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

Seventy-Ninth Session
February 14, 2017

The Committee on Corrections, Parole, and Probation was called to order by Chairman James Ohrenschall at 8:01 a.m. on Tuesday, February 14, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Steve Yeager, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Connie S. Bisbee, Chairman, State Board of Parole Commissioners
David M. Smith, Parole Hearings Examiner II, State Board of Parole Commissioners
Julie Butler, Administrator, General Services Division, Department of Public Safety
Mindy McKay, Records Bureau Chief, General Services Division, Department of Public Safety
Julie Ornellas, Special Services Manager, General Services Division, Department of Public Safety
Joshua J. Hicks, representing the Consumer Data Industry Association
K. Neena Laxalt, representing the Board of Massage Therapists
Colleen Platt, representing the Board of Massage Therapists
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Tonja Brown, Private Citizen, Carson City, Nevada

Chairman Ohrenschall:
[Roll was taken. Committee protocol and rules were explained.] We will start off with a presentation on the Board of Parole Commissioners by Connie Bisbee and David Smith.

Connie S. Bisbee, Chairman, State Board of Parole Commissioners:
Mr. Smith and I were talking this morning and realized that between the two of us, we have 52 years of parole, probation, and corrections experience. He did, however, ask that I point out that only 21 of them were his. I would like to think that I know everything about those three areas, but I can tell you that Mr. Smith does know everything about those three areas. He is a wonderful historian for the correctional system in Nevada. I hope you will take advantage of that throughout the session if you have questions. Feel free to contact us.

As you will see on slide 2 (Exhibit C), the State Board of Parole Commissioners is made up of six members and one chairman. We are all appointed by the Governor. I am the current Chairman and have been since 2009. In the south, we have Commissioners Keeler, Gray, and Monterde. In the north, we have Commissioners Jackson, Endel, and Corda. Education-wise, the Board averages a master's degree. Commissioner Endel is minus his dissertation from a doctorate. I did not add the number of years of experience in each of the specialties that they represent because it is well over a hundred years, even though not one of them is over 21.

Slide 3 asks, What is parole? Parole is the conditional release from prison. The court determines the initial parole release. However, the minimum sentence can be reduced by credits in the state of Nevada. That is typically what we refer to as "A.B. 510 credits." Parole is an act of grace. There is no right to parole. That has been determined by the Nevada State Legislature.

The Parole Board is an independent body [slide 4 (Exhibit C)]. If you look at organizational structures, you will see that we are organized under the Department of Public Safety, but if you look at their actual organizational chart, you will see all of these boxes and lines. Way out in the corner, you will see a yellow box that says "Parole Board," but it is not connected to anything. What that tells you is that we are an independent body, and we are actually established under the Governor in terms of who sits on the Board. We serve four-year terms. Because we are a very small agency with only 26 people in three offices in Nevada, we are absolutely dependent on the Department of Public Safety and their fine work of providing administrative services for us. I always like to be sure to mention that we do appreciate Director James Wright and his folks for the help they provide us.

The Parole Board is responsible for helping plan an inmate's safe release into the community. That does not mean that we approve the release plans. I want to make a slight correction to what you were told yesterday. The Parole Board neither denies nor approves parole plans. We make parole decisions, and favorable decisions are passed on to the Division of Parole and Probation. They investigate and determine whether a release plan is a safe one or if an additional plan needs to be made. The only time the Board will even make a comment about a parole plan is if—and this really does happen—we have an inmate before us whom we are going to grant parole, but his offense is a domestic battery with strangulation and the plan is to return him to the same person who is the victim. In that case, at the hearing we will say this is not going to work and that the Board will never approve his living with the victim while on parole. That is one of the only times the Parole Board would have any decision about plans. The other exception would be if we felt the offender would do better in another state. That would go through the Federal Interstate Compact for the Supervision of Parolees and Probationers. We return offenders to prison when what we thought would be a safe release is no longer safe. We do that through parole violations.

I will give you another bit of correction. It was not intentional, but you may have come away from yesterday's presentation believing that 40 percent of the prison population are parole and probation violators. The actual number of parole violators that are currently in prison is 7.41 percent of the population. Department of Corrections Director James Dzurenda was wonderful when I stated that I was worried that people may have gotten the wrong impression. He had his people dig down to the weeds for me and presented this to me this morning. Parole violators, new and technical, are 7.41 percent. We are very dependent on the Department of Corrections (NDOC) and the Division of Parole and Probation. We do not maintain our own databases; we are provided information from those two agencies. One of the things that the chief of Parole and Probation asked that I mention is that the parole success rate in Nevada is between 78 and 79 percent. It is 7.41 percent of the prison

population that are parole violators, but 78 to 79 percent of all the people we put out on parole successfully complete that parole.

Regarding parole supervision [slide 5 (Exhibit C)], once we make a decision to parole someone, they are sent to the Division of Parole and Probation, which is responsible for the control and supervision of those offenders. They do that by monitoring the parolee's home, job, activities, associates, et cetera. Conditions of parole can include that there is drug testing and treatment, electronic monitoring, no contact with victims, or requirements to pay restitution. Those are the things that the Division of Parole and Probation enforce for us. The parolees are supervised by officers of the Division. The Parole Board does not have parole officers under it. We are only 26 people in total, and our total job is to release them, to bring them back to prison, and to make decisions on conditions.

The parole and judicial systems are the legal framework that empowers judges, prison officials, and parole boards [slide 6]. That is what gives us our marching orders and tells us how we are supposed to do what we are supposed to do under our authorities. The whole reason for the Parole Board to be part of that system is so there is some flexibility in our system. It is not black and white; it is not that an inmate is going to do 20 years for this, and at the end of the 20 years, he will go out and everything will be done. It may be that he is going to do 2 to 20 years, and the Parole Board is going to have an independent body decide if 2 years is enough or if 4 years is enough, and if the Parole Board can release him safely prior to the 20-year end of sentence.

There are multiple types of parole hearings [slide 7]: discretionary, mandatory, parole violation, lifetime supervision, and reconsideration hearings. A discretionary parole hearing is exactly that: It is at the discretion of the Board. When an inmate is eligible for parole, the Board will hold a hearing to determine if this is the time to send that inmate out on parole. The decision is up to the Board. It takes four commissioners to make a decision, either negative or positive. It is never one person deciding anyone's fate.

The mandatory parole hearings are hearings that are held if the inmate has not been granted a discretionary hearing. It is the last chance to get out of prison a little early. It is set by statute, and the only thing the Board is to consider when granting or denying a mandatory hearing is whether that person is a threat to community safety. There are a lot of things that will go into a discretionary hearing, but there is only that one thing, set by statute, for a mandatory hearing.

We conduct parole violation hearings that result in either a return to incarceration or a release back to the community to satisfy the original requirements of that parole.

We also conduct lifetime supervision hearings. You are going to hear about these during this session. Lifetime supervision is for sex offenders who have met the statutory requirements of their sentences, either through parole or probation, but have an additional tag of at least ten years of lifetime supervision. The Board, by statute, is required to set those conditions. We are not involved in any violations of that. It is up to the court.

We also do what is called reconsideration hearings. An example of that would be when you have someone who has been granted parole, but has not gotten out yet, and we are notified by the NDOC that he has just been found guilty of a major violation of prison rules. It could be very serious things like assault and battery or some other serious offense, or it could be those things that are not as serious. It is a major violation to have tobacco in prison, but the Board would not necessarily think that the inmate needs to lose his parole for tobacco. A reconsideration hearing would be where we would bring the offender back to the Board and look at what they have been charged with and whether that charge would lead us to believe that he is no longer a safe person to put out into the community early.

The Fiscal Year (FY) 2016 caseload between July 2015 and June 2016 was 7,720 final decisions that we made [slide 8 (Exhibit C)]. Each decision takes a minimum of four votes, which makes it over 30,000 votes, and each member was responsible for considering 3,900 cases. If you include the hearings that did not result in a final parole decision, we held approximately 9,354 hearings during FY 2016. If you look at the statute—which is odd because it was written many years ago—it requires the Board to meet at least twice annually. With 9,354 hearings, it takes more than twice annually. We are doing hearings or violations four days a week. We have four hearing rooms, and frequently are using all four hearing rooms at the same time. It would be interesting if we could do that in two days a year, but that is not happening any longer. If you look at the caseload for FY13 to FY18 [slide 9], it shows you the general caseload over the past few years, along with the projected cases.

We also do comparison cases by offenses; that is on the next chart [slide 10]. That shows you five fiscal years of parole consideration hearings by general offense type. One thing that I always like to tell people is that sex offenses in Nevada can run a huge gamut. It could be anything from a pandering charge to a prostitution charge and all the way up to the very serious charge of sexual assault—not that pandering is not serious. It covers a lot of different things, including engaging in prostitution while being HIV positive. There are a lot of different degrees of sex offenses, and I always like to point that out.

David M. Smith, Parole Hearings Examiner II, State Board of Parole Commissioners:
We included the first half of FY17 on this chart as well. Yesterday, if you noticed in the NDOC director's presentation, he talked about how the increase in intake has been occurring in the last 18 months or so. The Parole Board starts to see that increase once they become eligible, so there is a lag between the time they come in and when we see them. What we are seeing now in the first half of FY17 is an increased caseload because of the increase in the intake. You can see that if we continue with this trend, we will have over 7,000 hearings in FY17.

Connie Bisbee:
We are at the last slide. I also provided a couple of additional handouts that we have given to the public. One includes our most recent Quarterly Report of Actions (Exhibit D). We post everything on our website. All you have to do is Google the State Board of Parole Commissioners. You will find that we keep our statistics on the website for years. The report breaks it down to reasons for denying, reasons for granting, what numbers we had

of each type of crime, what percentages were granted, what percentages were denied, et cetera. We like to think we are extremely transparent. In fact, the only thing that is done privately at the Board is deliberations, and the law allows us to deliberate in private. It is not that anyone would have an objection to deliberating in public, but it takes four commissioners to make a decision, and we meet in panels of two or three. If I am having a parole hearing with you and I say I vote we grant parole, and the person next to me says his vote is to grant parole, and we tell that to the inmate, he is going to go away from there thinking he has parole. However, once the rest of the Board deliberates on it, the decision is to deny. We do not want to put the public, the victims, or the inmate in that position. They walk away from a hearing thinking one thing is going to happen and that is not what happens. The opposite could be true too. The panel could recommend that we deny parole, yet when the entire Board looks at it, the decision is to grant. Deliberation is the only thing that is done in private, and for a very good reason.

I have also provided the Nevada Parole Risk Assessment form (Exhibit E). That is also included on the website along with the instructions on how that is used. We do use a risk assessment. It is validated and gets revalidated. In fact, it is going through revalidation right now. It has been found to be very highly accurate for property offenses.

In addition to this risk assessment on sex offenders, by state law, we get a sex offender assessment of risk from the NDOC. We use the risk assessment with the offense severity to determine whether to recommend that we grant parole. I have provided a copy of the Discretionary Release Parole Guideline Worksheet (Exhibit F). Anything that we use is on the website along with instructions on how to use it. We welcome any questions about those and are always available to answer them. David is excellent in answering those questions.

There are a couple of other things that I want to clarify. We do not have a debtors' prison in Nevada or anything that resembles a debtors' prison. If someone comes to us with a violation, it could say that he has not paid restitution or his fines. We have never revoked a person based on a fiscal issue. We had a victim that was in dire straits because of the crime that had been committed against her. We received information from a third party that a parolee was sitting on a huge pile of money and was not paying any of the restitution. We had that person, with counsel, come in on what is called a "walk-in." He was not incarcerated, and we did not sign a warrant. We had a discussion with them, and the victim was given a $45,000 check at the end of the day. Although he was not reincarcerated for not paying, restitution is a very serious thing. We were aware that the money was there. In 17 years, I have never had someone revoked because he was not paying his fines or fees.

As another aside, when Justice Hardesty went into the whole credit issue, he mentioned that there are only two people in the state who understood credits. There is a third person and that is Mr. Smith. If you ever want someone to show you on a whiteboard how you can come to prison and actually expire before your minimum sentence because of the way credits run, talk to Mr. Smith. It has happened on multiple occasions.

We have a suggestion about boot camp if it comes up this session. I will ask you to look at the federal study on boot camps and why the feds no longer do them. There is no efficacy in it. In fact, they have found that sometimes there is a higher rate of reoffending after going to boot camp. Boot camp is not like in the military where you go through this horrendous—or sometimes interesting—period of time, and you go out and do your job or go to tech school. In boot camp versus prison, you get very intensive and strict things going on for a period of time, and then immediately go back to the same place, not to a different country or different job. There is a very good federal study that was done on that, and they no longer use boot camps.

Assemblyman Yeager:
My question is on the handout on the "Quarterly Report of Actions." Section 3 talks about when parole is denied in a manner that deviates from what is recommended. I noticed at the top we have 23 actions to deny out of 620, or 3.7 percent. Right above that where it describes what "deviation" means, it talks about not being considered a deviation until they are denied parole at the second parole hearing. Is there a way to break that out to know how many folks were denied at the first hearing? I understand that is not necessarily a deviation under the lexicon, but I think it would be helpful to know how many were denied the first time around when the recommendation was for parole. If inmates are denied the first time around, is there a standard for how long they will wait before they come before the Board for the second consideration?

David Smith:
It is unlikely that we would be able to pull those statistics. Our guideline does not differentiate between the first and second hearings. It is something that we would have to look at while we are actually conducting the hearing. JFA Associates, when they do the population forecast for the NDOC, will break down the numbers. JFA is the contractor through the Budget Division that does the prison population forecast. They are the current vendor. They prepare a report twice a year to assist in determining what the projection of the NDOC population will be. They include a section on parole actions, and it is broken down by first, second, third, fourth, or fifth hearing as to when they were granted. We cannot equate that to our guideline.

When we conduct a hearing, much of the information is received and disseminated electronically. When we identify a case that deviates from our guideline, we flag it, and it requires the chairman's vote on the case. If you look at the Discretionary Release Guideline Worksheet (Exhibit F) that was included in the handout, the chart at the top of it gives a grid related to our guideline. It will only become a deviation if we grant parole when the guideline says to deny, or when we deny parole when the guideline says to parole. Generally, for those three sections that say to parole at the first or second hearing, it would only be a deviation if we saw that it was the second hearing and we denied it at that point. We would not be able to determine how many of those were deviations.

Assemblyman Yeager:
That does help. In looking at the Discretionary Release Parole Guideline Worksheet, I noticed when someone has a risk level that is low, it says to parole at initial parole eligibility. Do you know if anyone has been denied at that stage? It seems different from the other two categories that say to parole at the first or second hearing.

David Smith:
There is a small number of those who are denied. If you look at section 2 [Exhibit D], you will see that 84 percent of those under "Parole at Initial" are granted. The "Parole at 1st or 2nd Hearing" group was granted at 58 percent. "Consider Factors" was granted at 41 percent, and "Deny Parole" was at 2 percent. The total in that section was 49 percent for this quarter. The risk assessment does not apply to the mandatory parole guideline, but we include statistics so we can review that as well. They get paroled at a bit higher grant rate. If you notice, on page 4 of the section titled "Mandatory Parole Actions by Guideline Recommendations," there were nine who were denied parole at initial, but they are not deviations because the guideline does not apply to mandatory parole. It is very likely that their criminal history is much more severe. They may have been charged with a drug crime, but they have a substantial criminal history of violence, so we have to look at the totality of this person and whether we think there is a risk based on this totality and not just the offense they are in prison for.

Connie Bisbee:
What Mr. Smith said about violence is the truth almost 100 percent of the time when you are denying parole at initial. The risk based on the current offense could be very low because it is a minor crime compared to the prison population, but the totality of the history could be huge. You could have someone with assaults, with robberies, with a huge felony history, and that is the reason for the decision to deviate on initial. The risk assessment is best for property crimes. It is not very good at making the assessment for violence, and we do not use it at all for sex offenses.

Assemblyman Yeager:
The second question I had was, when someone is denied at a first parole hearing, is there a standard length of time that they wait for a second hearing?

Connie Bisbee:
There is not. That is an individual decision. We do not deny for less than 12 months. That is based on the practicality. We hear three and four months in advance, and it would be very difficult to do that. The minimum denial period would be one year, and depending on the length of sentence and the crime, it can be as much as five years. The five years is pretty rare though.

Chairman Ohrenschall:
When there is a deviation either denying or granting, is there any explanation given for the deviation?

David Smith:
When the new parole module was actually put into the NDOC system in 2007, we incorporated a series of reasons for granting or denying that we could indicate on the order. Except in certain circumstances, we are not required to provide reasons for granting or denying parole, but we provide a reason in every case. In this way, an inmate understands what we were looking at and why he was denied. If you go further into the quarterly report, you can see the reasons that were selected for each type of action. There may be more reasons listed because there may be multiple reasons with an action, so it does not apply to just one particular case, but to many.

Chairman Ohrenschall:
Once inmates have been approved or denied, do they get to see either of the forms? Do they get to find out how they scored?

David Smith:
We provide a formal order indicating the cases that we considered action on, who voted and what the final votes were, reasons for grant or denial, any conditions if they are granted, and the guideline itself showing how we tabulated the risk assessment and how we applied the most severe offense that was considered to come up with the recommendation. We also include aggravating and mitigating factors that may have been considered by the Board.

Assemblyman Fumo:
I want to go back to slide 6, to "punishing offenders and protecting the public." What tools do you provide, or are provided, to people who are on parole or probation so they can become productive, successful members of society? Do you advise them upon denial of probation what they can do to improve their chances next time?

Connie Bisbee:
We only handle the parolees, so we do not come into the probation piece. You did not get the Department of Public Safety presentation yesterday that would have included Chief Wood, so I am going to defer part of that so she can let you know what it is that they are doing with inmates in order for them to be out there and be successful. I forgot what your second question was.

Assemblyman Fumo:
Upon denial of parole, do you give them any advice on what they can do to improve their chances when they come around the next time?

Connie Bisbee:
We do. That is part of the order on every denial. We give suggestions on how to make them a better candidate in the future. A lot of times it is to clean up their disciplinary actions. We want them to do programming that is specific to their situation; that could include empathy training. With our substance abusers, we would like to see them in substance abuse courses. For sex offenders, we would like to see them in the sex offender programming. I will reiterate that the lack of programming is not a flat-out reason for denial. We do not deny just because a person did not have programs available. Many times a specific program that would have been good for them was not available at their institution. It would make no sense whatsoever to say that they did not do any sex offender programming when we knew it was not available to them. What happens in those cases, when everything else is considered and we want to parole them, we parole them and make that treatment a condition of their parole while they are in the community. The Division of Parole and Probation takes over and sets them up with that treatment.

David Smith:
Also, sometimes people make really good inmates, but they do not make good citizens. We can make suggestions. They may not have any disciplinaries or not be associated with a gang. They may do everything we would want an inmate to do, but their conduct when they are not locked up has been shown to be so outrageous that they are not a safe risk to be released. In particular, there is a large number of sociopaths in prison, and when you are dealing with people who have those types of tendencies, you have to be careful because they can become very manipulative. They learn what to say and how to respond with what they think you want to hear. We do not want to release someone who has those tendencies because they will go out and revictimize. That is one of the things we have to do in evaluating these prisoners to make sure we are not releasing those people, because they will go out and hurt people again.

Assemblyman Fumo:
Based on that answer, if you have sociopaths in there, are they diagnosed by a doctor? Do you have letters saying that that person is a diagnosed sociopath, or how do you get that information?

David Smith:
The Department of Corrections has psychiatric staff, and they provide mental health reports to us. They also provide reviews of their behavior. A lot of times the presentence investigation will include information regarding evaluations that were done by the court, like whether they went to Lake's Crossing Center. We have a lot of information available to us. We do not release a lot of information since a lot of it is confidential. They are entitled to some privacy with respect to their medical or mental health diagnoses. Many times we may discuss some of those things during the hearing. All of our hearings are open to the public and are recorded. If there is ever a question about a case, you are welcome to ask about that, and we can get a copy to you. Those are areas where we have to be careful. There are some people we want to release who have severe mental health issues. These people may not be dangerous unless they are not being treated. As far as the system in Nevada goes, we are

working towards it and working closely with mental health, Parole and Probation, and the Department of Corrections. We want to have a safe handoff for people who need to have continuing treatment in the community.

Assemblyman Thompson:
I am sure you take this seriously because these are people's lives and families who are dealing with these situations. The presentation from the Parole Board is very dear to me because a lot of my constituents are involved with the system, and we are not here to judge, but that is the situation. I did not get the statistics from the DOC yet, but with the demographic makeup of the people in prison, could you tell us about your Board? Can you tell us what the racial and ethnic makeup is? I look at it like a jury.

Connie Bisbee:
When I was asked to come to the Board, I was not asked about my ethnicity, but it is something that the governors have looked at carefully over the years. Hopefully I will get everyone's gender and ethnicity correct. On the Board we have one African-American gentleman, one Native-American gentleman, one Hispanic woman, one Basque gentleman, and two Caucasians.

Assemblyman Thompson:
What is the working relationship with the Department of Corrections? I ask because I feel that it needs to be solid. Although the NDOC works with the inmates all the time, you potentially are seeing them for the first time. I am thinking of your quote that you want them to be better candidates in the future.

Connie Bisbee:
To be perfectly honest, it stunk in the past, but we have a new administration and a lot of new folks. There has been a lot of movement and promotion within the NDOC, and now they work very hard at communicating with us and the Division of Parole and Probation. Mr. Smith meets with them frequently on all of the data information. I was not criticizing Director Dzurenda when I made some corrections to what he said yesterday. I thought there might be a problem with you thinking that. However, he immediately had his folks get into the weeds and pull up those statistics for me. The agencies work very closely together, and we meet a lot. Anyone who has been around more than three years knows that that has not always been the story.

Assemblyman Thompson:
Three years can be the difference in a person's release. I hope we can get it together much faster than three years. Is this risk assessment an evidence-based risk assessment? When I go back to your quote about wanting them to be better candidates in the future, I see some things on here that are inherent. Automatically you get a point if you are a male and another point if you have had a prior serious drug offense. You are already medium risk, so when do you get a chance? Why can the Parole Board not look at what offenders have done since they came into custody as opposed to looking at prior history? People tend to discriminate against these people and not give them a chance.

Connie Bisbee:
That is a really good question because those things do not change. The reality is that they are a higher risk having been born male than being born female. It is a validated risk. It has been revalidated multiple times since we first started using it. That is just a plain fact; they are a higher risk. Some people have horrible criminal history from many years ago. They cannot change what age they were the first time they committed an offense. They cannot change the static things. When it comes to risk and severity, the chart that you see is just a recommendation as to what to do. The Board is not bound by that recommendation. I will give you an example: Let us say that you are in prison on a drug possession charge, but not a huge quantity. You are an addict so this is not a surprise. Forty years ago you had a couple of domestic violence incidents and maybe a robbery. That thirty- or forty-year-old history is not relevant to the man having the drug problem or to the risk decision.

Assemblyman Thompson:
That is why I asked from where you were getting the assessment. Based on your definition, I would be—at my age—a medium risk.

Connie Bisbee:
A medium risk just means that you are a medium risk. It means that there may be people who would be better candidates. You are at moderate risk to reoffend. We are going to look at the negatives and the positives. You are at moderate risk because you committed your first crime at the age of 14. You are 45 years old now, and this is your first offense since then. You have to look at the person; that is why you are having a hearing. No decision is made before they are sitting before us. Some people have made profound changes while incarcerated. For example, some people have long denial periods due to horrible institutional behavior. They have done everything that could possibly be done wrong. Then they do not have a disciplinary for three years. They still have all the garbage from the past—that is the past, and it does not go away—but when they are sitting here after a five-year denial and they have not had a write-up in three years, I wonder what changed and what happened. The offenders want to get out some day and be better people, so they stop with the prison politics. I will know that they got it, so they are granted.

Assemblyman Thompson:
Go back to the basics of the risk assessment. Is it evidence-based or a federal guideline? That is what I want to know.

David Smith:
To touch on a bit of history, we began to get involved with the Association of Paroling Authorities International in the late nineties. They are the only organization that deals exclusively with parole boards. With that contact, we were actually able to get a grant through the National Institute of Corrections. They came out to look at the entire population released from the NDOC in 1999. They looked at all of these characteristics and at who came back with a new felony within three years. We began using this risk assessment in 2003. All of the components of the risk assessment are valid predictors of recidivism.

They are weighted based on the degree of the points. Those with the highest scores came back with the highest frequency. The people with the lowest scores came back with the lowest frequency. This was a huge change from the guideline we were using before. We did not really trust the new one. It took us four years of using it side by side with our other guideline before we had the confidence to use it exclusively. It is very predictive. We have revalidated it twice. The last time was in 2012, and we are in the middle of a revalidation now. In 2012 when it was revalidated, minor modifications were made because certain factors did not come out with the same weight; they were not as valid. A good example is the disciplinary conduct. When the NDOC banned tobacco, it became a major disciplinary issue. We used to give a higher weight to a major disciplinary than to a minor one. We found that that was not predictive. It was the number of discipinaries that was more predictive so we changed it. Those are the things that we are looking at today. With respect to the static factors, they are more predictive than the dynamic, but the dynamic factors have shown to reduce the risk that the static factors show.

Assemblywoman Miller:
Last week we had a presentation about the prison credits, and many of us were confused. Since Chairman Bisbee said that you are the expert, at some point could you share that information with us, whether by paper, email, or actually coming in to explain the prison credit system to us? I know we do not have time today, but that would be valuable information for us.

David Smith:
I am happy to sit down and explain that to anyone. The NDOC prepared some presentations regarding credits in the past, so they may be able to share specific information. Generally, I get involved when I look at a sentence and see that something is wrong. That is when I find out what the issue is. Many times it is the way a judgment of conviction comes in. For example, for some sentences, like auto theft, if the value of the vehicle is under a certain dollar amount it becomes a category C felony instead of a category B, and there is an entitlement to credits. That is basically it. The most complex issue with credits is when there are concurrent sentences and consecutive relationships.

Assemblyman Pickard:
I want to go back to the statement about mental health and when they are getting out. I assume that ongoing treatment is a condition of parole. Are the monitoring parole officers seeing them frequently enough to ensure they are staying on their treatment plans? How is this monitored?

David Smith:
We do not actually supervise them, so that is a better question for Parole and Probation. When we want to parole a person who is taking medication in prison, we generally include a condition that mental health management be coordinated with the treatment provider before release. Generally, the NDOC gives out about 30 days of "gate meds" so they are still taking their medication and have time to make an appointment to see the provider before running out of the medication. However, the biggest reason we end up denying mental health cases

is a history of noncompliance. They use drugs out in the community and, unless someone follows them around, they continue their noncompliance, becoming the most problematic cases.

Assemblywoman Cohen:
I have not heard much about the victims of crimes. Can you please discuss the Board's communication and interplay with victims, victims' families, and advocacy groups.

Connie Bisbee:
Victims play an extremely important part in the decision making. We have what we refer to as a victim and family advocate on our Board. She is responsible for the communications with victims, inmate families, or anyone on the outside who would need to communicate with us. By statute, victims have rights, including in the parole process. The victims are notified approximately 30 days before we are going to hear the inmates' cases. They are told that a hearing is coming up, and if they have questions, they can speak with a commissioner. They can appear and speak at the hearing, write to the Board, and call the victim's advocate. The advocate is amazing and has been doing this job for a lot of years and spends a lot of time with the victims. The rights belonging to victims are very specific, and we are very cognizant of that. Victim impact is frequently a reason for denial when the impact was such that the period of time does not seem sufficient. Victims' rights are prevalent throughout all of the work. Victims will come to testify at the actual parole hearing, and we invite them to do so.

Assemblyman Watkins:
My question is on the risk assessment and the information we have been provided. Do you have any statistics regarding deviations and when deviations apply to income status? Do you collect that information? On first glance at the risk assessment, it seems to favor white-collar crime and disfavor other types of crimes. Is that intentional?

David Smith:
Basically, when it was created, it was specifically based on the general characteristics of the inmate population that was released in Nevada. The characteristics were based on crimes committed in Nevada. I specify that because we have gambling; most other states do not. There are a lot of crimes related to gambling. It was that group that was discharged and released on parole and who came back whose characteristics were used. There was no intention to single out any particular group. There was no focus on ethnicity, income status, or anything like that. I do not think NDOC even tracks income status.

Assemblyman Watkins:
When was this population tracked? What year was it?

David Smith:
The first time we did it was the 1999 releases. Then we waited three years to see who came back from that release. One thing unique about Nevada is our low recidivism rate compared to other states. Very likely it is because we have a transient population, so once they get out of prison they go to another state. If they continue breaking the law, they do it in a different state. So if they do not come back into our population, we cannot measure it. We only see those who come back in Nevada.

Assemblyman Watkins:
You would agree then that this risk assessment is only as good as the data that was in the prison system as it existed in 1999, right?

David Smith:
No, because we have continued to revalidate it. From the changes we made in 2012, we had to wait three years to see who came back from release after the changes were made for those inmates whom we considered. What will happen now, once the contract is through, is they will measure all of this data against the releases in 2013 to see if the factors remain valid.

Chairman Ohrenschall:
We are now going to open the hearing on Assembly Bill 27.

Assembly Bill 27: Transfers certain duties from the Executive Secretary of the State Board of Parole Commissioners to the Department of Corrections. (BDR 16-262)

David M. Smith, Parole Hearings Examiner II, State Board of Parole Commissioners:
Our hearings are all open to the public, and you are all invited to observe our hearings. We are happy to meet with anyone with individual questions related to our processes.

Assembly Bill 27 is a housekeeping bill related to the eligibility list that the State Board of Parole Commissioners must send to law enforcement prior to holding parole hearings. The current statute requires that, "The Executive Secretary shall prepare a list at least 30 days before any scheduled action by the Board showing each person then eligible for parole . . . ." It must include detailed sentence information, including credits the eligible prisoners have earned against their sentences.

The Department of Corrections (NDOC) is required under *Nevada Revised Statutes* (NRS) 213.131 to determine the parole eligibility of each inmate and to provide notice to the Board. In order for the Board to satisfy the requirement to provide detailed sentence and credit information to law enforcement, NDOC includes that information on the eligibility list they provide each month to the Board. This bill codifies the practice that has taken place for at least the past 21 years—and I say 21 years because that is how long I have worked for the state—and likely the practice that has taken place since that section of statute was enacted in 1979. The only change to the existing language in the statute is to require NDOC to prepare the list at least 40 days in advance of any scheduled parole hearing and to provide the list to

the Parole Board. Everything else would remain the same. We would mail out the list to law enforcement. I would note that NDOC currently provides the list to us in this manner, and we also comply with the notice requirements.

It truly is a housekeeping bill. The reason we wanted to bring it forward is, as people and agencies change, if we were tasked with having to compile the credit and sentence information, there is no way we could. When we discussed this with the NDOC, they agreed to put it into statute the only way it can work. In this way, there is no question going forward, if we all leave and someone else comes in and questions why we are doing something that the statute does not say.

Chairman Ohrenschall:
Can you give us a little more information on the change to 40 days in section 1, line 3 of A.B. 27 versus what is 30 days in the existing statute?

David Smith:
We still have the 30-day notice to law enforcement on page 3, section 2. The 40 days is the time for NDOC to prepare the list, get it to us, then we send it to the printer and get it back. That 10 days is our preparation time to mail it out before the 30 days.

Chairman Ohrenschall:
Will that delay anyone from getting their hearing on the agenda? Will that extra ten days slow things down?

David Smith:
Not at all. It is how we currently have to manage it. It is a problem with the timing. An inmate comes in, but once his credits are applied, he is already past eligibility. If the day he arrives is after the list is prepared, he ends up waiting an extra month. That may happen, but it is not because of the ten days. The NDOC has to get that list to us in time for us to get it to the printer. Also, it is not ten working days; it is ten calendar days.

Assemblyman Pickard:
Justice Hardesty testified about the difficulty of the credit system. If this legislation relies on that credit system, and as the Justice suggested, we were to make changes to the credit system, how might that affect this bill?

David Smith:
It depends on the changes to the credits. Generally, a person only comes to prison if they have at least a year to do, but that is not always the case. On paper they have a year to do, but their credits make them eligible in five or six months. If they have a 12- to 30-month term, they get half off, so it comes out to 12 to 15 months. There are very short periods of parole if they take credits off of the maximum and not the minimum. There are a lot of people who probably would be served by not going to prison. It is the credits that actually cause that to occur. It is very expensive to bring a person into prison; the intake process is expensive. If they are already eligible, we try to get everything ready to go, and we

recognize that they need to be processed back out. If they are coming into prison for four or five months only, NDOC does nothing for them since they cannot provide treatment. It is basically just an interruption in their conduct in the community. My personal feeling is that there are probably better ways to deal with those people.

Assemblyman Pickard:
Do you believe that the credit calculation should be simplified, modified, or do you think it is appropriate as constructed?

David Smith:
There is no simple solution to the credit system. Each time the credit law changes, the inmates who are affected by each law begin to ripple through the system. We discovered that issue with the aggregated sentencing law. I believe there is going to be a cleanup bill during the session. There may be a person who is sentenced under two different credit laws and now is trying to aggregate those sentences. If you mix in a new credit law on top of that, it would have a rippling effect throughout NDOC and the criminal justice system.

Chairman Ohrenschall:
Currently, if you have an offender who might be coming up to do four or five months, your hands are tied.

David Smith:
I would not say our hands are tied. We recognize that people do better when they transition out of prison. When someone comes to prison, unless they have a solid family or place to go in the community, it is very difficult to come back out. When you go to prison, you generally lose everything, unless you have a solid footing before you go in. Now you come out with very little money and very few resources and are expected to make it. A lot of people have a very difficult time making it; the transition is difficult. If you are going to take someone's car, apartment, et cetera, for four or five months and he gets back out, what good did that do? It creates another hardship and potentially leads to breaking the law even though he is just trying to make it. That is not the case for all; that is just one group of offenders who are affected by that.

Another thing is that they come out of prison with a felony conviction. If they apply for a job, the employer wants to know if they are ex-felons. They have difficulty obtaining employment. There are a lot of social ramifications to sending people to prison.

Assemblyman Yeager:
I have dealt with the situation where a client has accrued a lot of credit in the local detention facilities, and ultimately, he is going to end up in prison for a felony. Everyone can look at it and see that the person is probably going to be immediately paroled. The problem, as you have identified, is that he needs to go through the intake process at NDOC, which can take some time. Depending on when he gets there, there could be a 30- or 40-day delay before he gets to the Board. I ask that you continue thinking about something we can do in conjunction with the local detention facilities and NDOC for those cases, and if there is a way to

identify them. We need to come up with a streamlined process where we do not have to burden NDOC with the intake process and the additional time. Sitting here today, I do not know what that is, but I know we will have a number of bills on this topic. We invite your input on how we can make it efficient and effective. Obviously, we have to comply with the statutes, but for those special cases, we can hopefully find a way to make this work, which makes a lot of sense.

David Smith:
We will be happy to discuss anything with any of the members.

Chairman Ohrenschall:
Are there any other questions? [There were none.] Is there any testimony in support of A.B. 27? We have lost the feed to Las Vegas, but we will take any testimony from down south as soon as we get it back. Is there anyone in Carson City who is opposed to A.B. 27? Seeing no one, is there anyone neutral on the bill? [There was no one.] There is no one signed in down in the Sawyer Building in Las Vegas, so I will close the hearing on Assembly Bill 27. I will now open the hearing on Assembly Bill 26.

Assembly Bill 26: Revises provisions governing the dissemination of certain records of criminal history to certain persons by the Central Repository for Nevada Records of Criminal History. (BDR 14-138)

Julie Butler, Administrator, General Services Division, Department of Public Safety:
The General Services Division houses the Central Repository for Nevada Records of Criminal History. Today we have two bills before you that deal with changes to our authorizing statute, *Nevada Revised Statutes* (NRS) Chapter 179A. With me is Mindy McKay, Records Bureau Chief, and she will present both bills.

Mindy McKay, Records Bureau Chief, General Services Division, Department of Public Safety:
The General Services Division houses the Central Repository for Nevada Records of Criminal History, which maintains statewide records of Nevada arrests and dispositions. Historically, Assembly Bill 47 of the 78th Session was enacted in the 2015 Legislative Session to formally codify the Repository's long-standing, name-based criminal history records service for Nevada's employers and to make it easier for employment screening companies to enroll in the service. Through implementation of A.B. 47 of the 78th Session, some legal deficiencies were noted. Assembly Bill 26 will correct those. Assembly Bill 47 of the 78th Session did not contemplate an employment screening service conducting work on behalf of another employment screening service or on behalf of an employer outside of this state. Assembly Bill 26 establishes the authority needed by employment screening services to conduct work on behalf of other employment screening services and on behalf of employers outside of Nevada by entering into an agreement approved by the Central Repository. The agreement is necessary to ensure the security of the dissemination of criminal history records information from one employment screening service to another employment screening service, and ultimately to an employer.

Assembly Bill 47 of the 78th Session allowed volunteer organizations and employment screening services outside of Nevada to use the service, but not employers outside of Nevada. Assembly Bill 26 will fix this inconsistency.

With that, I request the Committee's support for A.B. 26 and I am happy to answer any questions the Committee may have.

Chairman Ohrenschall:
When does the scenario arise where you have an employment screening service that needs to have another employment screening service get this information?

Mindy McKay:
It occurs when one employment screening service does not have a private investigator's (PI) license, so they contract with another employment screening service that has a PI license.

Chairman Ohrenschall:
That private investigator's license is the only authorization that the employment screening service would need to qualify for the Central Repository?

Mindy McKay:
That is as far as I am aware. We would have to see an application from them in order to determine the rest, but that is the scenario that we have been presented.

Chairman Ohrenschall:
The scenario that this bill is trying to accommodate is when an employer hires an employment screening service that is not authorized, or is authorized but wants to subcontract out to an unauthorized employment screening service.

Mindy McKay:
Correct.

Chairman Ohrenschall:
Are there any concerns about the unauthorized employment screening service? Why are they not going through the process to be authorized?

Mindy McKay:
No, we have not had any issues.

Assemblyman Pickard:
I do not have background on this, but it appears to me that as we are shifting from participants to specifically authorized participants, I am assuming we have a new layer of screening the screeners. Then, since we are looking specifically at section 1, subsection 8 of A.B. 26, it appears that we are potentially reducing the amount of information getting into

the hands of the employers. I wonder if this bill is going to end up reducing the outflow of information to employers that need this. Please tell us a little about the screening process and who ultimately has access to the Repository.

Julie Butler:
Many of our employers can come directly to us for background checks. This service originated as a mechanism mainly for the casino industry to background check their nongaming employees. It was a name-based background check for valets, housekeeping, et cetera. Employers have the authority under statute to come to us directly for the information; however, many employers choose to use a third-party screening service because they just do not want to deal with the human resources aspect. They find it easier to contract that piece out. After Assembly Bill 47 of the 78th Session passed, it came to our attention that some of the screening services were providing services to other screening services. It also came to our attention that the Private Investigator's Licensing Board has to license these screening services. We were not aware of that, and it was because of A.B. 47 of the 78th Session that some of our customers said, "This bill does not contemplate the license that the Private Investigator's Licensing Board needs." We want to make sure we are sensitive to that. I do not think it will reduce any information that is available to the employers. It is at the employers' discretion whether they want to use a third-party screening company or get it directly from us.

Assemblyman Pickard:
If I understand this correctly, any employer can access the Repository with an application. Is that right? Are there specific requirements for employers to get access?

Chairman Ohrenschall:
That is a good question, and I want to add to it. I see you are expanding the requirement that employers be in-state. Would you also speak on the rationale to that?

Mindy McKay:
There is a series of contacts that need to occur before someone can become a participant of our program. They reach out to us and let us know that they are interested, so we give them a telephone call, a question and answer, and an application they can complete to ensure they are one of the three entities: an employer, a volunteer organization, or an employment screening service. Since they are accessing our system directly through a computer, we want to make sure that the computer is secure, so we send our information technology (IT) team out or ask questions to make sure the connection will be secure. We also want to make sure they have their PI license. After they apply and we determine that they meet the eligibility requirements, and our IT team determines that they are going to be securely accessing the system, then we start the connection and start training them. We audit them every so often thereafter.

Assemblyman Pickard:
I am trying to get my arms around who ultimately can use this. I am an employer, and I am trying to determine how I get access to this. Ultimately, I want to be sure that we are not reducing the amount of information that is getting out by adding layers of application processes and reviews.

Mindy McKay:
The information would not be reduced by that. Since volunteer organizations and employment screening services can be outside of the state, oftentimes employers will use employment screening services outside the state while the employer is in Nevada. We have other employers outside the state who are interested in seeking information from Nevada because they may have an applicant who has lived and worked in Nevada, so they would like to have access to Nevada information as well. We felt for consistency—and because Assembly Bill 47 of the 78th Session allowed for volunteer organizations and employment screening services to use the system—that we would also like to open it up to employers outside of the state.

Assemblyman Wheeler:
The first thing I noticed on this bill was the required two-thirds majority vote, but I do not see a fiscal note on it. Is there a new charge? This seems like a cleanup for A.B. 47 of the 78th Session, and I understand why you are doing that. I want to know what the charge is and why the two-thirds vote requirement. Are you seeing a difference in the monetary income?

Julie Butler:
It is funny that you asked that because when the bill dropped, I emailed Brenda Erdoes and asked her that question. It has the potential to increase the Repository's revenue by opening it up to employers out of state, and per the *Constitution of the State of Nevada*, it will require a two-thirds majority vote.

Assemblyman Elliot T. Anderson:
I appreciate that you have a requirement that the nonauthorized participant enter into an agreement that has been approved by the Central Repository. I guess I am trying to understand what exactly that type of legal relationship would be. Is that some type of indemnification? There are privacy concerns when you deal with this type of information. I want to know what kind of agreement you are contemplating. I also do not understand why it is so hard for the nonauthorized participants to become authorized. Why can they not go through that process if they want to do business in our state?

Mindy McKay:
Once we determine that they are eligible, part of the process of applying is that they need to sign an interlocal agreement. We have that drawn up by our attorneys. That is the legal part of entering into a contract with us and becoming a participant of the system.

Assemblyman Elliot T. Anderson:
It might be good to put more specificity in the bill regarding what would be required in terms of that relationship. It would give me more comfort to have that more defined in the bill. I do not understand what is so onerous for these employment screening services. If they are doing a significant amount of business in this state, why would they not become authorized? We have a pass-through authorized participant.

Julie Butler:
When we brought this bill forward last session, it was to give the information directly to the employer. However, individuals from the Consumer Data Industry Association were also instrumental in bringing this bill forward. They represent these third-party employment screening service companies. Those companies are used quite a bit by employers to get the information. This bill was to be responsive to those employers who wish to use a third party to screen applicants for jobs.

Assemblyman Elliot T. Anderson:
I would note that we need more specificity on what type of agreement would be entered into.

Julie Butler:
It says in the current language that they enter into an agreement that has been approved by the Central Repository, and we have that agreement as approved by the Office of the Attorney General through our deputy attorney general. That agreement is codified.

Assemblyman Elliot T. Anderson:
I understand, but it does not say what the agreement has to be. I need to see exactly what you are approving. You are asking for discretion. There is not a lot of specificity, so you could do whatever you want and have any type of agreement. I am looking for some type of protections. This is sensitive information, and I would like to have some clarity.

Julie Butler:
We can certainly get you a copy of our approved civil name-check contract that we have entities sign. I would be reluctant to codify that contract. If we did, we would have to come back to this body every two years to make changes to the contract. That is not common practice with any state contract as far as I am aware. We do not codify any of the contracts that we enter into, and that seems to be what you are asking.

Assemblyman Elliot T. Anderson:
We do not codify contracts, but we require minimum terms to contracts that are important for ensuring information is being handled with sensitivity. We are exempting these companies from our process by not making themselves become authorized providers.

Chairman Ohrenschall:
I would appreciate it if you could provide the Committee with a copy of the contract. The concern that we have is, will the same safeguards for the consumer be applicable to the third-party employment screening services if they are not authorized? Two years ago when A.B. 47 of the 78th Session was presented, we were concerned about the data breaches that we had read about in the papers. It seems things have gotten worse in the intervening 20 months. While we want efficiency, none of us want anyone's data being put at risk or having to worry about that.

Assemblyman Yeager:
My question dovetails off of Assemblyman Elliot Anderson's question. The agreement that is referenced in that subsection is the agreement between the employment screening service and the Central Repository, not an agreement between the two employment screening services. Is that right?

Julie Butler:
Yes. That is correct. The agreement is between the primary employment screening service and the Central Repository.

Assemblyman Yeager:
To make sure I have this clear, the employment screening service that is authorized has an agreement with the Central Repository, and then they essentially subcontract with someone who is not authorized. Does the service that is not authorized also have to sign a contract with the Central Repository, or do they sign a contract with the authorized screener?

Julie Butler:
That agreement would be between the nonauthorized participant and the authorized participant.

Assemblyman Yeager:
Under section 1, subsection 8, would the Central Repository then have to approve the agreement that was entered into between the authorized service and the nonauthorized service? If the answer to that is yes, do you have a standard agreement, or would the parties come to you with their own crafted agreement?

Mindy McKay:
That is correct. They would bring their respective agreement to us since we do not have a template for them. There are just too many, and they would have their own. We would want to make sure the language in there about the information that they are getting from our agency meets our requirements for security and protection of the information, dissemination, storage, and destruction.

Assemblyman Watkins:
As I understand your testimony, based on the agreement between the Central Repository and the third-party employment screening service, you would know who their clients are. Is that correct?

Mindy McKay:
No. We do not audit them as to who is receiving that information.

Julie Ornellas, Special Services Manager, General Services Division, Department of Public Safety:
Currently, we do not know who their customers are. We found that out once we tried to implement A.B. 47 of the 78th Session. Prior to that bill, we had no provisions to allow them to disseminate the information, so the information was very controlled. Once A.B. 47 of the 78th Session was put in place and we tried to implement it, we found that, not only did the employment screening service companies work on behalf of other employment screening services, but we did not have a clear picture of who they were working for. To be honest, they were not willing to share that information. Because of the dissemination restriction, they were not allowed to give anything but a red light or a green light.

However, when A.B. 47 of the 78th Session was implemented, they were allowed to disseminate the record. That opened up another challenge for us to put controls on our authorized participants and to know the agencies they worked for. To make it clear, this bill would require our authorized participants to enter into an agreement with us, and those employment screening service companies that are going to be working on behalf of another will have an agreement between the two of them that we would agree on to ensure that they will meet the storage, dissemination, and destruction requirements to ensure the information is secure. That is our goal: to maintain privacy where it needs to be.

I would also like to bring up something that you have talked a little about: authorized participants. In Assembly Bill 26, section 1, subsection 11, it talks about the eligible persons. Before they become authorized participants, they are considered eligible persons as defined. We are not going to restrict anyone from having access to the program. It will be just as it is today. We will take in any eligible persons who are interested and vet them through our normal process. The only extra steps that we will have is if they are working on behalf of another party, which is that other layer of employment screening service to another employment screening service. That is where we need to have the other agreement in place, so they know the restrictions, not only as our authorized participants do, but also as the middle layer to ensure the protection of the information. Once A.B. 47 of the 78th Session was put in place and we started to implement it, we went out to some of our employment screening service companies and talked about the new dissemination allowance. They told us they were working on behalf of all the other employment screening service companies, which we were not aware of at the time. We have been trying to put some language in place to continue to allow that and not reduce the amount of information that is going out on behalf of employers, but also to control it as much as possible.

Assemblyman Watkins:
It appears there were some unintended difficulties in implementing A.B. 47 of the 78th Session, and this bill, from my estimation, would make it worse. Now we would have another layer of third-party employment screening services that we may not know who they are unless you review the contracts. We do not know who their clients are, and they could be out of state. We have a whole bunch of people who could be accessing information when we do not know if they qualify as eligible persons under the statute in the first place. Is that right?

Julie Ornellas:
It will be. When A.B. 47 of the 78th Session was passed and we tried to implement it, that bill allowed for the information to go out of state. There is always going to be difficulty, which is why we never allowed that before. That in itself created complexities because we are not going to be able to audit in other states. We are putting the agreements in place as much as possible and training and educating our authorized participants with the goal of sharing information and protecting it the best we can. Once that provision was put in law for those employment screening service companies, that took it out of our hands unless we audit every single employer, and there are thousands.

Assemblywoman Jauregui:
I want to echo the concerns that Assemblyman Elliot Anderson has. My concern is that any volunteer organization or employer can contract with any employment screening service, and if they are not an authorized participant and have a license, they contract with an authorized participant to do the background check. Is that correct?

Julie Ornellas:
Yes.

Assemblywoman Jauregui:
The employment screening service is not held to the same requirements as the authorized participant. They did not pay the licensing fees, and they are not held to the same security information requirements. In addition to that, what are you doing to ensure that there is no breach of data?

Julie Ornellas:
When you are referring to the licensing fee, are you referring to the private investigator licensing? With A.B. 47 of the 78th Session, we were not even aware that employment screening service companies operating in Nevada were required to have a PI license. That was brought to our attention when we attempted to implement this. It was another employment screening service company that was upset at the law passing that allows for the out-of-state employment screening service company to even operate in Nevada.

Through our research, we contacted the Private Investigator's Licensing Board, and they confirmed that employment screening service companies need to have a PI license if they are going to operate in Nevada, which is why that relationship was created where an employment screening service company would work on behalf of another. One of the other provisions in the PI statute was that they also need to have a presence in Nevada. A lot of them could not meet that requirement, so they were not able to get a PI license. If this bill does not pass, it will force these relationships that are already going on to discontinue. They could all come directly to us, and they would be direct authorized participants.

Assemblywoman Jauregui:
Have you looked at the failure rate of third-party employment screening services in terms of data breaches?

Julie Butler:
No, we have not. As for the breach of data and how we protect against it, for those entities that have a direct connection to our database, part of accessing this information through the Central Repository is that data is encrypted in transit. There is a virtual private network that is connected between the client's computer and our Central Repository database, which is how the data is encrypted in transit. One of the reasons that auditing these entities is required as part of our contract is to ensure they have physical security. This means that the terminal of the computer that is used to access the information is not out in the public area available for anyone and everyone to walk by and see it, that there are physical protections, and that they are not storing the information on their own resident machines without some type of secure access. We audit using those methods to ensure we do not have a breach of data. As far as the third parties, they are governed by the Fair Credit Reporting Act. That is a different act, and we are not subject to it as governmental agencies. I am not an expert on what this Act requires of these third-party companies.

Assemblyman Elliot T. Anderson:
If we do not allow these contracts, people can contract directly with companies that are already in Nevada and have already gone through the licensing process with the PI Board, correct?

Julie Butler:
That is correct.

Chairman Ohrenschall:
Looking at the language in A.B. 26, on page 3, lines 7 through 12, have any of those employment screening services that are getting this information been audited under the current law? I see that you are now adding that language.

Julie Ornellas:
Yes. We have a regular audit cycle for our authorized, contracted participants and we maintain very tight schedules. We go on site and audit for storage, dissemination, and destruction. We also check their computers to ensure there has been no unauthorized access. Again, in the past we did not have a provision for allowing dissemination beyond that, but Assembly Bill 47 of the 78th Session does have that. If they disseminate under that bill, they do a dissemination log so we can track where the information went and what was given out.

Chairman Ohrenschall:
You audit the authorized participants, but the subcontractors are not audited. Is that because you do not believe they are subject to your audit jurisdiction?

Julie Ornellas:
This is all new. We will definitely implement the agreement if this passes. It would be our goal to do at least a paper audit. If they are out of state, it is going to be very difficult for us at this point in time.

Assemblyman Pickard:
What I find troubling and had not contemplated until we got into this discussion is about that secondary user. There does not seem to be any kind of controls. As a lawyer, I do low-level investigations of litigants. I assumed that they paid attention to what I did, especially when I downloaded it, but I now know they do not pay any attention to how I use that information. We could conceivably be getting a lot of sensitive personal information without any oversight or control of how it is ultimately disseminated. What can the Repository do about that, if anything?

Julie Butler:
That is a legitimate concern. We are also concerned about protecting people's privacy and ensuring that the information that we share does not get in the hands of individuals who are not authorized. That is why we require them to sign a contract and why my staff regularly audits the participants in the program. They must go through the application process to even participate to ensure they meet our criteria. We are putting safeguards in place where we can make sure the data does not get in the hands of those who cannot have it. Obviously, we cannot control every contingency. We do the best we can with the resources we have. We share your concerns.

Assemblyman Pickard:
Is there something in your agreement with the primary participant about any punishment for improper dissemination to someone they contract with?

Julie Ornellas:
We are currently working on the final language for this new bill. We have language for A.B. 47 of the 78th Session. Depending on the outcome of this, we will have to massage our language. We could include language that their contract could be terminated if they disseminate information in an improper way or use the information in an unauthorized manner.

Assemblyman Pickard:
It is important to note that I am not talking about the authorized user using it improperly, but that they become responsible for the secondary user.

Chairman Ohrenschall:
Since A.B. 47 of the 78th Session passed, have you severed relationships with any of the participants? Have you had any issues?

Julie Ornellas:
To be honest with you, we have had challenges in trying to implement this with the way that A.B. 47 of the 78th Session was written. We have not even finalized these relationships yet. We are just finding out that these relationships exist, thus the reason for writing this bill—to try to address what we are seeing. As we move forward if this were to pass, we will incorporate any language that you see fit or change the relationships that we are running across as we try to implement A.B. 47 of the 78th Session.

Julie Butler:
In the past, we have severed relationships with some of our civil name-check customers when we discovered through audit that they disseminated the information improperly or they were violating conditions of our contract.

Assemblyman Wheeler:
I think this has gone on long enough on this bill, so I will talk to them offline. I will also talk to my caucus about asking follow-up questions without asking for them as well.

Chairman Ohrenschall:
Is there anyone else in Carson City who would like to testify in support of Assembly Bill 26? [There was no one.] Is there anyone in Las Vegas who would like to testify in support of A.B. 26? Seeing no one, is there anyone in Carson City or Las Vegas who would like to testify in opposition to Assembly Bill 26? [There was no one.] Is there anyone neutral on A.B. 26?

Joshua J. Hicks, representing the Consumer Data Industry Association:
I was not planning to testify, but I thought I would make a few comments. We represent the Consumer Data Industry Association (CDIA), and you heard a comment about that. We were involved with Assembly Bill 47 of the 78th Session, and we were supportive of it, as was the Department of Public Safety (DPS) and the Governor's Office of Economic Development.

I thought some context would be helpful. The whole reason behind that bill, as you heard, was the prohibition of third-party background-check companies sharing this information. The way it used to work is that an employer could always go to DPS and ask for this information, but if a third-party background-check company did it, they could get the information but could not share it with the employer. What they would do is verify the information they received from different locations.

For example, they might find out that someone had a conviction in Clark County, so they would ask Clark County for a copy of the conviction, which could be shared with the employer. The result was a cumbersome process that took quite some time. That was a lot of the testimony from my client in that session, including a comparison of other states and how long background checks on employees would take. It took longer in Nevada compared to other states, where it could be less than 24 hours. That is a problem for people who want a job and are ready to work. We have situations in Nevada where qualified people ready to be hired wait long periods for background checks. A lot of the push behind A.B. 47 of the 78th Session was to streamline the background checks and allow these background check companies to share directly with the employer. From my clients' perspective, this has been working well. Things have been working fine for them and they have had no problems. That bill, by the way, passed with broad support. It was a bipartisan bill. There was only one negative vote on the Assembly side, and it was signed into law by the Governor.

The concern that I have with hearing some of this testimony—and we look forward to working with DPS to see if we can figure some of this out—is that it appears to be putting some of these cumbersome issues back in place. That could extend this again and make it a longer process to get background checks done. I understand what DPS would like to do. I understand that they want to make sure they can control where the information goes. It is important to keep in mind that this is public information that can be obtained by employers. It can be obtained by looking at county records. While it is important, it is also important to keep in mind the goal of A.B. 47 of the 78th Session, which was to make the background process shorter and to get people back to work.

We look forward to working with DPS on this. I do not have anything to offer right now, but maybe we can put something together and work with Julie.

Chairman Ohrenschall:
I remember a lot of the concerns of the Committee about data breaches and the testimony that this would increase efficiency. I am glad to hear that it has happened. As far as the unauthorized employment screening service, that is not something we contemplated. I think they should be subject to audit.

There seems to be no one else to testify in the neutral position, so I will close the hearing on Assembly Bill 26. I will open the hearing on Assembly Bill 76.

Assembly Bill 76: Revises provisions relating to the Central Repository for Nevada Records of Criminal History. (BDR 14-260)

Chairman Ohrenschall:
This is a lengthy bill, so please take us through it section by section.

Mindy McKay, Records Bureau Chief, General Services Division, Department of Public Safety:
I am here to present Assembly Bill 76. The General Services Division houses the Central Repository for Nevada Records of Criminal History, which maintains statewide records of Nevada arrests and dispositions. *Nevada Revised Statutes* (NRS) Chapter 179A created the Central Repository and governs most of what the Central Repository does. Assembly Bill 76 proposes many changes in an effort to address outdated information and changes affected by previous legislation. I will explain each section as you requested.

Section 1 repeals the reference to NRS 179A.180 to 179A.240 due to our proposal to repeal those sections, which I will explain when we get to section 21 of the bill.

Section 2 defines the term "biometric identifier" as a result of Assembly Bill 224 of the 78th Session, which authorized criminal justice agencies to use new forms of biometric identification to positively identify a person. Section 3 references section 2 due to the term "biometric identifier" being added. Section 4 adds the biometric identifier language for the aforementioned reasons.

Section 5, subsection 2, would repeal language in NRS 179A.075 relating to the Central Repository's mandate to collect data on the delinquency of children. The Central Repository does not collect information on juvenile delinquency; that information is collected by other agencies. This amendment would remove the mandate for the Central Repository to report on information it does not collect. We are also seeking to add language to NRS 179A.075, section 5, subsection 2, paragraph (b), subparagraph (2), referencing the Federal Bureau of Investigation (FBI) Uniform Crime Reporting (UCR) Program's policies, procedures, and definitions. This will allow for any format or data to be collected whenever changes are made to the FBI's UCR Program without future statute amendments.

The Central Repository seeks to amend section 5, subsection 5, by deleting this subsection entirely from A.B. 76 (Exhibit G). At the time the bill draft requests were due, not much was known about the FBI's use-of-force reporting program. Since that time, the FBI decided to build a use-of-force reporting program that criminal justice agencies nationwide can use. Therefore, including a separate state mandate for the same data would be costly and duplicative of efforts at the federal level, and the Central Repository seeks to remove this requirement from the bill.

Finally, section 5, subsection 11, paragraph (a) related to "biometric identifier" is being repealed because it was relocated under section 2 of the bill. Section 6 repeals the reference to delinquency of children, as explained earlier. Section 7 repeals the reference to NRS 179A.180 to 179A.240 due to our proposal to repeal those sections, which I will explain when we get to section 21 of the bill.

Section 8 amends NRS 179A.100 as follows: Section 8, subsection 4 is being repealed because sex offender registration information is available via the public website as the public record pursuant to NRS 179B.250, section 2, which states, "The community notification website is the source of record for information available to the public concerning offenders listed in the statewide registry . . . ."

Section 8, subsection 5 is being repealed because it references subsection 4, which is being repealed. Section 8, subsection 6 is being repealed because it references subsections 4 and 5, which are being repealed.

Due to the aforementioned being repealed, section 8, subsection 7, becomes subsection 4. In the new subsection 4, paragraphs (c) through (e), (k), (m), and (t) through (x) are being repealed because those entities have their own statutory authority to submit fingerprints to the Central Repository for state and FBI criminal records, thus there is no reason to duplicate authority in another statute. However, it has been brought to our attention today that it may take away the ability for those various bodies to request criminal record information from other criminal record agencies. We will be working on, and may come back with, another amendment to retain those sections.

In section 9, NRS 179A.110 repeals the reference to NRS 179A.180 to 179A.240 due to those statutes being repealed and replaced with a reference for fingerprint submission specific to federal laws or regulations.

Section 10, subsection 3, paragraph (a) repeals the reference to providing a criminal history record response within the immediately preceding 6 months and replaces it with 90 days in order to be consistent with the FBI's policy on providing duplicative fingerprint records-check responses. That is their policy, and we align ourselves with the FBI whenever they make changes.

Chairman Ohrenschall:
That changes the frequency from 6 months to 90 days to comply with the FBI?

Mindy McKay:
To align with the FBI. Section 11 amends NRS 179A.150, subsection 4, paragraph (d) to repeal the reference to NRS 179A.210 due to that statute being repealed and replaced with a reference for fingerprint submission authorization specific to federal laws or regulations.

Section 12, which amends NRS 179A.310, deals with the Central Repository's authorization to provide free criminal history records checks to employers whose volunteers work with children. Subsection 1 repeals the reference to "Investigate" and replaces it with "Process Requests for Information on . . ." because the Central Repository does not investigate the backgrounds of volunteers who work with children. Rather, our staff processes the background check requests and provides the results to the requestor for the requestor to make their respective determinations on whether the volunteer is suitable to work around children. Subsections 2 through 6 make conforming changes. Also, subsections 2 through 6 repeal the requirement for the Central Repository "to determine whether" a volunteer "has committed an offense listed in subsection 4 of NRS 179A.190" because the Central Repository does not make those determinations, and NRS 179A.190 is being repealed. The National Child Protection Act and Volunteers for Children Act allow for the dissemination of the criminal record directly to the authorized entities in order for those entities to make their own employment suitability determinations. Section 13 makes similar changes as in section 12.

Section 14 amends NRS 179A.450 to align the required crimes-against-older-persons data in the statute with the data that is currently available from the agencies that report to the Central Repository. Additionally, the data is not analyzed by the Central Repository for any purpose; rather, the data is simply reported for use by other agencies and the public. Because the published data does not contain confidential information, the language that existed in the statute specific to confidentiality is being repealed in order to allow the Central Repository to continue to publish the data so as not to misrepresent the understanding of confidential information.

Section 15 seeks to repeal subsection 8 of NRS 179B.250, which deals with the Community Notification website for sex offenders, due to NRS 179A.180 to NRS 179A.240 being repealed. Section 16 seeks to amend NRS 41.100, section 1 to repeal the reference to NRS 179A.230 due to that section being repealed.

Section 21 seeks to repeal NRS 179A.105 due to other statutes being repealed. Of those, NRS 179A.180 to NRS 179A.240 are being repealed because agencies may now use the federal National Child Protection Act and Volunteers for Children Act to conduct fingerprint-based background checks for reemployment and volunteer suitability checks, making NRS 179A.180 through 179A.240 obsolete. Repealing this outdated statutory authority will result in cost savings due to the elimination of Central Repository staff making employment suitability determinations on behalf of the employers. Under the current process, employers receive a redacted criminal history record response from the Central Repository, which does not give employers the full story about their potential applicants or volunteers. The National Child Protection Act and Volunteers for Children Act allows the employers to receive the applicant's full rap sheet in order to make their own suitability determinations.

With that, I request the Committee's support for Assembly Bill 76 and I am happy to answer any questions that the Committee may have.

Chairman Ohrenschall:
The amendment is now on the Nevada Electronic Legislative Information System. We like to have amendments delivered to our committee manager by noon the day before the hearing so everyone can look it over.

Assemblyman Elliot T. Anderson:
My question is about the amendment and the proposed deletion of section 5, subsection 5. I note that the amendment strikes out mandatory language. Is the federal program mandatory or permissive in terms of that reporting?

Julie Butler, Administrator, General Services Division, Department of Public Safety:
The federal program on use of force is still being crafted. It is my understanding at this point that it is going to be voluntary, as is any of the Uniform Crime Reporting information. At the time we were talking about this on the national scene, not much was known about use-of-force reporting other than it was being rolled out. As a method to prevent duplication at the state and federal levels, we are proposing to strike this language at the state level.

Assemblyman Elliot T. Anderson:
I understand what you are doing, but I would note for the Committee that there is a policy choice, as this is structured to be permissive at this point, and you had originally proposed a mandatory reporting program. You said that we were lining out community notification provisions because of their law. I am not familiar with the statutory references. Are the statutory references that you referred to also known as the Adam Walsh Child Protection and Safety Act? Is that the authority that you were referencing?

Mindy McKay:
Currently, we are still implementing and abiding by Megan's Law. We have not implemented the Adam Walsh Child Protection and Safety Act yet. It is in regard to the Nevada Sex Offender Registry Website.

Assemblyman Elliot T. Anderson:
You mentioned that we have a different portal for community notification. Throughout the statutory reference, was that referring to Megan's Law or does it refer to the Adam Walsh Act?

Mindy McKay:
Currently, the public website is in accordance with Megan's Law.

Assemblyman Pickard:
We are removing from section 15, subsection 8, any requirement for the Central Repository to publicize or provide that notification by way of the website. If not the Repository, who will?

Julie Butler:
What we are seeing is that anyone can look it up on the website right now and access the information on a sex offender that we are allowed by law to publish. There is no reason or need to have it in statute.

Assemblyman Yeager:
You mentioned that you were working with some folks on section 8 where you were striking folks who were able to access certain records. Please give the Committee a sense of what some of the concerns were. What would this section allow folks to access that they cannot otherwise access under existing law?

Julie Butler:
It was brought to our attention today by the Board of Massage Therapists that they use this statute for purposes other than related to licensing. We were looking at this statute from our own perspective. Each of these agencies as listed in statute has their own separate statute that allows them to submit fingerprints to the Repository for submission to the FBI for employment and licensing. What was brought to our attention today is that the massage therapists also use this statute as a means to go to their local law enforcement agencies to get the criminal histories of potential massage licensees that might be under investigation or facing disciplinary action, so it is for reasons other than employment and licensing. It was not our intent to prohibit them from accessing the information they need to do their jobs. We were simply looking at it as duplicative of the employment and licensing that exists in other statutes.

Assemblyman Fumo:
I read that letter from the Board of Massage Therapists (Exhibit H), and it gave me some concern about NRS 179A.100. It seems that they are using a citation—or just the charge and not the conviction—against a person who is licensed by them.

Julie Butler:
I cannot speak to that. I do not know the reasons why they might use it. They will have to speak to it. This statute just gives them authorization to go to their local law enforcement agency to use criminal history for means other than employment licensing, which is what we were concerned about.

Assemblyman Fumo:
Have you read their letter? What they specifically say in the letter is that they are looking at people who are cited or charged. Are they here?

Julie Butler:
They are here, so I will defer to them.

Chairman Ohrenschall:
The information that you provide to the agencies does include citations and arrests, even if it was dropped and not pursued. That information is kept at the Repository.

Julie Butler:
We keep a record of individuals' criminal history. That would include arrests that do not yet have dispositions because those charges are still making their way through the courts. After those have been disposed of, it could include no charges filed, acquitted, found guilty, et cetera. It is a record of all criminal history, and it is fingerprint-based and not name-based. Typically, we do not include citations unless those are accompanied with a set of fingerprints.

Assemblyman Yeager:
When you say you keep a record of the arrests, is it correct that you have the status but you do not keep copies of the underlying documents or police reports? That would be something that the local law enforcement would have possession of, right?

Julie Butler:
Yes, that is correct. When the individual is booked, he is taken to the local booking station, fingerprinted, and the charges are sent to criminal history where we maintain a record of the charges.

Chairman Ohrenschall:
On page 5 of the bill, there is new language about being in accordance with the UCR Program. Do you attempt to be in accordance with that now, even though it is not in statute? Is this something that would be new for the Repository?

Mindy McKay:
We currently follow that, but it was never in statute. Having it in statute allows us to better train, audit, and hold those agencies that do report in accordance with the FBI's policies and procedures. It helps us when it is in statute as well.

Julie Butler:
We have a separate statute that requires us to annually produce a report called "Crime in Nevada," which we are required to deliver to the Governor and the Legislature. It is essentially the state level of the FBI's UCR Program. It would align us with what the FBI is doing.

Chairman Ohrenschall:
Is there anyone else in support of Assembly Bill 76 in Carson City or Las Vegas? This is your opportunity to come forward. [There was no one.] Is there anyone in opposition?

K. Neena Laxalt, representing the Board of Massage Therapists:
We are happy that the Central Repository has decided to work with us. The Board of Massage Therapists is structured a little differently than some of the other boards as far as using the Central Repository. We go beyond just the employment screening and actually look at arrest records for potential disciplinary action.

I have with me Colleen Platt, who is the attorney for the Board of Massage Therapists. Assemblyman Fumo asked some questions, so she will go through the process of what we use the preconviction records for and how we use them in the disciplinary process. [See Exhibit H.]

Colleen Platt, representing the Board of Massage Therapists:
Under the statutes, local law enforcement agencies are required, when they go into a massage establishment and arrest someone for solicitation of prostitution, to check our database to see if that person is licensed with us. If she is licensed with us, law enforcement is required by law to report that the person was arrested for a sexual offense, either prostitution or solicitation of prostitution. We then issue a subpoena to that local law enforcement agency asking for those records. We receive the arrest report, then under NRS 640C.700, section 4, we are authorized to take disciplinary action against that licensee for that arrest. Soliciting prostitution while performing a massage is not in the best interest of the public. We are trying to encourage those licensees to come back to the standard of care and practice that we implement with our statutes and regulations.

Assemblyman Fumo:
My concern is whether you are instituting disciplinary action upon a conviction, or are you instituting disciplinary action upon the arrest?

Colleen Platt:
We are authorized to institute the disciplinary action upon arrest.

Assemblyman Fumo:
I understand that the license for the massage therapist is a privilege and not a right, but these people have a right to be presumed innocent until proven guilty. You are taking your privilege and superseding it above their rights. What if this person is found not guilty later? Do you let them keep their license?

Colleen Platt:
We institute what is called a "complaint/notice of hearing," which is just alleged facts and alleged violations of law. Then we move to a hearing, at which point they can tell their side, and then the Board makes a determination. We do not use the arrest report there. We have the arresting officer come and testify to the facts. The Board then makes a determination.

Assemblyman Fumo:
My concern is that we are taking away their privilege based on an accusation before they are convicted.

Assemblyman Yeager:
I am trying to understand because I think what you said was, when you are alerted to an arrest, you use your subpoena power to obtain the arrest documents that come from local law enforcement, not from the Central Repository. What is the impact of the bill as it exists today? Would that prevent you from using the subpoena power to get the arrest reports? I read it as just precluding you from going to the Central Repository to get the records from them.

Colleen Platt:
We have had some issues in the past with obtaining these records. These provisions were added to the statutes in 2009. We also have a companion statute in our chapter that speaks to convictions. In order for us to adequately protect the public in regard to solicitation of prostitution and make sure these massage therapists are complying with the statutes and regulations, we use NRS 179A.100 in conjunction with NRS 640C.745 and NRS 640C.720 to obtain those documents, so we can adequately protect the public.

Assemblyman Elliot T. Anderson:
The statutory reference that you have a problem with removing is NRS 179A.100, section 7, paragraph (w), which in A.B. 76 would be the new section 8, subsection 4, paragraph (w), correct?

Colleen Platt:
That is correct.

Assemblyman Elliot T. Anderson:
Can you please tell me what lines in the section that is proposed to be repealed that you specifically have an issue with? You said there was a subtle difference in the language between the two chapters.

Colleen Platt:
Section 8 of A.B. 76 says that records of criminal history—which is defined for that chapter—may be disseminated by an agency of criminal justice. That is the key that defines this chapter as well. Then when you move down to what becomes subsection 4 of section 8, it proposes to delete paragraph (w), the Board of Massage Therapists and its Executive Director.

The massage therapists' statue is NRS 640C.745, which authorizes us to request the records of criminal history from a court of competent jurisdiction or a local government agency. There is a slight difference in the language and the terms used in the statutes, so we are concerned that the slight difference might cause some other agencies to not provide the records we need in order to protect the public. That is the biggest concern. As we all know, commas and words all make a big difference in statutes.

Assemblywoman Cohen:
I understand that people who are accused of prostitution will often end up taking a plea for trespassing. What happens with someone who takes the trespass plea, and how does that affect what you do and their licensing?

Colleen Platt:
That is a big concern. That is why we are authorized to institute the disciplinary action upon their arrest. The practice is that a lot of these solicitation arrests are pled down to trespassing or dismissed. Keep in mind that this is administrative and not criminal. I understand that we are dealing with someone's livelihood, so we provide due process. They are absolutely offered all of the due process mechanisms. We do not automatically take their licenses. We try to work with them to bring them into compliance with our statutes and regulations. That is a concern, and that is why we are authorized upon arrest, with or without consent. If an undercover officer goes in, he is arguably consenting to the solicitation of prostitution. That is also why you have "with or without consent." That is the triggering event that authorizes us to look at the arrest. Many times the criminal complaint is not finalized before we take final administrative action, either in the form of a settlement agreement or in the form of a formal hearing. Many times those cases are postponed six months out, and we generally have more than a 90- to 120-day turnaround time with regard to our complaints.

Chairman Ohrenschall:
Are your licensees required to report an arrest regardless if charges are filed?

Colleen Platt:
Yes. They are supposed to, but we generally do not see that.

Chairman Ohrenschall:
The issue that you have is that you would only be privy to the information about actual convictions if the case is negotiated, but not the arrest if charges were not filed.

Colleen Platt:
Yes. That statute speaks to the arrest and conviction for a sexual offense. Now we will have the ability to discipline someone for the solicitation with or without consent, but I am going to have to wait until they are convicted. As we know in general practice, a lot of times they are convicted for trespassing or some other gross misdemeanor or a misdemeanor.

Chairman Ohrenschall:
So generally, upon finding out about an arrest of one of your licensees, the Board will usually act prior to the case being resolved, whether it is negotiated or goes to trial?

Colleen Platt:
Yes, that does occur sometimes. It depends on the time frame of when they are arrested, when we are provided notice, the subpoenas, and Board meetings.

Assemblyman Yeager:
When you receive notice that someone has been arrested, what do you do administratively? Do you suspend that person? Please walk me through the process of what you do in response to that information. I think you said that it is generally 90 to 120 days. What is their status during that investigation period?

Colleen Platt:
The Board receives information from the local law enforcement agency. A letter is generated suspending their license for 15 business days to alert them. We then issue a subpoena to the local law enforcement agency to receive those arrest reports, at which time a report is generated internally from staff and is provided to me as the attorney. I then draft a complaint/notice of hearing and send that out. Many times there is a handful of attorneys who generally represent these types of licensees, so we either settle the case or go forward with a full evidentiary hearing at which time we would subpoena the officer to testify.

Assemblyman Yeager:
Can you give the Committee a sense of the volume that we are talking about? How many of these prostitution-related suspensions happen on an annual basis, or how prevalent is this?

Colleen Platt:
I believe from the Clark County jurisdiction it was about 16 arrests last year and 4 so far this year. To clarify a little, we usually receive that information from the vice cops in those jurisdictions. They have sting operations when they have the time, money, and an opportunity to do that.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I did not initially sign in to take a position on this bill. I wanted to hear the testimony on Assembly Bill 26 and how it compared to this bill to determine what the overall impact would be. I came to the table in opposition. I will work with Julie Butler.

I do have concerns. My first concern is that which was raised by the Board of Massage Therapists and the repeal of those paragraphs in section 8. I believe it does not only apply to massage therapy. We work very closely with the Gaming Control Board, nursing, and other entities. When we have businesses that show a pattern of practice that may have a negative impact on public safety, our ability to go after those businesses from the licensing perspective is important. As you know, the Board of Massage Therapists, prostitution, and

human trafficking are huge issues in Clark County. Often those massage therapy businesses are fronts for that type of activity. When we see a pattern of practice in those businesses, being able to hold the business owners accountable for the activities that are occurring inside those businesses is important, and the licensing process is key to that.

My second concern is on the top of page 13, paragraph (k), where it strikes out language about any person or governmental entity which has entered into a contract to provide services to an agency of criminal justice. If you remember, when I gave my presentation to this body several days ago, I talked about the Hope for Prisoners program. It is a very important program that we use to get people reacclimated into society when they serve time in the Clark County Detention Center. If the language in paragraph (k) were stricken, I believe that would impede our ability to share information with Hope for Prisoners that they use when they select candidates for that program. It also falls into other aspects such as contracts that we have with entities that come into the Clark County Detention Center and do assessments. To give you another example, several years ago, Dr. Austin came in and did a study inside the jail to look at, among other things, demographics, recidivism, repeat offenders, how many people in the Center had been there previously, and what their crimes were that they were charged under versus what the plea bargains were. In order for us to provide him with the information to do that study—which ultimately benefits the criminal justice system as a whole and helps us make reforms—we need to be able to provide criminal history. This section would strike that out and inhibit us from doing that.

Those are my primary concerns with the bill as written. I do not believe it is Ms. Butler's intent to tie the hands of local law enforcement. We will work with her to retain those sections or to tweak the language, so it meets a comfort level for this body.

Chairman Ohrenschall:
Is there anyone else in opposition to Assembly Bill 76? [There was no one.] Is there anyone who is neutral on this bill? [There was no one.]

Julie Butler:
We would be happy to work with the Board of Massage Therapists and the Las Vegas Metropolitan Police Department. It was not our intent to limit the information that was available. My office viewed it as duplicative and did not realize that there were other agencies with unintended consequences.

Chairman Ohrenschall:
Other than the Board of Massage Therapists, have any of the other boards expressed any concerns to you regarding the proposed changes in the bill?

Julie Butler:
They have not, but in the interest of not creating any more unintended consequences, you will likely see an amendment that will probably reinstate all of that.

Chairman Ohrenschall:
We will close the hearing on Assembly Bill 76 and open up for public comment.

Tonja Brown, Private Citizen, Carson City, Nevada:
I have provided this Committee with some information from a presentation that I gave on September 12, 2016, to the Advisory Commission on the Administration of Justice (Exhibit I). The information that I presented to them was drilling down into the Parole Board and showing them why inmates are being denied parole. During my presentation, I provided a document of 18 attachments (Exhibit J) showing some of the factors that played into granting or denying parole.

Some of these attachments will show a Nevada Offender Tracking Information System (NOTIS) file from a former inmate. In this file, as highlighted in orange and green, are disciplinary charges that led to litigation that this inmate won against the Department of Corrections (NDOC). The disciplinary actions should have been removed from the inmate's file and should never have been submitted to the Parole Board. This becomes a problem when an inmate appears before the Parole Board and is unable to see his file to check for inaccuracies. The NDOC is submitting the inmate's record that contains incorrect information to the Parole Board.

Some of this incorrect information consists of false felony charges due to a computer glitch when the software program was installed on June 5, 2007. This was hidden by the NDOC for years. This incorrect information plays a factor in denying the inmate parole.

Recently it has come to my attention that some inmates' earned credits are missing from their files and from the Parole Board files, yet the inmates are in possession of the correct information. This plays a factor in them being paroled to the street. This is why an independent ombudsman is needed for NDOC. An ombudsman will save the taxpayers money from future litigation by the inmate, and there will be more paroles granted to inmates when the file is correct.

I have also provided to you the revised index for the exhibits (Exhibit K).

Previously, Connie Bisbee, Parole Board Commissioner, spoke before you and she touched on some things. This documentation contradicts what she said. I would like to go through a few of the attachments.

Attachment 15A is victims' rights versus inmates' rights in the documents (Exhibit J). Also, inmate litigation: when an inmate litigates against the NDOC or the Parole Board, you will see that the Parole Board will retaliate by denying them parole, while those who do not—but have been convicted of more heinous crimes—will get paroled. It is documented that if an inmate maintains his innocence, he will never see the streets. You must admit guilt or you will never be paroled. Some have been denied to expiration when they have life with the possibility of parole. That is also in the documentation.

Attachment 1 is the computer glitch. All of this information is in a NOTIS file. The inmate is not allowed to see a NOTIS file, so they have no way of knowing if it is accurate. This particular inmate entered the prison system in 1989. It does not pick up until ten years later in 1999. Where are the previous ten years? All that is highlighted in green and orange shows offense charges and disciplinary charges. These disciplinary charges will go to the Parole Board. The Parole Board and the NDOC have no way of knowing that the person litigated and won. On page 28—where it is highlighted in yellow—on June 5, 2007, they installed the software program called NOTIS. It showed that on June 5, 2007, this inmate committed a new crime. This information was then submitted to the Parole Board within 30 days. The Parole Board then denied him, and not only denied, but he was changed to high risk from moderate risk. Nothing changed; in fact, he did nothing but improve, but the file reflects negative and inaccurate information.

In 2011, this was printed off and remained in the file for four years. This individual died in 2009. That is why I have it; inmates do not have access to it. This was court ordered. Had this not happened, no one would ever be able to see what this NOTIS file looks like. If you take a look at this, the computer glitch, and the documentation and the litigation, we are talking about information pertaining to credits and the Nevada Supreme Court orders dealing with credits.

A primary example of retaliatory behavior by the Parole Board is in 2007, which is Attachment 18 (Exhibit J). That is *Klein v. Bisbee* [USDC 3:09-cv-00221-LRH-RAM], and that shows a pattern of retaliatory behavior, and it was moving forward at the time of this inmate's death. You will find other lawsuits filed by this inmate, along with several other inmates, where they have gone before the Parole Board and due process was violated.

One of the documents also discusses Mr. Stockmier, and there is an affidavit from me. I was asked to attend a Parole Board hearing on behalf of an advocate. I sat in the lobby and waited. I got there before the hearing was to begin and asked when Mr. Stockmier's case would be heard and was told that they had already heard it. That would have been impossible because they did not ask anyone out there. I went in and listened to the rest of the parole hearings of other inmates, and every time they had a decision that needed to be made, they asked everyone in the room to step out so they could deliberate. While they deliberate, they play music. That did not happen in the Stockmier case. They already had their minds made up. They denied him. There are things like this in the documentation. It gives you a better understanding. Look at the denials. You have to look at what is really accurate.

In 2009 or 2011, there was a bill for an ombudsman for the Office of the Attorney General. It was a start. We need an independent ombudsman. It will cut down on litigation, and most importantly, inmates must be able to see their files. There are thousands of inmates who

have false information in their files. It has recently come to my attention that the Parole Board is trying to figure out what happened to these inmates' credits. They will be appearing before the Parole Board next month. The inmates do have their credits; also, they are missing other information from NDOC and the Parole Board, but they have the original paperwork. There are problems there. When they come in here and tell you this, I want you to think about that and go back to the information that I have provided to you.

There are all kinds of areas—segregation, aggregated, victims' rights, disciplinary, the computer glitch—and think about, is there stuff in the inmates' files? That is one of the reasons they are being denied. The inmates have the right to see their information, so they can correct it and so there will be more granted paroles. These denials are costing the taxpayers in excess of $40 million per year. If they would grant more paroles, we would not need new prisons built.

I will not be able to attend all meetings, but I will try to do my best. I want you to take a look and go through all of the information so if something comes up that does not seem right, go here and take a look, and it will probably contradict what they just told you.

Assemblyman Pickard:
Do you know if there is an audit procedure at all for reviewing the documents and records that are in the individual files? Is there a process that would normally catch those types of errors?

Tonja Brown:
It is an attachment under "computer glitch." It was a 2013 audit that was conducted by the Advisory Commission on the Administration of Justice. It was completed, and I was able to show the Board of Parole Commissioners and others that the audit was flawed. That is explained in here.

Assemblyman Pickard:
Then I understand that the answer is yes, there is an audit procedure.

Tonja Brown:
There was one dealing with the computer glitch, but it was flawed. They only asked certain questions and did not go into where they needed to go. They just touched the surface of the audit. We do not know how many inmates had false information in their files.

Assemblyman Yeager:
Some of these problems we have heard about and will hear about throughout the session. One of the issues that we have is that the information technology inside the prison is quite antiquated and does not really allow sorting of information, providing information, or easy access to information. That is something we will have to grapple with to the extent that any of us return to this body in the future and have a say in what we do. All of our criminal justice agencies statewide could use an infrastructure upgrade when it comes to technology and to, hopefully, address some of these problems.

Chairman Ohrenschall:
Seeing no one else for public comment, I will close public comment. The meeting is adjourned [at 10:41 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a copy of a PowerPoint presentation titled "2017 Presentation of the Board of Parole Commissioners," presented by Connie S. Bisbee, Chairman, State Board of Parole Commissioners.

Exhibit D is a document titled "Parole Board Quarterly Report of Actions October 1 through December 31, 2016 (Q2, FY2017)," by the State Board of Parole Commissioners, presented by Connie S. Bisbee, Chairman, State Board of Parole Commissioners.

Exhibit E is a form titled "Nevada Parole Risk Assessment," updated on November 1, 2012, presented by Connie S. Bisbee, Chairman, State Board of Parole Commissioners.

Exhibit F is a form titled "Discretionary Release Parole Guideline Worksheet," updated on November 1, 2012, presented by Connie S. Bisbee, Chairman, State Board of Parole Commissioners.

Exhibit G is a proposed amendment to Assembly Bill 76, dated January 26, 2017, presented by Mindy McKay, Records Bureau Chief, General Services Division, Department of Public Safety.

Exhibit H is a letter dated February 10, 2017, in opposition to Assembly Bill 76 to Chairman Ohrenschall and members of the Assembly Committee on Corrections, Parole, and Probation, authored by Sandra Anderson, Executive Director of the Board of Massage Therapists, and submitted by K. Neena Laxalt, representing the Board of Massage Therapists.

Exhibit I is an undated document titled "Parole Board Denials and Some of the Factors Considered for the Parole Board," submitted by Tonja Brown, Private Citizen, Carson City, Nevada.

Exhibit J is an undated document titled "Attachment 1," presented to the Advisory Commission on the Administration of Justice and submitted by Tonja Brown, Private Citizen, Carson City, Nevada.

Exhibit K is an undated document titled "Revised Index," presented to the Advisory Commission on the Administration of Justice and submitted by Tonja Brown, Private Citizen, Carson City, Nevada.