

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
February 13, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:01 p.m. on Friday, February 13, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Ruben J. Kihuen
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Scott Hammond (Excused)
Senator Tick Segerblom (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Connie Westadt, Committee Secretary

OTHERS PRESENT:

Jeff Fontaine, Executive Director, Nevada Association of Counties
Joni Eastley, Assistant County Manager, Nye County
Lisa Gianoli, Washoe County
Steve Walker, Storey County; Lyon County; Carson City; Douglas County;
Eureka County
Natalie Wood, Chief, Division of Parole and Probation, Department of Public
Safety

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Robin Hager, Administrative Services Officer, Division of Parole and Probation,
Department of Public Safety

Chair Brower:

Pursuant to Joint Standing Rule No. 14, the Committee has been allocated additional Committee bill draft requests (BDR). February 16 is the deadline to request the drafting of these additional measures. The State Bar of Nevada has requested three BDRs: namely, the Business Law Section, the Probate and Trust Law Section and Real Property Law Section.

SENATOR KIHUEN MOVED TO INITIATE THREE BILL DRAFT REQUESTS.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

We will now open the hearing on Senate Bill (S.B.) 16.

SENATE BILL 16: Revises provisions governing presentence and general investigations and reports made by the Division of Parole and Probation of the Department of Public Safety. (BDR 14-469)

Jeff Fontaine (Executive Director, Nevada Association of Counties):

Senate Bill 16 reduces the percentage of the cost that the counties must pay to the State for presentence investigation reports (PSI) prepared by the Division of Parole and Probation of the Department of Public Safety from 70 percent to 30 percent. Prior to 2012, the State paid the entire cost of PSIs; however, in 2011, the Governor's Executive Budget shifted the entire cost for PSIs to the counties. This was one of a number of cost shifts to the counties during the 76th Session to help the State balance its budget during the economic downturn.

As a result of negotiations with the State, particularly with Parole and Probation, the assessment was ultimately reduced to 70 percent. It does not appear that the reduction was based on the benefit or the use of PSIs by the

counties but rather on Parole and Probation's analysis or position that the State can produce 70 percent of a PSI through established means available to the State while the counties only produce 30 percent of a PSI. In other words, the justification for the 70 percent county assessment was based on the faulty premise that the counties receive 100 percent of the benefit of a PSI but can only provide 30 percent of the required information. This 70 percent assessment was continued in the 2013 Session and is again included in the Governor's Executive Budget for the 2015-2017 biennium.

The PSI cost assessment burden for our counties is not equitable based on the benefit that the State receives from the PSI relative to the counties. Unlike other cost assessments in which the counties have the option to perform the service in lieu of paying, the counties have no option but to pay the State for this service over which they have no control.

The specific information required to be in a PSI is set forth in *Nevada Revised Statute* (NRS) 176.145: for example, prior criminal record, financial condition and a recommendation of both the minimum and maximum term of imprisonment. The PSI is generally used one time by the district court judge in sentencing, whereas it appears that the State's use can be reoccurring. In fact, the sentenced defendant becomes the responsibility of the State. Parole and Probation provides the following information about PSIs:

The Presentence Investigation Report is more than a powerful tool for judges at sentencing. It serves many important and useful purposes.

- It is used by the Division officer when the offender is released to either probation or parole.
- It is used by the Nevada Department of Corrections for inmate classification and designation.
- It is used by the Parole Commission in evaluating the granting of parole for inmates.
- It is used to locate fugitive or absconders, and in the investigation of a new crime.
- It is used by correctional treatment agencies in the rehabilitation of offenders.
- It is used by other states if the offender is approved for transfer under the Interstate Compact for Adult Offender Supervision.

Senate Bill 16 is about relieving some of the cost burden on our counties, many of which are still struggling, and equitably sharing the costs for PSIs within the State. Clark County is not here today. Officials asked me to convey their support for S.B. 16.

Chair Brower:

Is a PSI's cost derived from a Parole and Probation employee's time preparing it?

Mr. Fontaine:

That is my understanding. The counties do have information that is included in the PSI. I do not know if county staffs participate in preparing the PSI.

Chair Brower:

I am trying to understand what the term "expense" means. The county does not purchase anything in conjunction with the preparation of the PSI. How would the expense be divided up? Do the Parole and Probation employees keep track of their time and have an hourly rate?

Mr. Fontaine:

I cannot tell you how they account for the costs. When this was first proposed in 2011, the recommendation was to put the entire cost of the PSI onto the counties. We asked many of the same questions you are asking today. We were provided some information about how many employees this would fund, but beyond that, we are left with questions.

Chair Brower:

The pre-2011 system included the State picking up the entire cost. That makes sense to me because State employees do the work. The State pays their salaries. The State picks up the cost. The proposal in 2011 from the administration was to shift 100 percent of the cost to the counties. That did not work. The compromise was the counties picked up 70 percent of the cost. That is the state of the law. How does that work in practice? How is the 70 percent-to-30 percent share divided?

Mr. Fontaine:

In this biennium, the amount the 17 counties are required to contribute is a little over \$7 million.

Chair Brower:

Let us break it down. A defendant pleads guilty or is convicted of a crime. A PSI is prepared. How is the cost of that PSI divided between the State and the county? How are the total costs calculated before the division?

Mr. Fontaine:

Prior to the beginning of the fiscal year, Parole and Probation sends a notice of a billing amount to each county. The amount is based on a projection of how many PSIs—the actual numbers from the prior year—are performed for each county. Then the county is billed the percentage that county contributes to the total number of PSIs. At the end of the fiscal year, the State recalculates based on actual numbers. If a county was projected to have five PSIs prepared and it had four, it gets a refund. If it had six, it has to pay more.

Chair Brower:

If a PSI costs \$1,000, by statute the county would pay \$700; the State would pay \$300. I am struggling with how the \$1,000 derived.

Mr. Fontaine:

I do not have an answer to that question.

Joni Eastley (Assistant County Manager, Nye County):

I am currently the Assistant County Manager for Nye County. I was formerly a Nye County Commissioner for 12 years. Nye County is in favor of the passage of S.B. 16, which would reduce the percentage of the expense paid by counties for PSIs. Nye County has the highest reimbursement of any of Nevada's rural counties—approximately \$204,000 this biennium. Nye County was identified in a January *USA Today* article as the poorest county in Nevada.

I want to tell you a little bit about Nye County in order to bring into focus why \$200,000 is so important. At more than 18,000 square miles in size, Nye County is the largest county in Nevada. It is the third-largest county in the United States. Ninety-eight percent of the land in Nye County is owned, controlled or managed by the federal government. Nye County's assessed valuation has declined nearly \$590 million since 2009. The opportunities to generate revenues from other sources are either insignificant or not available. The property tax rate is capped. Because sales tax is economically driven, our Consolidated Tax Distribution revenues have remained flat since 2011. Nye County had a \$1 billion solar project locate near the County seat of

Tonopah that has not produced the local or County revenues hoped for because of the heavy tax abatements that the company sought and received.

Our citizens live in ten communities of varying sizes spread over 18,000 square miles with the majority in the extreme southern portion of the County in Pahrump. Service delivery over an area this size is extremely difficult. In the face of declining revenues, it has become next to impossible. We have reduced our head count by 20 percent through attrition and targeted buyouts. That helped somewhat. Then we were hit with several unfunded State mandates that obliterated the meager gains the County was able to make, and that made the hole bigger. Nye County's unemployment rate in January exceeded 10 percent. Nearly 19 percent of our citizens live at or below poverty level. The National Association of Counties *County Economic Tracker 2014* produced consistent zeros for Nye County: zero jobs recovered, zero unemployment rate recovery, zero gross domestic product recovered and zero home prices recovered.

Nye County's economic future remains bleak. At the bottom of the economic downturn, the number of homes that were empty in Nye County, predominantly in Pahrump where the majority of our population lives, exceeded 4,000. As Nye County continues its desperate search for dollars to plug a \$2.5 million budget shortfall, we encourage you to provide us with the small bit of relief that passage of this bill will afford.

Lisa Gianoli (Washoe County):

The cost to Washoe County for PSIs is \$1.33 million for the biennium. The cost increased from zero to 70 percent in one session. The spreadsheet Washoe County received from the State shows that the State used the average number of PSIs for calendar year 2011 and 2012 and allocated that number and the costs by county. The total number of PSIs for the State was 10,033. Washoe County had 1,883 PSIs.

Chair Brower:

What is the average cost of a PSI?

Ms. Gianoli:

That is not delineated.

Chair Brower:

Do you know how the cost of a PSI is determined?

Ms. Gianoli:

No. I assume it is based on employee salary and benefits. If I divide \$7.087 million by 10,033 statewide PSIs, I can back into a charge per PSI.

Steve Walker (Storey County; Lyon County; Carson City; Douglas County; Eureka County):

We support S.B. 16.

Natalie Wood (Chief, Division of Parole and Probation, Department of Public Safety):

I can certainly appreciate the burden of these costs on the counties; however, Parole and Probation is statutorily required to prepare PSIs for the courts. The primary purpose of the PSI is to provide sentencing recommendations for the court, the district attorneys and the public defenders. It is true that Parole and Probation utilizes the PSI at a later point in case management because we have it. The Parole Board uses a PSI to grant parole and the Department of Corrections uses it for classification. The majority of the information in a PSI can be pulled from an offender information tracking system.

In fiscal year (FY) 2015, Parole and Probation produced on average 871 PSIs monthly for the entire State with the majority being for Clark County. If we were to flip-flop the 70 percent-to-30 percent split so that the State takes on the 70 percent burden, the impact on the State is \$4.8 million.

Chair Brower:

For the biennium, would it cost the State \$4.8 million if we pass this bill?

Ms. Wood:

Yes. Parole and Probation provided a fiscal note. We can provide justification for the current 70 percent-to-30 percent split.

Chair Brower:

How is the cost of a PSI determined by Parole and Probation?

Ms. Wood:

It is difficult to put a dollar amount on a PSI because it can take several days, if not a week, to prepare a PSI depending on the length of the individual's criminal history and the nature of the offense. A particularly egregious offense with multiple victims and multiple offenders can be extensive.

Robin Hager (Administrative Services Officer, Division of Parole and Probation, Department of Public Safety):

For the upcoming biennium, I build the budget. I take FY 2014 actual percentages of PSIs by county and personnel expenditures, i.e., salaries and benefits, State-driven personnel assessments. I apply those percentages by county to the total salary costs. That determines the cost of the PSIs. After the budget is approved, the counties get a bill every month. The bill is the same every month. At the end of June when the fiscal year is over, I obtain from our tracking system the actual number of PSIs requested by county. I then recalculate the counties' bills. Except for FY 2014, the counties have gotten refunds because of things such as vacancies, furloughs and no merit increases. Last year was a little different because of 21 temporary positions approved by the Interim Finance Committee to catch up with a backlog in PSIs.

Chair Brower:

Do Parole and Probation employees keep track of their time by PSI?

Ms. Hager:

We do not keep track of time because our employees only do PSIs. There is no reason to track by hour.

Chair Brower:

Is it a percentage of their existence?

Ms. Hager:

It is 100 percent of their existence. All they do is write PSIs.

Chair Brower:

I understand now how you do it; however, we are talking about a State case, albeit tried in a county courthouse. Why would the county pay for a State-prepared PSI for a State prosecution?

Ms. Wood:

The sole purpose of the PSI is to serve county court judges and attorneys in that particular sentencing. Parole and Probation could pull that data from its own internal resources to assist with case management. The PSI provides county judges and attorneys with a global overview of the defendant—historical and criminal justice information. It provides judges a recommendation to accept or deny as part of that defendant's sentencing.

Chair Brower:

The judicial system is the State's system, albeit divided up by districts roughly by county with some exceptions. The cases are called State v. Smith. The ultimate result for many cases is incarceration in the Department of Corrections system. Granted the prosecutor is the county district attorney (DA), although it is the State that authorizes the existence of the county DA and gives the DA jurisdiction. I have always viewed the system as more of a State system with some county aspects—such as the county courthouse. It seems to be a State process and Parole and Probation's role in the process makes sense. I do not understand why the State should not pick up the tab for that process.

Ms. Wood:

That is an excellent question. We are being asked to provide a service-level demand to the counties in order for them to carry out their duties.

Chair Brower:

Your point is that Parole and Probation is providing a service to the county's prosecution. On the other hand, I always viewed it as the State's prosecution, albeit divided up county DA by county DA.

Senator Ford:

Are you authorized to come down at all on the 70 percent-to-30 percent split? Is a 50 percent-to-50 percent split something the State could go for?

Ms. Wood:

I am not in a position to negotiate any type of split. The 70 percent-to-30 percent split is appropriate and fiscally responsible.

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Chair Brower

The hearing on S.B. 16 is closed. We are adjourned at 1:34 p.m.

RESPECTFULLY SUBMITTED:

Connie Westadt,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

Date: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	2		Attendance Roster