock Academy at Summit View Correctional Center that is near Nellis Air Force Base in Las Vegas. You mentioned that, for your comfort level, you wanted to build a facility on that site. I did not see that on page 13 in terms of the goals for this session. Is that still a goal of yours in terms of satisfying your comfort level so those children could be transferred and housed with other juveniles in the delinquency system?

**Greg Cox:**

I am pleased that the number has been decreased to 10 or 11. I look at those offenders and the programming services that we are providing. Looking at the



future of the state with all of the issues associated with the economic downturn in our budget, I believe we have lived part of the mission since the goal was to reduce the population down to 10 or 11. Some of the offenders have committed very violent crimes. As an example, we have helped Red Rock Academy look at their security issues to help them with different programs, procedures, and security policies that they have. I think, looking at the future of the state, it is probably something we will tackle in the future. I think there are limitations regarding budget issues. However, I appreciate Justice Hardesty and other members of that committee, including you, focusing on this issue. People have listened, and that is why our numbers have been driven down. I would like to continue to inform the Committee on what we are doing in that program and with the population there as it happens. I am pleased that it is not growing anymore and is now stable. We are doing a good job with the resources that we have regarding the programming for the 18-and-under inmates. The state has done a number of things. I do not currently have any 13- to 15-year-olds in there. We have had some that are now 16 or 17. That is a good sign for the Department and the state. I support that, and it is a very difficult population for us to manage. Our emphasis should be on programming. I think the Nevada Division of Child and Family Services of the Department of Health and Human Services does a very good job, as does Rite of Passage, with that population.

I can see this thing evolving in the future. I think we should absolutely continue to focus on it and look at that population and what we are currently doing with them in our Department. Educational opportunities and other things are important. A number of those kids are going to age-out into the Department of Corrections due to the violent crimes they committed. We are at a number that is fairly consistent now.

**Assemblyman Thompson:**

Pages 12 and 13 say that only 11 percent of your budget covers "other." In that item, it talks about federal grants. Since there are some initiatives and new programs that you want to bring on board, do you have a team working specifically on grants? We, as a state, are missing many opportunities where we could improve seeking grants that can benefit our state. Many times the grants are earmarked for our state, but we do not go after them. If it exists, can you tell us more about your grant team's efforts to get federal or local grants?

**Greg Cox:**

We are very focused and we have moved to focusing on federal grant funding for different programs, such as substance abuse. Our PREA was supported by grant funding for the training of our staff. I believe the Department

of Administration's grant coordinator has done a good job of giving back to agencies and departments. We are focused on grants, Second Chance Act and other grants that are coming forward, and looking at federal funding. The State Criminal Alien Assistance Program is a federal grant. That grant has been reduced significantly, which will impact our operation. That was done by Congress.

You are correct that we need to drill down to these specific grants. I have a team of individuals—management analysts—who look at these. We have a group, Scott Sisco, Denise Martinez, and others, who are looking at our grants continuously and grants that are out there regarding public safety and public policies, specifically on corrections. I agree, and we are doing that. We are working with our partners, like P&P and the Nevada Board of Parole Commissioners, on that type of measure.

**Chairman Hansen:**

One of the requests in the Nevada Spending and Government Efficiency report was to have a state grants coordinator position. Thank you.

We are going to go into Assembly Bill 12, and I will open the hearing.

**Assembly Bill 12: Provides for the continuation of the diversion program that allows certain probation violators to receive treatment for alcohol or drug abuse or mental illness in lieu of revocation of probation. (BDR 14-341)**

**James G. (Greg) Cox, Director, Department of Corrections:**

To my right is James Scally, who is the Correctional Manager at Casa Grande Traditional Housing Center. It is important that he be here since he is the one who runs and manages the program for us. One of the things that I want to do this session is to bring the staff who run these programs with me in case there are specific questions on the programs that we can answer now.

This program is Opportunity for Probation with Enforcement in Nevada (OPEN). It is a diversion program that we started in 2010 with our sister agency, the Division of Parole and Probation (P&P), and Judge Jackie Glass of the Eighth Judicial District Court. The program was started when I was the Deputy Director. We looked at this program and how we might move it forward. When we opened it, we looked at modeling it after Hawaii's Opportunity Probation with Enforcement. We looked at that program to determine how we might bring it to our state. I know that Judge Linda Bell testified last session in favor of the program and has been a big supporter of the bill, as has the Eighth Judicial Court. What we are asking for in this bill is to not allow the program to sunset. We are not asking for additional funding, just

as P&P is not. We look at it as an opportunity to not only decrease our prison population, but also to decrease the jail population in Clark County at the Clark County Detention Center. It gives the judge the opportunity to utilize this diversionary program to say that the offender can go there for a certain period of time, whatever the judge decides the time frame should be. The offender can stay in the community, keep his job if he has one, or stay in educational programming if he is doing that. We do not remove them from the community. They have to stay at Casa Grande if they are sanctioned to go there. One of the things about this program is that it provides an intermediate sanction for that individual. Just having the sanction out there has worked very well. Those who do not do what Judge Bell wants them to do are sentenced to Casa Grande. That is hanging over their heads; they must do what they are told or they will be sent to Casa Grande. For the vast majority of people, that has worked. It is important that we in this state have this type of program.

Parole and Probation has worked with us very closely on this. They have one employee assigned to it. He has done a very good job with this program over the years and is very committed to it.

This program takes the commitment of the judges. I cannot tell you how well we are working with Judge Bell and what she does with this program and the other specialty courts that she works with. She took this on—it was previously Judge Glass'—after a period of time while it was struggling. She jumped in and took it over. I believe she absolutely supports the program and its conception. I was sitting here last session when she testified in favor of it.

My concern with this bill is that the program not be allowed to sunset. We are not asking for additional money; just let the program continue. Please support Judge Bell, the staff at P&P, and all the staff at Casa Grande Transitional Housing who are running the program.

**Assemblyman Jones:**

I think Casa Grande is a great program. For my business, I have probably hired about 30 people over the last few years from Casa Grande or Hope for Prisoners with Jon D. Ponder. I think they are both great programs. The problem that I have is, while they are there and required to do their drug testing, the employees do quite well. As soon as the drug testing ends, almost 80 or 90 percent leave my employment within two or three months. Is there any way to continue the testing for a year or more? It is unfortunate because they are good employees, but as soon as they are off drug testing or out of Casa Grande they are gone.

**Greg Cox:**

We know there are challenges regarding substance abuse for this population. They have a parole date and at the completion of their parole, we would like them to be drug free and not use substances of any kind. We know that that is a struggle for many people. I have seen you present at the Hope for Prisoners, so I know that you realize that people with substance abuse problems use again. My understanding is that people who go to programs specifically for that may take seven or eight times before they finally commit to not using drugs or alcohol.

It would be beneficial for the community to continue this program. You yourself have said that it has benefited your business. We say from the first day of the program that this is an opportunity for those people to do the right thing. It provides for that. It does not necessarily mean that all of them will do the right thing, but as we have seen many times we focus on the negative side of corrections instead of the positive outcomes. In your words, we will say that eight out of ten offend or reuse, but it is the 20 percent that do not that counts. It is our hope to take the 20 percent and turn it into 30 percent or 40 percent of those individuals not reoffending or recommitting crimes, or not using drugs.

**Assemblyman Jones:**

I do not have a problem with the program, so my question is whether there is any way to extend the requirement for testing. It seems that it is always date-coincident to either getting off the testing at Casa Grande or getting off of parole testing. That is what happens. With the testing parameters it could be extended out to two or three years instead of six months or a year.

**Greg Cox:**

I understand the question and, to be frank, I believe at the end of the day they have parole terms, they complete them, then there is no more testing. The testing can be done by employers. We would hope that our former inmates are not testing positive any time they have been incarcerated. There is a degree of supervision and a level of testing for any individual who has been incarcerated, served their sentence or term, and then are completed. Looking at some type of sanction that could be long-term testing would be up to the courts to determine during sentencing. If you extend that level of supervision, P&P would need additional staff to monitor and supervise those individuals to ensure they are not reusing. Supervision is an important component of this program. I understand the difficulty, but it would be very complex to extend parole out for a year or two years. There may be other less costly sanctions. Other states have considered it. It is limited by a person's combined sentence and length of parole; that comes from the court.

**Assemblyman Thompson:**

I am a strong proponent of diversion programs. I failed in the introductions to state that I am a representative in North Las Vegas, but I am also a strong proponent for outcomes and performance measures. It indicates in the Legislative Counsel Digest that this was a pilot program. Is there any place where we can see what the outcomes have been for the last three to four years? You are asking that this not be sunsetted, so I would want to know what the performance measures are, what were the outcomes, et cetera, before I could make an educated decision for this. Do you have any references where we could get this information?

**Greg Cox:**

We can provide the numbers of how many offenders we have had in the program, how many graduates, and other outcome measures. Specifically, based on other things, we would have to look at other treatment programs such as the Salvation Army and intensive day treatment programs. We have 26 offenders in that. We can provide that level of detail to you. With Judge Bell, we have 88 participants. We have 55 active participants in the program. Even though you may be in the program, and you may be complying, you are not what I would call active in the program; you do not have any issues.

**Assemblyman Thompson:**

I understand the outputs because they are good, but I am very concerned about the performance measures and the behavioral changes and all of those types of components. I hope that the report will not just give how many entered and how many exited successfully. I would like to see a lot of the in-between and the changes that occurred with the residents of your program.

**Chairman Hansen:**

The original bill (Assembly Bill No. 93 of the 76th Session) says,

The Department of Corrections and the Division of Parole and Probation of the Department of Public Safety shall jointly submit a report at least twice annually to the Director of the Legislative Counsel Bureau for transmittal to the Interim Finance Committee. The report must include: 1) The number of probationers participating in the pilot diversion program; 2) The reasons the probationers entered the program; 3) The number of probationers who satisfied the terms and conditions of their participation in the program; and 4) The status of the probationers who are in the program at the time the report is prepared.

Therefore, all of that stuff should be available to us. I assume you are turning in your reports, Director Cox.

**Greg Cox:**

I do know that P&P is submitting those reports. They will be able to provide those to the Committee. I also think the questions are good ones. I think Judge Bell could specifically talk about the change that she sees in these offenders and what it means to the program, but she is not here.

**Assemblyman Elliot T. Anderson:**

Do you have the data that shows the recidivism rate after completion of the program? I would be curious to see that. If we are going to find the value in these diversion programs—which I do believe in—we need to see what the data shows. Is that available?

**Greg Cox:**

One of the things we can do is look at the population that is not in the program, comparing those who are in and those who are not. We can provide details of those who were in the program and those who have failed the program. We can provide that number to you. If you are going to look at that specific outcome, we are going to need to have a data analysis completed. We can have those discussions with P&P and with Judge Bell regarding how we might be able to get that level of detail to this Committee.

**Assemblyman Elliot T. Anderson:**

To be clear, I am not interested in people who have failed the program. I am looking for people who completed the program and then offended again or not. I want to know what the recidivism rate is, not the rate of completion and graduation.

**Greg Cox:**

We have that and I will get that information to you.

**Assemblywoman Seaman:**

I think you have answered most of my questions now. Do the reports show the breakdowns of alcohol, drugs, and the mentally ill? Are they broken down in your reports?

**Greg Cox:**

It is my understanding that the report that P&P generates does not have that detail.

**Chairman Hansen:**

Are there any other questions? [There were none.] We will now open testimony in support of A.B. 12.

**Vanessa Spinazola, Legislative & Advocacy Director, American Civil Liberties Union of Nevada:**

We are a nonprofit, nonpartisan organization that supports the *Nevada Constitution* and the *U.S. Constitution* protecting rights. We are here to support Director Cox's A.B. 12 program. In addition to the success of the program, we are coming at it from the perspective of mass incarceration. We look at any alternatives as good. These are people who would otherwise have been in the system, costing us \$22,000 per year and potentially recidivating at a rate higher than what we might see in these programs. We are here to lend our support and ask for your support for this program.

**Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:**

I would echo the comments and sentiments of my colleague in support of A.B. 12. I know from being a practitioner for the last 12 years with the Washoe County Public Defender's Office that it is invaluable to have these diversionary-style programs and to see the good and positive effect and outcome that it can have in an individual life. I would also lend my support.

**Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:**

We are in support of A.B. 12. It is always better to have more options rather than fewer. I was thinking about the four clients I have who have gone into the program. These are individuals who are usually not violent, but who are having trouble on probation. They are not checking in the way they are supposed to, are not attending counseling, or not taking it seriously. Some of these individuals either do not have the social tools necessary or are just not accustomed to complying with a schedule. This is a program that helps those individuals be more on point. With the four that I have had, were it not for the OPEN program, they would probably have ended up in the Clark County Detention Center or the Nevada Department of Corrections. This is a cost-saving measure as well.

Regarding Assemblyman Thompson's question, this is obviously not a full snapshot of the program, but the four clients that I have had in the program have not come back for any further proceedings. Perhaps they had some intermediate sanctions, but, as far as I know, they have not come back for a full-blown revocation proceeding that would put them in jail or prison. This program, for the segment of society that it serves, is very effective, and I would

like to see it continue to grow in the future to provide additional options for the sentencing judge.

**Assemblywoman Diaz:**

How many of these four clients were drug abusers, alcohol-related, or mental illness-related?

**Steve Yeager:**

My recollection is that a couple of them were struggling with alcohol. It is not uncommon as a condition of probation to be under a no alcohol clause. I remember that a couple of them had violated that clause. The other ones were not drug issues. It was a lack of motivation or respect for the seriousness of being on probation, doing things like not checking in when you are supposed to, not communicating with the probation officer, or blowing off classes whether it be anger management or substance abuse. They are the fringe folks who really do not deserve to be incarcerated but need more hand-holding. That is my experience with the four that I had. My guess is that, in a broader sense, you will see more folks who deal with addiction and drug issues in the programs. It is difficult for someone who is dealing with that kind of issue to be expected to make it to drug and alcohol classes on his own.

**Assemblyman Gardner:**

About how long were they in the OPEN program? You said you have not seen them come back, so I wonder how long it has been since they completed the program.

**Steve Yeager:**

I do not know if they are still in the program; I tried to find out. Unfortunately, I do not have access here to some of the computer systems that I have in Clark County. I would say the last one who went into the program about eight or nine months ago and the other three were in before that. We are going on a year to 18 months with no problems. I cannot tell you definitively whether they successfully graduated. I just know they have not been revoked because, when they are up for revocation, I get a notice and have to go to court to fight for them. That has not happened yet with any of those four.

**Andres Moses, representing the Eighth Judicial District Court:**

I am here today to support A.B.12. Director Cox referenced Judge Bell's support, and I can confirm that that is, in fact, accurate. She is a strong supporter of this program and would like to see it continue. I can speak for all of the judges of the Eighth Judicial District Court and they all support the bill. It provides them additional resources for defendants who cannot successfully complete a typical probation program. In our eyes, this has been a successful



community partnership between P&P, Nevada Department of Corrections (NDOC), and the court, and we would like to see it continue.

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

For those of you who may not be familiar with the Nevada District Attorneys Association, we are composed entirely of the 17 elected district attorneys in the state of Nevada. We are here to voice our support for A.B. 12.

**Vanessa Spinazola:**

With your permission, I got an email from the Human Services Network. I work with them, and they are a group in Washoe County of social service providers and social workers. They provided a letter to the Committee ([Exhibit F](#)), and I am submitting it since they were not able to be here this morning.

**Chairman Hansen:**

Is there anyone else who would like to provide testimony in favor of A.B. 12?

**Kimberly Madris, Deputy Chief (South), Division of Parole and Probation, Department of Public Safety:**

The Division is in favor and would like to support NDOC in this matter.

**Chairman Hansen:**

Is there anyone else in Las Vegas who would like to testify in favor of A.B. 12? [There was no one.] Are there any folks in opposition to A.B.12 who would like to testify in Carson City or Las Vegas? [There was no one.] Is there anyone neutral in Carson City or Las Vegas? [There was no one.] Then I will close the hearing on A.B.12.

We will open the hearing on Assembly Bill 16, which will also be presented by Director Cox.

**Assembly Bill 16:** Revises provisions concerning sexual conduct between certain prisoners in lawful custody or confinement and other persons. (BDR 16-343)

**James G. (Greg) Cox, Director, Department of Corrections:**

Pam Del Porto is in Carson City and is the supervisor of the Inspector General's Office for the Nevada Department of Corrections.

**Pam Del Porto, Inspector General, Department of Corrections:**

I am here to testify on behalf of the proposed amendment under *Nevada Revised Statutes* (NRS) Chapter 212 in support of the Department's diligent efforts for our Prison Rape Elimination Act (PREA) compliance, which is

a federal law that was passed in 2003. I will pass the microphone back to Director Cox because he wants to give some background history and show what we have done and where we hope to be. I will then talk about the specific language in the bill.

**Greg Cox:**

Last session we tried to move forward with this bill. The PREA was passed in 2003. It took a long time for this bill and law to move forward. The vast majority of the departments of corrections throughout the country have taken the stance that we will implement this law in our operation in order to make it safe for those offenders and those who are doing time in our facilities throughout the United States. There was a lot of testimony given by inmate advocacy groups and other victims' groups concerning rape in prison, a tremendous amount of testimony in the U.S. Congress and in other places around this country.

The history of the bill is that, when it was passed, they had to set up different mechanisms to help us in corrections, detention, and jails across our country. They established the PREA Resource Center and also gave us an audit instrument. Assemblyman Thompson and others questioned what the outcomes were and what we are doing. One critical thing with the law was the audit tool and the measurements that were used. They were specifically drilled down to prison rape and the impact on people inside our system and systems across the country that were affected by it.

Through the Board of State Prison Commissioners, Governor Brian Sandoval asked me to work with them to devise a strategic plan to come into compliance with federal law. We devised a plan to do that—which I testified to previously. We have eight facilities that were audited by outside auditors. All eight facilities passed the audit, for which I thank Pam and others throughout the Department.

Assembly Bill 16 is really about complying with a statute in our state that Congress passed in 2003. We are the only state of the states that enacted PREA—and the audit complies with federal law—that has been described as an outlier. We are the only state in the Union that has specific laws that allow the prosecution of an inmate who was assaulted by, or had sex with, an employee, contractor, vendor, or volunteer. Pam will get into more detail, but we are the only state. When we go to training in Columbia, South Carolina, or Kansas City, Missouri, in the future and they do their presentations, the PREA Resource Center and the folks who are providing this training always mention that our state is the only state that has this. I do not want to be in that situation, and I know many of you do not either, but this is a fairly complex law and the statute itself really trickles to the federal law, even the language. We have looked at

other states, Arizona for example, and talked with people who have an interest in this. We have looked at our laws specific to border states and other states that have enacted the same laws and they basically model what the federal law says. The implementation of this has been done by our Department staff and they have done a great job. We have provided critical training to come into compliance. The audit instrument and our passage of the audit indicates that the training has made a difference. It is important to our Department, our employees, and certainly important to the inmate population.

Regarding any specific questions, I think Pam can help answer them. I hope this Committee will take this bill and move forward with it with the understanding that almost all states have, even the states that border us. I hope we can work through this if there are issues with it. All in all, it is the federal law. The entire Board of State Prison Commissioners has supported our efforts to come into compliance with it. The Office of the Attorney General is with us today.

**Pam Del Porto:**

We will go over some of the amendments and additions. As the Director indicated, this was a law passed by Congress in 2003. In August 2012, the standards associated with the passage of the Act became required. That is when the standards that we have to comply with became mandated. Our current law, NRS 212.187, has been on the books for a long time. That law is the consensual sex act for inmates. It is against the law for inmates to have consensual sex with any person. What we seek to do is to clarify that inmates are not in a position to give consent. There is a position of authority for contractors, staff members, and volunteers, and that was clearly identified in conjunction with the PREA. We want to add language to NRS 212.187 so that it does not include acts of a person who has custody of a prisoner—an employee, contractor, or volunteer. Again, it clarifies that it is not considered consensual with the employee, contractor, or volunteer. That will take us from the role of an outlier position in the eyes of the Department of Justice to the position of compliance with the other states.

**Greg Cox:**

We have also been contacted by the Offices of the United States Attorneys at the Department of Justice. They made it very clear to us that our refusal to comply with federal law and the mandates laid out in August 2012 will allow them to come look at our operations regarding any rape allegations in our Department. I believe it and we take that information very seriously, but at the end of the day it is the right thing to do, to come into compliance with the audit. We have been very successful in doing it.

We have eight facilities that have been approved and have passed the audit. I want you to have that information. There is a tremendous amount of litigation as this Committee well knows. There are a number of issues. Inmates in our state routinely have the right through the *Nevada Constitution* to file lawsuits and other things against the Department. We felt that coming into compliance with this was the right thing to do for our inmates to make it a safer and securer operation. This type of violence in our system is criminal. Staff who commit these acts and have sex with inmates commit a criminal act. As Ms. Del Porto has said, employees, contractors, and volunteers are specifically laid out in federal law and have authority over those inmates and their sentences. The Department of Justice and the U.S. Congress believe that the authority would now allow anyone to have consensual sex with that employee, contractor, or volunteer. In other words, they are being forced to have sex due to their being in a correctional or detention facility throughout our country.

**Assemblyman Elliot T. Anderson:**

Can we see the authority to which you are referring? Can you give us some background and what the federal government requires of you so we can have that context?

**Pam Del Porto:**

If you would like, I can provide the Assembly Committee with the easy-read version of the standards that were put out by the Department of Justice. I think it would be as important to provide a copy of the audit instrument which goes line by line through all the requirements for any department to meet the role of compliance.

**Assemblywoman Fiore:**

I would like clarification on A.B. 16. We are looking to make having sex with a prisoner a category D felony, and we are talking about consensual sex. I will give an example. Last session, we had an incident in the Clark County prison where a Clark County School District teacher was having consensual sex with an inmate. Would that teacher now be considered a criminal and have a category D felony against her?

**Pam Del Porto:**

With the Department of Corrections, school teachers are contractors. Depending on the prosecution's discretion and depending upon the circumstances, if there was evidence to support it, he or she could face that penalty. If I can clarify something, it is currently a category D felony for inmates to have sexual conduct with any person, even voluntarily. What we

seek to do is maintain that staff member's professional responsibility. He or she should be treated at the same level of penalty if there is evidence to support that he or she has abused an inmate.

**Assemblywoman Fiore:**

In that particular incident, is this bill going to say if they are Clark County School District teachers and unions get involved, this is not going to take effect? If they commit the crime, they commit the crime.

**Pam Del Porto:**

We have to keep in mind that there are administrative sanctions and then there are criminal sanctions. Obviously, criminal sanctions would apply across the board if there is evidence that it occurred.

**Assemblyman Thompson:**

I understand that we would include employees and volunteers, but I am trying to get around the contractors. Would not the contractors automatically have to comply with the federal law since we, as the state, would not necessarily be liable for a contractor since we do not pay for health benefits or retirement? It is just a contract, so the contractor would already have to be in compliance. I am trying to look at the level of responsibility of the state. Although the contractors do the work that the Department of Corrections needs to be done, from a liability standpoint, would he not be taken out of the mix?

**Pam Del Porto:**

I want to make sure I understand, and I will give you an example. Right now, the Nevada Division of Forestry (NDF) is a contractor to the DOC. They take control of our inmates who work under their supervision while in the field. There is an issue of control because, if NDF says that the inmate did A, B, C, or D, the inmate can face disciplinary sanctions. That is where the control comes into play. They would still face the possibility of administrative or criminal sanctions.

**Greg Cox:**

The thing is that the federal law does talk about contractors. Specifically, in other states, there are contracted services like health care providers or food service, so that is why it was included. Even in those instances, whatever private contractors the Department of Corrections may have, it is still liable to some degree for those people's behavior or their commission of an act. I do not think we can totally say that we would not have some liability. That is what the evidence shows in other states that have large operations by a contracted business entity or service provider.

**Pam Del Porto:**

Regarding contractors and volunteers, the Department of Corrections has incorporated a zero-tolerance policy and every contractor and volunteer coming into the Department has to acknowledge the zero-tolerance policy and the mandatory reporting requirements. Additionally, the amount of time the volunteer or contractor spends with the inmate population will determine if they have to take instruction on what PREA is and the PREA requirements.

**Assemblywoman Diaz:**

How rampant is this problem in our prison system, or has it been?

**Pam Del Porto:**

As part of the audit requirements, I have to generate reports that compare the statistics from year to year. We also, since 2010, have been submitting yearly reports to the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS). Comparing 2013 to 2012, in 2012 there were eight cases of staff-on-inmate sexual abuse that were substantiated. Of those eight, four were sent for prosecution review, and of those, two were prosecuted and two were not. In 2013, there were no substantiated cases of staff-on-inmate sexual abuse. In 2014, even though the numbers have not been officially released by BJS, there were none substantiated. What that shows is that the Department has made great strides in our education of staff.

**Assemblywoman Diaz:**

What does it mean, unsubstantiated? Were there some whistles blown or investigations? What does it mean for 2013 and 2014?

**Pam Del Porto:**

There are three categories that PREA recognizes. There is unfounded, which means there is clear evidence that supports that nothing happened. Unsubstantiated means that the Department could not prove or disprove that the act did or did not occur. There are cases where it is he said, she said and we cannot, through all of our data and criminal investigation, prove it. Substantiated means that the Department was able to show that the act of abuse did, in fact, occur.

**Assemblywoman Diaz:**

What is the means of obtaining evidence? If it is an inmate versus a worker, where do you get the proof to substantiate the claim? How is it equitable to both sides?

**Pam Del Porto:**

Many of these can be very long and drawn-out processes. We have the database of inmate phone calls that are important. We check the shift rosters. We check places of employment when it may involve an inmate from Casa Grande or Northern Nevada Restitution Center. We talk to other inmates and staff. We look at diagrams. We go to places that may be involved. It is a process of backtracking. Could this have happened, and if so, how or where? What do we do to support or refute, because that is our job as an investigator. We submit all of the information. It depends on the circumstances of the matter.

**Assemblyman Ohrenschall:**

You mentioned that in 2012 two cases were prosecuted. Do you know what they were prosecuted under because the statute is not law yet?

**Pam Del Porto:**

They were prosecuted under the consensual sex act. At that time frame, that was all we had. To the prosecutor, it did not reach the realm of rape.

**Assemblyman Ohrenschall:**

Is that a felony charge?

**Pam Del Porto:**

Yes.

**Assemblyman Ohrenschall:**

I know different states do things differently, but in the states that do not allow different genders to work in the prisons, are there fewer incidents of this?

**Greg Cox:**

Most departments allow men and women to work in either facility, whether it is an all-male facility or all-female population. In fact, that was one of the things that we worked through with this Act: looking at different things we could do to provide an appropriate level when it came to showering and such. As an example, I once was warden at a co-ed facility that had over 1,000 females and 800 men. We had a combination of male and female employees. This law puts forth measures and things in our operation to not only comply with the law but also comply with the labor law. We have a large number of female employees in our Department working in male facilities. We have male employees working in female facilities. That works well for all of us. The jail also has that, including detention centers, et cetera. There are opportunities for advancement, so it is not uncommon to have female supervisors as sergeants and lieutenants. They do a good job. Part of us working through this has been identifying that

it is a reality for us and a reality in our labor law. We have very, very good female employees working in male institutions and good male employees working in female institutions, and it works well for us.

**Assemblyman O'Neill:**

Do you conduct criminal investigations on these allegations rather than civil ones under NRS Chapter 289?

**Pam Del Porto:**

We do both. We always start with a criminal investigation so that there is no crossing the line of Miranda warning, which are the rights afforded a person under criminal investigation, versus Garrity warning, which are the rights afforded to the employer and employee relationship.

The other part that we would seek to add to Nevada authority under NRS Chapter 212 is the specific definition of a contractor, employee, and volunteer, and to add the definitions of violations of PREA. Under the Video Voyeurism Prevention Act of 2004, there is specific language that protects staff who are engaged in those necessary acts during the course and scope of their official duties. That is very important because staff do have to conduct strip searches, pat searches, and maintain health, welfare, and safety. We want to be sure to add the part regarding the course and scope of their job and that it is not a violation of the law. We believe that passage of this law is important to maintain the best practices that the Department seeks to provide under the Prison Rape Elimination Act. We also want to be part of the program and not be an outlier.

**Assemblyman Gardner:**

Section 6, subsection 3, paragraph (b) of the bill talks about the protection for the employees. It says as long as it is according to their necessary duties. Who determines what those necessary duties are?

**Pam Del Porto:**

We have essential functions assigned to each of the staff members in each position. For example, part of the job of custody staff members is the health and welfare of the inmates, so they do random checks where they walk around the unit and make sure there are no fights. They look in cell windows and make sure they are not covered, et cetera. It is going to depend on the actual position.

**Assemblyman Gardner:**

If a contractor, employee, or volunteer works at one prison but engages in sexual conduct with someone at a different prison, would they be chargeable



under this act? If they are, what if that person had a prior sexual relationship with this other prisoner with conjugal visits?

**Pam Del Porto:**

For the record, there are no conjugal visits or consensual sex for an inmate. The Department has a single database, which is called Incident Reporting, for every unusual occurrence that happens in the Department of Corrections. Obviously, that would include allegations or reports of sexual abuse. We can search it by name of the inmate, name of the staff member, name of the contractor, date, location, and so forth. If someone gets in trouble at High Desert State Prison, he can be automatically banned from entrance to any of the prisons. Whether we seek criminal prosecution or just administrative actions depends on the outcome of the investigation. That is true whether it is staff, contractor, or volunteer. Additionally, before any staff member is employed or before any person is promoted, we do a criminal background check. There are also questions posed to the applicant about whether they have engaged in any of the acts associated with PREA. If so, we will not hire them. For employees, they must take the block of instruction on what exactly PREA is, the zero-tolerance policy, and mandatory reporting before they are around the inmate population.

**Assemblyman O'Neill:**

This is addressed to legal staff. I want to ensure that this statute would also include our county and city jails.

**Brad Wilkinson, Committee Counsel:**

It does, in fact, include those. The definition of prison and prisoner in the bill and in existing law, as set forth in NRS Chapter 208, applies to all of Title 16. It covers local facilities also. There is a reference to contractors in the bill in section 3 that makes it clear that these are contractors who entered into agreements with the sheriff or chief of police.

**Assemblyman Elliot T. Anderson:**

I am looking at what you are defining as sexual abuse. Obviously, a lot of those are very serious types of acts. Does it not take away from the definition to say that a kiss on the cheek could be sexual abuse and then make someone a felon? Is there not a way to parse that out a little? I do not think it has a place in a prison either, but it seems like overkill.

**Pam Del Porto:**

The Department took this language and definition straight from the Department of Justice under the PREA act.

**Assemblyman Elliot T. Anderson:**

I understand that, but if we are going to use the resources of the state and define what is going to be a felony and a category D felony, that is very serious. We are saying that you are a felon because you kissed someone.

**Pam Del Porto:**

Obviously, there is some discretion in that, if a husband visits a wife, the Department has the authorization to allow for a brief kiss. However, it is not appropriate for a contractor, volunteer, or staff member to kiss an inmate, however briefly, on the cheek or any other location.

**Assemblyman Elliot T. Anderson:**

For the record, I agree with that, but it may also not be appropriate to charge them with a felony for that.

**Greg Cox:**

I would like to speak on that. Of course, there is prosecutorial discretion based on the facts and the evidence in the case. The Department can only provide the facts and the evidence that we have. Ultimately the decision is made by the legal authority—whether it is the Office of the Attorney General or the district attorney's office—whether they want to prosecute under the law. That is something that the Department cannot do.

**Assemblywoman Fiore:**

Something that we can do as legislators and lawmakers is to make sure that the language is crystal clear. It is unfortunate that we cannot leave it up to others to determine how to interpret the law. If the law interprets that a kiss is a felony, then a kiss is a felony. Too many times we have too many people incarcerated and the punishment does not fit the crime. That is what Assemblyman Anderson is speaking of. Until we get the federal language that is going to agree with the state language, I am personally not a fan of just taking federal language for the sake of taking federal language. If it does not work for Nevada, then it is not going to work for Nevada.

**Assemblywoman Diaz:**

How much of A.B. 16 is PREA and how much have we tweaked it to fit the state? Is there anything in here that is not directly out of PREA? Did we modify anything or make it unique in order to fit our needs?

**Brad Wilkinson:**

The language in the bill is very similar to the *Code of Federal Regulations*. We changed a word here and there to make it match our style, but it very closely tracks the federal law.

**Pam Del Porto:**

That is the basics of what I wanted to discuss. I hope that we can get into the best practice of what is intended by the federal law, but, additionally, we do not want to see the abuse of inmates by staff. We want to make it clear that they are held to a higher standard.

**Greg Cox:**

I would like to thank Pam and our staff for moving forward with this. I know there are many questions, and I appreciate the Committee's legal counsel for stating that the basic concepts in the language are based on federal law. I know there are members who look at this from the viewpoint of what is good for our state. We believe that this law is good for our state and for operations. I was tasked with bringing this forward, as many directors across the country were. I think that we have done a good job. Please, Assemblywoman Fiore, look at the standards that we have and the audit instrument and see what you think. We are willing to look at the bill's language, but it is based on the federal law. That is how we get audited and that is the process as overseen by the Department of Justice and Offices of the United States Attorneys. The rest of the states in the country have the same limitations. We can provide you with statutes from different states if you would like to see what they have included in their statutes. We want to help with this process.

**Chairman Hansen:**

We will open the hearing to all those who are in support of A.B. 16 who would like to publicly testify.

**Chuck Callaway, Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**

We are here today in support of A.B. 16. The Clark County Detention Center is a PREA-compliant facility through our accreditation process. The safety and well-being of our inmates is a priority to us. We take any information of sexual abuse within our facility very seriously. We are in support of the bill.

**Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:**

We are also in support of A.B. 16. We support all of PREA and the clear lines that it draws out for the protection of inmates throughout the state, and specifically those in the care and custody of the Washoe County Detention Facility.

**Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:**

We mirror the comments made by my counterparts here. The rurals follow PREA and we totally support it.

**Elizabeth Hickman, Senior Deputy Attorney General, Office of the Attorney General:**

I am here to express that the Office of the Attorney General supports A.B. 16. It is important to stay in compliance with PREA through the adoption of the Department's best practices.

**Adrina Ramos-King, Government Affairs Officer, City of Las Vegas:**

We are here in support of A.B. 16. The City of Las Vegas would also like to echo the comments of the NDOC and Assemblyman O'Neill as they pertain to the inclusion of the word "jail." We want to communicate the direct affect it would have for the same unlawful activity in our detention facilities. As such, to the Committee's satisfaction that jails are considered local facilities, we support the bill.

**Chairman Hansen:**

Is there anyone else who would like to testify in favor of A.B. 16? [There was no one.] Is there anyone in opposition to A.B. 16?

**Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:**

I prepared a document ([Exhibit G](#)) and before I start, I would like the Committee to know that I had a very productive conversation yesterday with Director Cox and Inspector General Del Porto about some of our concerns with this bill. I do not think we were able to reach any compromise, but I do appreciate their time and willingness to listen to our concerns.

What the Committee has in front of it is essentially some points from Mr. Sullivan at the Washoe County Public Defender's Office and me. I appreciate the Department's need to comply with PREA. I also appreciate not wanting Nevada to be an outlier. However, I think this bill, and some of the language in it, goes too far, even if it tracks the federal language. As you will note on the sheet, there are some philosophical objections to the bill as a whole as it treats consensual and nonconsensual conduct the same way. In fact, when you look at the bill and the way it defines sexual abuse, it is contradictory to the idea that you could have consensual contact such as kissing. To characterize that as sexual abuse is certainly a bit of an overreach. In addition, the bill attempts to criminalize the attempt to do an act in the same way as a completed act. That goes contrary to how our judicial system usually looks at attempts. Usually, attempts are considered a lesser offense than the

actual completion of an act. This bill does not make that distinction. Everything is a category D felony.

Finally, point number 3, there does not seem to be any sanction for lack of compliance with the actual language in the federal PREA bill. I think there was some grant money available, but I believe that ran out in 2010. I do not necessarily disagree that this complies with the federal PREA language, but under federal PREA, consensual acts are treated as misdemeanors and not as felonies. This bill does depart from the federal language in the sense that everything is a category D felony, and that is not the case under federal PREA. Under federal PREA, typically, nonconsensual acts are treated as felonies and consensual acts are treated as misdemeanors, punishable by six months or a year in jail. That, in terms of our sentencing structure, is a departure from the way federal PREA works. That is not easy to find in the federal law because you have to jump around here and there, but that is the way it is treated under the federal law.

There is a possibility that conviction under this statute could lead to sex offender registration. It does not currently because those laws are not being enforced or have been enjoined, but if the federal Adam Walsh language is again brought on board, any act that is described in here would require sex offender registration and potential lifetime supervision. When we are looking at the specific language of this bill, for instance section 6, subsection 3, paragraph (a), subparagraph (3)—which is what was referenced by the Committee—kissing or even an attempted kiss would now potentially be a category D felony requiring sex offender registration and possible lifetime supervision. That is a hard pill to swallow. We are not opposed to some of the language in this bill, and would not necessarily be opposed to the language that we find objectionable if the penalties were concurrent with what the conduct actually is. The way the bill is currently written the Clark County and Washoe County Public Defender's Offices would have a problem with the sections that are listed in the handout for not being appropriate for category D sex offender registration.

**Chairman Hansen:**

Earlier testimony suggested that you cannot have any sexual conduct with an inmate, period. That would make any sexual act whatsoever a crime. Is that your understanding as well?

**Steve Yeager:**

If we assume for a second that this bill does not pass, right now any sexual conduct between inmates is a category D felony. That is sexual conduct and not sexual abuse, so that is the current law. I do not believe the existing law

would necessarily allow prosecution for some of these acts in A.B. 16 if we are talking about a contractor, volunteer, or employee. Of course, some of these will always be prosecuted. If we are thinking about a forcible rape, it does not matter who commits it; you are looking at a felony prosecution. Some of these more minor things I do not believe could currently be prosecuted as category D felonies.

To get to your broader question, I see this as a policy decision for this Committee. You could say as a blanket proposition that no inmate in NDOC is able to consent to any sexual act with a volunteer, contractor, or employee. That is a policy decision to make. I personally do not think that is the case; I think there probably are individuals who are capable of consenting. In order to look at this law, we essentially have to imagine that you cannot consent. That is not to say that there are situations where you really do not have any choice. I am not here to say that. There are situations where people are coerced, but to make a blanket statement that no prisoner could consent to any of the acts listed in this bill just goes too far.

**Chairman Hansen:**

In my mind, if you are in a position of authority dealing with an inmate, that seems to be where that boundary crosses. Inmate to inmate is different from someone who is in there and has some level of authority over the inmate.

Have you offered any substitute language and tried to work out any kind of an arrangement with the proponents of the bill?

**Steve Yeager:**

We did have a conversation yesterday. It was late in the day so we did not get down to the brass tacks of language, but I would be happy to offer some additional language. Currently, as the bill is crafted, we would oppose that language entirely. If there was a way we could take some of the acts described and reduce the penalty, this would potentially be a bill we could live with.

**Chairman Hansen:**

I would encourage that.

**Assemblyman O'Neill:**

You made the statement that the authority and control that a contractor, volunteer, or employee has over an inmate makes it so the inmate cannot give consent. That is the assumption of the law.

**Assemblyman Nelson:**

As I read this language, section 6, subsection 3, paragraph (a), subparagraph (3) says, "Contact between the mouth and any part of the body committed with the intent to arouse the prisoner or to arouse, appeal to or gratify . . . ." Not to get into the ridiculous, but you never really know how someone is going to interpret a statute, particularly a jury. I think you could read this so that kissing someone on the hand could possibly violate the law. Is that the way you read it?

**Steve Yeager:**

I do read it that way. I think we could say prosecutorial discretion in that case would never be brought, but the question that I always have when we rely on that kind of a statement is, if we can tighten up this language to make sure it is very clear in the legislator's mind what is intended to be a category D felony and what is not, we ought to try to make that language as tight as possible. If this committee is not comfortable with the idea that such a prosecution could be brought, then I think the language needs to be clarified to make that abundantly clear that that is not a category D felony. As it is written now, I think it would be under certain circumstances.

**Assemblyman Nelson:**

I think the testimony has been that, under the federal law, a consensual act is a misdemeanor and not a felony. Are there any other significant departures between the federal law and the proposed state law?

**Steve Yeager:**

I would not say there are any other significant departures. There are some language differences, particularly in section 6, subsection 3, paragraph (a), subparagraph (8) where it talks about the invasion of privacy. That is worded a bit different from the federal law. The federal law calls it "voyeurism." It breaks it down a little differently, but the language does track fairly similarly. I think where we see the departure is in the penalties.

**Assemblyman O'Neill:**

Are you saying that in PREA it has a statute saying that an inmate can have consensual sex with an employee, contractor, or volunteer? Are you saying they can give consent, because I thought PREA said they cannot give consent? Is it an assumption because of the position that consent cannot be given?

**Steve Yeager:**

I think you are correct that federal PREA does come in with the assumption that there is a relationship of power that negates consent. But it is in a separate statute or separate federal code that talks about the penalties. It does make

a distinction between consensual and nonconsensual. In one context we are saying that consent is not possible, but when we look at what penalty is appropriate, they ask whether there was consent. How they make that determination, I do not know.

**Assemblyman Gardner:**

Even if we do not pass this bill and it does not exist, if someone does any of these actions they would be prosecuted under federal law right now. What is the opposition to this bill since most of this language is already in federal law?

**Steve Yeager:**

I do not know the answer to that question. I am not sure whether they could bring a federal prosecution. I just do not know of any federal prosecutions for violation of PREA in the state context. Obviously, the federal system has its own prison system that is governed by federal law. I do not know if someone else in the room can answer that.

**Chairman Hansen:**

That raises an interesting point. If we fail to comply with PREA, will the Department of Justice come in and start prosecuting the things that we fail to do under that act? That is a possibility that we should look into.

**Vanessa Spinazola, Legislative & Advocacy Director, American Civil Liberties Union of Nevada:**

We support PREA generally, and we think Director Cox and Inspector General Del Porto have done a fabulous job. As she mentioned, we passed our PREA audit already. We do believe that prisoners can consent to sex. I know the consensual sex act is not on the table today; what is on the table today is contractors, volunteers, and employees. We are concerned with the misdemeanor. We would like to work with Director Cox. We think we can still get to the heart of what PREA says by perhaps writing in an intent provision. I am talking about coercion or threats of violence to get to those sex acts. This might actually get us out of over investigating potentially dozens of cases where it really was consensual and we arrive at the same place. We arrive at the place where a prisoner engaged in a consensual act. We hope to work with Director Cox to write some of those intent requirements into this bill.

**Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:**

I echo the sentiments and comments of my colleagues here. I have been working with Mr. Yeager concerning objections and his proposed amendment to A.B. 16. To briefly dovetail on some of those points, we would again ask you not to treat the attempts, threats, or requests the same as the conduct. As you



know, under Nevada law, historically someone who attempts to commit a category D would be reduced to a category E, or someone attempting to commit a category E crime could very well be a gross misdemeanor under certain circumstances. I would ask you to take that into consideration.

I would be remiss if I did not mention my other colleague, Mr. Christopher Frey, from the Washoe County Public Defender's Office, when he made comments regarding Senate Bill 33 of the 77th Session. Not to keep belaboring the issue of consensual kissing, but that was his concern. I believe there may have been a concern from other Senators or Assemblymen about sex offender registry if someone was convicted under this scenario for consensual kissing, or any other innocuous behavior, being on lifetime supervision or lifetime sex offender registry.

We are in opposition to the bill, but I would be happy to work on crafting some language for this bill.

**Assemblywoman Fiore:**

When we look at our Nevada law and we look at constantly implementing federal law, why do we have Nevada legislators? I would caution us to be careful about mimicking law from Washington versus law from Nevada.

**Chairman Hansen:**

Is there any other testimony in opposition to A.B. 16 in Carson City or Las Vegas? [There was none.] Is there anyone in the neutral position? [There was no one.]

**Assemblyman Elliot T. Anderson:**

Can we ask our legal counsel to look into the federal ramifications of not passing this legislation so that we have that very clear?

**Chairman Hansen:**

That is a good idea, so we will do that. The Act was passed in 2003 and here we are in 2015, so we would have had any significant penalties by now. We should look into that. I will close the hearing on A.B. 16.

We are not going to have time to hear Assembly Bill 31. I apologize.

**Assembly Bill 31: Removes the requirement that certain administrative regulations of the Department of Corrections be adopted in accordance with the Nevada Administrative Procedure Act. (BDR 16-340)**

We will open up for public comments. Is there anyone who would like to have a moment for public comment in Carson City or Las Vegas? Seeing no one, I will close this meeting. We are adjourned [at 10:54 a.m.].

RESPECTFULLY SUBMITTED:

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Karyn Werner  
Committee Secretary

APPROVED BY:

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Assemblyman Ira Hansen, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** February 3, 2015

**Time of Meeting:** 8:00 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Diane Thornton	Excerpts of the Assembly Standing Rules
	D	Diane Thornton	Committee Brief of the Assembly Committee on Judiciary
	E	James G. Cox	Nevada Department of Corrections Overview
<u>A.B. 12</u>	F	Vanessa Spinazola	Letter of Support from Human Services Network
<u>A.B. 16</u>	G	Steve Yeager	Objections and Proposed Amendment