

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

**Seventy-Ninth Session
April 6, 2017**

The Committee on Corrections, Parole, and Probation was called to order by Chairman James Ohrenschall at 8:07 a.m. on Thursday, April 6, 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:

Assemblyman Jason Frierson, Assembly District No. 8
Assemblyman William McCurdy II, Assembly District No. 6



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Devon Isbell, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Claudia Stieber, Private Citizen, Reno, Nevada
Roy Giurlani, Private Citizen, Carson City, Nevada
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers
Mark Smith, Private Citizen, Reno, Nevada
Stuart Walker, Private Citizen, Spring Creek, Nevada
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada; and representing Nevada Law Enforcement Coalition
Michael Sean Giurlani, President, Nevada State Law Enforcement Officers' Association
Tom Ely, Private Citizen, Las Vegas, Nevada
James M. Wright, Director, Department of Public Safety
Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Andres Moses, Staff Attorney, Eighth Judicial District Court
Eric Spratley, Lieutenant, Intergovernmental Services, Washoe County Sheriff's Office

Chairman Ohrenschall:

[The meeting was called to order and protocol was explained.] We have three bills that we are hearing today. We are going to start with Assembly Bill 302, which transfers the Division of Parole and Probation from the Department of Public Safety to the Department of Corrections. Before I open that hearing, I am going to ask Assemblywoman Cohen if she would take over and chair this meeting today, and then we will get started on Assembly Bill 302.

[Assemblywoman Cohen assumed the Chair.]

Assembly Bill 302: Transfers the Division of Parole and Probation from the Department of Public Safety to the Department of Corrections. (BDR 16-596)

Acting Chairwoman Cohen:

Welcome Chairman, Vice Chairman, and Mr. Speaker. Please begin.

Assemblyman Jason Frierson, Assembly District No. 8:

I am Assemblyman Jason Frierson from Assembly District No. 8, and I am the Speaker of the Assembly. Today I present to you Assembly Bill 302. Not having been in the Assembly Committee on Judiciary this session, I had an overview with a lot of details I am sure you have already heard, so I am going to truncate my presentation and get to the point of the bill so I can save us some time. The essence of this bill is reflected in the need for the state to be efficient and effective in how our departments operate. With the prison population that we have and the need to manage both how we incarcerate and whom we incarcerate, there is a need for us to be mindful of the process that takes place in order for that to work effectively. This is somewhat of my bailiwick so I am actually just going to toss my notes.

We are one of three states in the country that has our Division of Parole and Probation (P&P) under the Department of Public Safety (DPS). Forty-seven other states operate in a different manner where the department of parole and probation is either under the department of corrections, the courts, or in their own departments. There has been a national shift that started in states like Texas and Kentucky, where they were looking at how to address the criminal justice system differently.

This bill is not a bill proposing to put more people in prison or let more people out of prison. This bill proposes to change who makes those calls. Currently, with the Division of Parole and Probation under DPS, there are a few practical issues with respect to how our system operates and who makes the decisions. One issue is that one department is able to impact the bottom line of another department. The Division of Parole and Probation is able to make decisions that impact the Department of Corrections (NDOC) without any accountability for those decisions. The Division of Parole and Probation makes decisions about who gets revoked, they make recommendations about who goes to prison, and then another department has to live with that. The department that has to live with that decision—NDOC—has to figure out how to house somebody who killed someone with someone who stole something from Macys. It seems to me that the appropriate way to deal with those decisions is to let the department that has to house those people make those decisions. The department that has to house those people can decide whether to recommend a person to prison, where they will learn from people who have committed much more serious offenses. Arguably, that is a disservice to the public as far as public safety is concerned.

I believe, and have always believed, we operate the way we do in Nevada because this is the way we have always done it and because there is a sense of pride in being in law enforcement. That same culture and sense of pride does not exist with respect to the Department of Corrections. There have been some cultural issues within our system that are reflected in how work is done. I will give you an example of what initially brought this to my attention.

When a defendant is convicted, sentenced, and a presentence investigation (PSI) is generated—I believe you are going to hear more about PSIs later this morning—there is a recommendation made as to whether that individual should go to prison or should be granted probation. Over my years of experience several years ago, there were several instances when defendants were told they were going to get probation, and then they were referred to the person who was supposed to help them reintegrate back into society so they could succeed. The defendant would turn around and see a person in a law enforcement uniform with a badge and a gun, and then the defendant would say that they might as well be sent away. If we are going to have defendants matched up with an officer who is there to help them reintegrate back into society, that traditional law enforcement mentality does not help to bridge the gap and create a sense that the defendant and officer are going to be able to work together.

I want to make something clear, because I do not want this to turn into an attack effort against P&P. I know several probation officers who are wonderful at their jobs. I do not envy the kind of circumstances that they have to deal with when they have to supervise or when they have to check on their probationers or parolees. This is not about the officers and their ability to do their jobs on the front lines. I admire them and I actually had a wonderful experience when I was practicing criminal law. A probation officer called me and said, "Your client has not checked in, and I am going to submit a report and have a warrant issued if he does not get back to me. Can you reach out to him?" That was a tremendous help. I reached out to that client, told him he had to call his parole officer or he was going to go back, and for whatever reason it got his attention and he made that call. That is how the system is supposed to work, and that is a good thing.

Structurally, we still have a situation that allows one department to impact the bottom line of another department. It just seems to me that it would be more logical and more consistent with the rest of the country, more efficient and cost-effective, to allow the department that has to make decisions regarding housing make the decisions about who comes in and out of their institutions.

Some other states have incremental parole and probation processes where if an offender has a technical violation, rather than revoke them to serve their full sentence in prison, the state violates and houses them for 30 days to get the offender's attention. At the end of 30 days, the offender is re-released. We are certainly not precluded from doing this in Nevada, and I think that those are good steps. Director James Dzurenda brought some wonderful experience with him in how to operate NDOC. Fundamentally, it always raises my eyebrows when I recognize that we are 1 of 3 of the 50 states that still "do it the way we do it."

I also want to state that this is not a partisan issue. This is not even a criminal justice issue. I am not proposing that we dictate whether someone is sent to prison or let out of prison, and I am certainly not attempting to dictate how much P&P officers are paid. I am simply suggesting that, like 47 other states, we take our existing structure and place it under the department that has to deal with the consequences of the decisions. In theory, there would be absolutely no other changes aside from the letterhead and the titles on shirts.

I wanted to point out that not only is this idea not new in the country—because 47 other states do it this way—but it is also not new in Nevada. Governor Sandoval proposed almost this exact same thing in 2013 [Assembly Bill 497 of the 77th Session]. At that time, the Governor proposed to separate parole from probation, but the bill was not processed in the Assembly. I am here to say that I think it was a good idea in 2013—although there were some issues with separating parole and probation—and I think it is a good idea today. I do not believe that, in a state with our dynamics, we can afford to be one of a handful of states that do things just because it is the way it has always been done.

Assemblyman James Ohrenschall, Assembly District No. 12:

It is hard to follow our Speaker, who stated the case very well. I believe that this bill really has the potential not only to help the offenders who we hope will succeed under community supervision, but to also help all of us. When an offender succeeds, is not revoked, and is not sent to an NDOC facility, we all succeed; it really helps our entire community.

We have heard a lot of bills this session about trying to make sure that happens. We heard Assembly Bill 23 about independent reporting facilities for parolees and probationers. We heard Assemblyman Thompson's Assembly Bill 316 about trying to help make sure that when an offender is released, after they have served time, they are going to land on their feet and have the underpinning to make sure that they succeed.

I really believe that Assembly Bill 302 complements these other legislative efforts to try to make sure that whatever a sentencing judge orders—whether it is prison time, probation, or eventual parole after time served—we are going to help that person succeed. I believe that if A.B. 302 passes we will accomplish what we are trying to get at, and we will see lower rates of revocation and fewer inmates in our state facilities.

Assemblyman Steve Yeager, Assembly District No. 9:

Good morning Madam Chair and members of the Committee. I represent Assembly District No. 9 in southwest Las Vegas. I do not have much to add, other than that it is time for Nevada to do this. As Speaker Frierson noted, we are an outlier in this regard, and I think moving the Division of Parole and Probation to NDOC would make government more efficient and would provide better outcomes and results for offenders as well as our community. This bill will allow one agency to deal with an offender once that offender gets to the end of their court proceedings, and that agency would be NDOC. The Department of Corrections would work with the offender on probation, and if the offender is not successful on probation and goes back to prison, NDOC would know the track record and what efforts have already been undertaken. The Department would then be able to better utilize the time in prison to correct the behaviors that led to the revocation of probation in the first place.

Additionally, if NDOC continued to supervise an offender, the offender would have continuity of care once they were paroled. We talked about this, about starting programming prior to parole, when we heard Assemblyman Thompson's A.B. 316. Just imagine if NDOC maintained jurisdiction over that offender even after release, so there could be a true

continuity of care. Programming—both before going to prison, while in prison, and on parole—is a public safety measure. Without programming, public safety is at risk for all of us. The hope with A.B. 302 is that our programming would be more complete and that offenders would have a better continuity of care. With these remarks, I note for the Committee that I am in support of A.B. 302, and I stand ready for any questions.

Assemblyman Frierson:

I left out a couple of points that I wanted to make sure I address, if that is okay.

Acting Chairwoman Cohen:

Certainly.

Assemblyman Frierson:

I want to address two other issues, and then I apologize to the Committee because I need to go work on some budget closings in the Assembly Committee on Ways and Means. I welcome the opportunity to follow up and discuss this issue with members, even though I no longer practice law in this area. I realize there are still programs and opportunities for us to improve, and I truly think our corrections, parole, and probation will be more effective and efficient housed under one roof. For me, this bill is a function of practicality.

I tried to come up with an analogy: If I am at the door of my house, I get to decide who comes in and who goes out of my house. If someone else were to tell me that I had to let a person into my house and that I just had to deal with it—they may not know that I have a small child or a dog that someone is allergic to. The reality is that I get to decide who comes in my house; I get to decide whether I am comfortable with who comes into my house and whether they stay. It does not make sense to me—and 47 other states agree—that somebody else gets to decide who comes into the house without regard to the decisions that have to be made about how to mix a violent offender with a nonviolent offender, or a youth offender with a sexual predator. Whoever owns the house should get to make those decisions, but right now we have a different decision-maker and it does not seem like a practical situation. As I said, 47 other states agree with me.

I also wanted to point out that the original bill proposes to become effective on July 1, 2017. I agree that this is too soon. I agree that we need to take some time to do it right. I agree that we need to take the time to ensure that we transition our computer systems correctly so that corrections officers have access to the information they need so that the transition runs seamlessly. I am sensitive to the time frame, and I believe is a necessary adjustment.

I believe it is time for us to operate like the "big boy state" that we are and not like it is still 1960. I think it is time for us to join other states that supervise offenders in a way that allows them to make the best decisions for institutions in an effort to keep both the public safe and, quite frankly, to allow the officers in both facilities to do their jobs and focus on violent offenders without having to worry about protecting nonviolent offenders from them.

With that, I thank you for your attention. These able-bodied individuals—Chairman Ohrenschall and Vice Chairman Yeager—are more than capable of answering your questions. I know that there are people in the community who are concerned; they know me and I know them very well, and we have talked about this issue over the years. This should not be a surprise, but I want to make it clear that this bill is not an effort to put down their efforts, to suggest that they are not effective in their jobs. They should be respected, valued, maintained, and not punished. This bill is an effort to allow them to be more effective, but in an efficient way that I think better serves our state.

Acting Chairwoman Cohen:

Thank you, Mr. Speaker. Before you go, I want to be clear. You touched, very briefly, on the fiscal note. I want to make sure we are clear that this is a policy committee and you are asking us to address the policy issues alone, and the fiscal issue will be addressed at a later time in the proper committee.

Assemblyman Frierson:

Absolutely. The fiscal aspect of this would be an appropriation, and the Ways and Means Committee would have to address that portion of it. This is the policy discussion about whether or not we should make that structural change. If we believe that we should, then we can take the time, as I have suggested, to do it right and to get our buckets and affairs in order, so we do it in the right way in transition.

Acting Chairwoman Cohen:

Thank you, and thank you for spending some of your morning with us.

Assemblyman Pickard:

Speaking of the policy issue surrounding the fiscal note, I had a question because it is such a sizable appropriation that will be required. When we look at the dollars, are they needed because of the structural change, or are we planning for a massive personnel change? Do you know where the bulk of that effort is? That might be a better question for the departments, but I am just curious from the policy perspective because we have to look at how much disruption we are causing in the mix.

Assemblyman Frierson:

It is difficult not to make that a money question. I think that is something for Ways and Means to consider and ask questions about. I think we often end up adjusting fiscal notes, and it is always interesting to me how a multimillion-dollar fiscal note was \$500,000 four years ago.

Assemblyman Pickard:

I was just curious to know if we are making a substantial personnel change in the process of this. Are we causing some real disruption? I suspect, because of the way you presented the bill, that we are looking at essentially moving the same group of people from one building to another, and the fiscal note is probably just for infrastructure adjustments. Can you comment on that?

Assemblyman Frierson:

My intent is to not make a single personnel change whatsoever with this bill, but simply to structurally lift one department and house it within a department other than where it is right now, all while recognizing that there are computer issues, training issues, letterhead issues, and things of that nature. This is not a new idea and, again, in 2013, we had the same discussion about the fiscal note. In 2013, we discussed how much of our fiscal concern was well founded and how much was a concern about doing things differently. At the end of the day, if there is money and we have to pay for it, then we either pay for it or we do not, and the buck stops there. As a policy consideration, I think this change is certainly worthy of discussion so we can really get to the bottom of how much it will actually cost.

Assemblyman Pickard:

Sure, that is what I was driving at. Thank you.

Assemblyman Wheeler:

Mr. Speaker, one of the things you said is that you get to decide who comes into your house, and I fully, totally, 100 percent agree with you on that. The problem I see with that is that our prisons do not belong to NDOC; our corrections system is not their house. The people own the house that we put prisoners in through adjudication, as you well know. Part of that adjudication process is a violation of parole. If someone has violated their parole and we send them back, that is what we have prisons for: to try to deal with offenders. I realize it is hard to do. It is very, very hard to do.

My real question is that this department is a function of law enforcement. You said that it scares people, et cetera. Maybe it should. Obviously, I was on the other side; you were defending them and I was trying to put them in jail, so we look at this issue a little differently, but maybe prison should scare people. I am a little worried, and maybe you can answer this question for me. If we put P&P under NDOC, will we see less recidivism because the department will be afraid to violate parolees due to overcrowding, or will they be afraid to violate offenders because they will not want to house a minor offender with a major offender? Would it affect that rate?

Assemblyman Frierson:

I am more than happy to follow up and provide the Committee with information, but the studies that I have reviewed all indicate that housing parole and probation under corrections is an effective way to manage the system. Again, I practice in family law, but let us not forget that I was a prosecutor for five years. This is not a public defender or a criminal defense issue. I was deputy attorney general in habeas court, where inmates had lawsuits, which I had to defend the state against. I have been a district attorney, a deputy district attorney in child welfare and child abuse and neglect cases. Structurally, the bill itself has no impact whatsoever on decisions and how decisions are made; it is about who makes the decisions. I appreciate the distinction when I used the analogy of my house, but I could have just as easily said I was the manager of a store and I get to decide who comes and goes.

This is not a function of trying to be soft or hard; it is a function of trying to be effective. If I have a bed and I need to make a decision on who sleeps in that bed, I think that I am the one who is most effectively able to make that decision if I am the person supervising that bed. I will say—and I am sure that the department is able to speak to this—I do not remember what the department's motto was but I believe it was "dysfunctional at best." I did notice and pointed it out in another committee that the motto had changed. The notion had been embraced that the purpose of P&P, in part, is to help reintegrate individuals back into society.

We cannot give everybody a life sentence; some people are going to get out. I believe that we have to decide whether they get out of the system better or worse off. I believe we are doing a disservice to the public if we do not make sure that offenders come out better. People often want to bring up truth in sentencing, which is kind of a misnomer in Nevada. The reality is that the people who are making these decisions will be able to provide the programming and can provide the information. They will have the track record to make decisions about whether or not this person is able to reintegrate back into society, and if they are not, I am perfectly fine helping them stay where they are. This bill does not intend to make a change about that priority whatsoever. It is not about what decision is made; it is about who is making that decision.

Assemblyman Wheeler:

Thank you. I just worry about unintended consequences. That is not about what the bill says, but I am concerned about unintended consequences and I thank you for your answer.

Assemblyman Frierson:

I also thank you, and I also know that the world did not end in 47 other states. I do not think that this change is going to be mind-blowing, other than an eventual cultural change with how the department sees their job.

Assemblyman Wheeler:

Thank you, Mr. Speaker.

Acting Chairwoman Cohen:

Mr. Speaker, please leave. The building is in capable hands. I am just going to ask, though, will parole and probation officers still be Peace Officers' Standards and Training (POST) trained and certified, still carry guns, and still have badges?

Assemblyman Ohrenschall:

As I understand A.B. 302, nothing in that regard will change, aside from a simple change in the chain of command.

Assemblyman Yeager:

May I add to that? I know this is not about fiscal, but if you look at NDOC's fiscal note on the last page, they are contemplating continued POST certification for parole and probation officers. I think that is contemplated by the bill, and it is the way that NDOC is looking at the bill. I believe NDOC would make sure that that training continues to exist.

Assemblywoman Krasner:

I have a question about something that the Speaker said that I think you both could answer. He had said that truth in sentencing is a misnomer in Nevada, and that we are currently housing juveniles with adults, and shoplifters from Macy's with murderers. Is that happening now?

Assemblyman Ohrenschall:

The truth in sentencing legislation was something sponsored by former state Senator Mark James in 1995. How it has worked out certainly depends on whom you talk to, and I think that is what the Speaker was referring to. I do not think it has worked out the way it was planned.

As far as youthful offenders, we do house a little over 20 male juveniles at the Lovelock Correctional Center. Of course, they have sight and sound separation from the adult inmates, pursuant to the federal Prison Rape Elimination Act (PREA). As far as how NDOC houses different offenders—whether it is a nonviolent theft offense versus a violent crime—and where they are housed, there are medium-level facilities and maximum-level facilities. Perhaps someone from NDOC could speak better to that point, but I stand by everything the Speaker said.

Assemblywoman Tolles:

Thank you, and for the record, I want to say you are doing a great job chairing the Committee. Thank you for bringing this bill forward. I hope you can help laypeople like me understand this. The way that I see the continuum of care is that it is law enforcement's responsibility to bring people into the system; it is NDOC's responsibility to keep them while they are housed, and then it is P&P who works with them through the process of exit out of the system. Of course, the goal, as we have talked about continuously throughout this session, is to keep offenders out and get them successfully rehabilitated so they do not come back. I know you share that goal. As somewhat of a layperson, do I have an accurate view of that continuum in terms of the responsibilities of the three parties?

Assemblyman Yeager:

I think that is accurate. The law enforcement piece, of course, really begins when the person commits the crime. If someone goes to court and ultimately gets probation, they are assigned to the Division of Parole and Probation. I think that model now is a blended model of some law enforcement and some social work or a reentry function, but it would be P&P—along with the input of a judge—who would make the determination whether that offender needs to go to prison because they violated a condition of probation. If they decide that the offender does, then it is the prison who takes that person when they come into the facility. When the

person leaves prison, if they are on parole—because some people just expire their sentence and are then just released to the streets—the State Board of Parole Commissioners makes that decision as well. The Parole Board is a third agency that becomes involved, but the hand-off would be to the Division of Parole and Probation, who would supervise during the term of parole. Again, that is a blended model. If the person fails parole, then they go back to NDOC. I hope that answers your question about how this process works procedurally.

Assemblywoman Tolles:

That does. It helps a little bit. I guess I am trying to balance the fact that there are certain groups responsible for managing the relationship between the public and the inmate who is either entering or exiting the system, and these agencies do this for the sake of public safety. Perhaps my nuts-and-bolts question is how is public safety better served by bringing P&P back into the Department of Corrections, where the main goal is holding people inside prison versus getting them out and having them succeed in public?

Assemblyman Yeager:

I think that is really found in the continuity of care. For instance, we have heard some discussion in this Committee about how there are numerous inmates who could be paroled, but for various reasons they are not. One reason could be that there is not an adequate parole plan put in place. That is something that P&P currently works on, even though the offender is in the custody of NDOC. Our current system requires the two agencies to cooperate in some fashion, and while I am certainly not here to put any past transgressions on current administration, I think historically there has been a real breakdown there. Our hope is that, by putting all of those decisions and processes in the hands of NDOC, it would be NDOC employees who already know the inmate, know the programming, know what has worked and what has not worked. They would be able to come up with that parole plan and hopefully be able to create a continuity of care in ensuring that the same providers or at least the same programming is available on the outside. The hope is that with continuity of care, the chance of success will increase. Right now, we have two agencies that have to coordinate in what can be a clunky way—for lack of a better term. The whole process would be in the hands of the one agency.

On the probation side, NDOC would be doing the programming and if, at some point, the person failed and had to go back to prison, NDOC would know the reasons for that. They would know what worked and what did not work. They would know the offender in a personal way and be able to, while the offender is in the prison, try to continue to correct those problems, rather than causing an information gap or a knowledge gap with a particular offender. The philosophy would be, by having the same agency from start to finish, the agency can better address some of those concerns and have a better continuity of care and hopefully have better outcomes.

Assemblywoman Tolles:

Logistically then, those employees that are working for NDOC would then change their day-in and day-out job description, where maybe half the time they are dedicated to their current duties and then the other half of the time they are acting as a parole officer? So you have the same personnel splitting their duties? Logistically, I am just trying to wrap my head around this.

Assemblyman Yeager:

I think you are asking a very good question. There are a couple of different models of how it could work. If you picked up the entire Division of Parole and Probation and moved them under the prisons, really the same roles that are being done could continue to be done by the same people, but it would be in an integrated fashion within the Department of Corrections. Now, whether NDOC wanted to look at changing personnel descriptions or having more of a blended model where part-time it is a probation officer and part-time it is something else, I think those are decisions that could be made by NDOC. I think the benefit comes from having all of those employees under one roof with access to the information. I cannot speak to the particulars, but I think there would be an opportunity to just move the Division and keep the same functions and have one umbrella over all those functions.

Acting Chairwoman Cohen:

Are there any other questions from the Committee? [There were none.] We will now move to testimony in support. Is there anyone who would like to testify in support of A.B. 302 here in Carson City? Because we have two other bills to hear today, I am going to ask that comments be kept to three minutes.

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

I just wanted to register our support for A.B. 302. I think it makes a lot of sense to move the Division of Parole and Probation over to the Department of Corrections. During my 14-year tenure as a public defender, I have noticed that some of the best parole officers I have worked with in district court already had experience in NDOC. It has been a privilege to work with them. The officers had the institutional knowledge Vice Chairman Yeager spoke about. Whether offenders were placed on probation and were doing well, or they were messing up and the probation officer had to call me, as the Speaker said—and I had to call the offender to get them back on track—or whether they were looking at a probation or vacation and looking at incarceration in NDOC, the officers were able to speak to the offender and let them know about all the programs and all the institutional knowledge that they had acquired over the years to help them. There was not an interruption in programming. That is the key here; we do not want an interruption of programming. When that happens, when there is that disconnect with the programming, then we start to see increased recidivism rates. We would like to keep this continuity of care, as Vice Chairman Yeager put it, so we are in full support of A.B. 302. Thank you.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

We are also in support of this measure for the same reasons that the Speaker, Chairman Ohrenschall, and Vice Chairman Yeager stated. I think having an organization that shares the same mission and values will go a long way towards reintegrating people into society and helping them succeed, so we are in full support of this measure. Thank you.

Acting Chairwoman Cohen:

Thank you. Is there anyone else who would like to testify in support in Carson City or Las Vegas? [There was no one.] We will now move to testimony in opposition to A.B. 302 in Carson City.

Claudia Stieber, Private Citizen, Reno, Nevada:

I am a captain at the Division of Parole and Probation, Department of Public Safety, where I have worked for 22 years. I am here on my own time this morning expressing my personal opinions, and not the opinions of the Division. I have deep concerns regarding the proposal to move the Division from DPS to NDOC.

In my more than two decades at the Division, I have seen a lot of changes; some good and some not so good. The current direction in which the Division is moving brings me great hope and enthusiasm. The Division is pursuing several evidence-based practices such as the Day Reporting Centers and Effective Practices in Community Supervision (EPICS) training that can only improve the success of the offenders we are tasked with helping. I urge you to support those endeavors and not move the Division under NDOC. I fear a change in administration may derail the current, positive efforts of the Division, as valuable time and resources will be reallocated to the merger of NDOC and P&P. Moving the Division is not as simple as unplugging it from one department and plugging it into another. There would be a lot of time, energy, and expense spent merging the two entities—time I believe would be more productively spent on the positive programs each entity is currently pursuing.

I believe the current system of checks and balances that exists between having a state prison system, a separate Parole Board, and a separate Division of Parole and Probation works well for our state. This system provides a fair system of who enters prison and who paroles from prison. I know it is a simplistic analogy, but I do not think having the fox guard the hen house is in anyone's best interest. Placing the Division under NDOC would put our state in that poor scenario.

This state enjoys a very low recidivism state. Additionally, the offenders supervised by the Division have a very high rate of successfully completing their terms of supervision. I believe our parole success rate is among the highest in the nation. If that were true, why would we want to make big changes to a system that is not broken and is in fact quite successful?

I have yet to hear a compelling reason as to why this change is warranted. I have heard the same argument for years that other states do not have parole and probation systems like Nevada. I do not really care what other states do, unless their success rates are higher than Nevada's or the recidivism rates are lower. Perhaps it is the other states who should be looking to our state and emulating what we do here.

The Division's officers are some of the most highly trained officers in the state. Despite budget cuts, furloughs, and pay cuts, they continue to perform their duties in an exemplary manner. The offenders supervised by the Division are all convicted criminals: some dangerous, some violent. Our Division officers see those offenders in their homes. As such, our officers need to be category I peace officers. I fear that moving the Division to NDOC may jeopardize the ongoing POST certification of the Division's officers at that category I level. It is my opinion that the job of being a parole and probation officer is far too dangerous for anyone to do who is less than a category I peace officer. Additionally, the Division already has great difficulty in attracting, recruiting, hiring and retaining quality employees due to the low rate of pay and inferior benefits in comparison to other law enforcement agencies. As you know, NDOC also suffers from those same challenges. Moving the Division out of DPS and under NDOC would only amplify those issues.

In conclusion, the state's current system of housing the Division under DPS is working well and it is not broken, so why fix it? The proposal to move the Division to NDOC does not appear to offer any improvements, efficiencies, or cost savings; it is simply to make us like 47 other states. Please do not spend time and energy on an unnecessary and costly plan.

Thank you for your time this morning, and thank you for serving our state.

Acting Chairwoman Cohen:

Thank you, and do not go away. Thank you for your service as well, as we have a question from Assemblyman Thompson.

Assemblyman Thompson:

You mentioned a few times that your recidivism rate is great. You made strong statements about that. Can you share your data-tracking method and analysis with us? Also, can you share with us if that is seamless throughout the organization? I ask because one unit might track recidivism one way and another may track it a different way. How does the Division actually make sure that your statement is correct?

Claudia Stieber:

We have a unit specifically dedicated to that at our headquarters that tracks the data for our entire Division. I am testifying as a citizen this morning, however, so I do not have that sort of data with me. There are people here from the Division testifying on behalf of the Division who might be better able to answer that, but we do track that information.

Assemblyman Thompson:

When and if the Division comes up, I would like to know that. I would like to know, specifically, the name of the system that is being used to track recidivism.

Assemblyman Pickard:

I was intrigued by your statement about the fox guarding the hen house. In my view, having had no direct contact with either of these—I at least try to avoid the Department of Public Safety. The missions for both departments ultimately surround public safety. Everybody, I think, is trying to do the same thing in that respect. I would like you to tell me why you think that the NDOC is the fox guarding the hen house.

Claudia Stieber:

As far as the analogy, I guess the fear that I have has to do with when prisons tend to get overcrowded. This happened in our state in years past. I feel very hesitant to have the person running the prison system be the person in charge of controlling who comes out and who goes in. Of course, the Parole Board has not been talked about very much this morning; they are a separate entity that ultimately decides if parolees are revoked and sent back. I would hate to see our state follow in the footsteps of some other states like California where, when prisons become overcrowded, they allow the prisons to open the doors and let people go to relieve overcrowding. I am fearful about not having separate entities—the Board, Parole and Probation, and the prisons, separately—that brings me great fear. I do not think it is a good prospect for us to follow in the footsteps of our neighbor to the west. That is my fear.

Assemblyman Wheeler:

Ms. Stieber, I think that what you are saying is that this is a law enforcement function—which is kind of what I was trying to say—and that you see it as a law enforcement function through a law enforcement agency, which is DPS. I know that DPS is having problems retaining highway patrol officers because of the low pay—let us just say what it is. They move off to different agencies where they can get better benefits, better pay, et cetera, after we have trained them pretty well and they have put in a few years. Does P&P have that same problem within DPS, and would that problem be helped any by transferring it over to NDOC?

Claudia Stieber:

Our Division suffers from the exact same fate. We have tremendous difficulty attracting, recruiting, and retaining good employees once we have hired them and invested a ton of training in them, especially in the south. In Las Vegas, there are many other law enforcement agencies such as the Las Vegas Metropolitan Police Department (LVMPD) or the North Las Vegas Police Department ("North Town") that pay so much more and offer much better benefits that we just cannot compete. I know you have heard testimony this session and in previous sessions that NDOC probably suffers even more than our department in the same endeavor: attracting people and then keeping them. I am fearful that putting us in NDOC would only amplify that for NDOC and for us. At DPS, I think one of the things that helps us in attracting, recruiting, and retaining people is that we have five sworn divisions

within DPS where officers can transfer among the divisions. That is a huge selling point for DPS. If moved to NDOC, that would no longer be the case, and I fear our recruiting and retention would suffer because of that.

Assemblyman Wheeler:

Thank you.

Roy Giurlani, Private Citizen, Carson City, Nevada:

I am a retired captain from the Division of Parole and Probation. I served the Division and the citizens of the state of Nevada for over 25 years before retiring in 2011. I have worked in the rural communities, Reno, and Carson City, as well as at headquarters. I am very familiar with the Division's duties and responsibilities, as well as its history.

Division officers are uniquely trained and qualified. They also wear many different hats as they serve as peace officers, social workers, court officers, and program placement developers, to name but a few of their many duties. Their first duty, however, is as a peace officer protecting the communities they serve from those who would victimize the citizens of this state. The rehabilitation of those offenders comes in a close second.

When I first started my career with P&P in 1986, we received little law enforcement training outside of a six-week academy—compared to a six-month academy now—and the required yearly 24 hours of POST for recertification training. The equipment supplied by the Division to its officers at that time consisted of a badge, a pair of handcuffs with a case, and usually an older and rather run-down vehicle with which to conduct home contacts. Officers had to supply their own firearms and ammunition. Range qualifications in the rural areas were conducted off the side of the road, near Interstate 80, southwest of Elko. It consisted solely of putting holes in targets at a better-than 70 percent score and nothing else. We also had to supply our own bulletproof vests and would not be given pepper spray, ASP batons, or Tasers until we merged with DPS around 1996. Since then, Division officers have become highly trained and well-equipped peace officers. They perform at an exemplary level in an increasingly dangerous world. They protect us from the evil that exists in this world and deal with convicted and sometimes dangerous persons on a daily basis. It is my fear that transferring the Division to the Department of Corrections would result in a diminished dedication to the upkeep of their peace officer training, duties, and commitments.

Most people do not know or understand what these officers do. Many are surprised to find out that they are peace officers. Most believe that parole or probation officers are merely social workers or people who work with juvenile offenders. I believe that it is this misunderstanding that leads people to think that these officers should be under a department of corrections. After all, what they do is sometimes referred to as "community corrections."

It is because these offenders are supervised in a community setting that the officers who supervise them should also have the ability and authority to monitor, search, and arrest these offenders. Parole and probation officers deal with these offenders on the offenders' turf and in their neighborhoods. These places are oftentimes in areas that few members of the public

would willingly or intentionally enter. Division officers must work in these environments because, in order to effect positive change, you need to go to where the change is most needed.

As an example of just such a case, I remember an Interstate Compact Unit probationer by the name of Joseph Naso. He had a history of shoplifting and was being supervised for felony shoplifting out of the state of California. On the surface, he appeared to be a run-of-the-mill offender, but during a home contact conducted by division officers in April 2010, evidence of a possible probation violation was uncovered. As division officers are trained in investigation and evidence-gathering techniques, they eventually uncovered evidence, including a journal that led to Mr. Naso's conviction on four unsolved homicides committed in California in the 1970s and 1990s. The evidence recovered indicated that he may have also been involved in the rape and murder of numerous women across the country since the 1950s. Great police work and not social work led to that arrest and conviction.

This is only one example of how parole and probation officers in this state protect and serve our citizens; there are many, many more. Given this, we must keep these officers highly trained and well equipped. I fear that placing the Division under the Department of Corrections would drastically impact a division that is serving our citizens well. I know that I sleep better at night knowing the men and woman of P&P are on the job. At a time when money is tight and needs in other areas of the state are high, our citizens would be better served leaving the Division under DPS. The system is not broken; please leave it where it is, as it is currently doing an exemplary job of protecting and serving the citizens of Nevada.

I thank you for your time.

Acting Chairwoman Cohen:

Thank you, sir.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers:

I am the executive director at the Nevada Association of Public Safety Officers and a member of the statewide Law Enforcement Coalition. We oppose A.B. 302. I am going to ask you to listen to the subject matter experts on this bill. However, I get my moment here, so I am going to make a few comments about what I have heard and what I have learned.

First, in my observation of the creation of this bill, I do not see the director of the Department of Corrections anywhere. I do not see him pushing this bill. Respectfully—absolutely respectfully—I see four or five people who are testifying in support of the bill. I respect them all, but they are all public defenders—make a note of that. The only people pushing this bill right now are public defenders. This is a bill that has been pushed every session, but now we have public defenders in office. They have a right to do what they do, and they are in positions to do what they do—and I respect what they do—but I do not see NDOC out here. As a matter of fact, the biggest note on this bill is from NDOC. I know this is a policy committee, but the biggest note is from NDOC.

Speaker Frierson, respectfully, said earlier that he is concerned about what an offender will think when he looks up and sees a badge. Well, let me be blunt; too bad. Under the circumstances, he or she put themselves there. I am not concerned about what he thinks or she thinks when they look up and see a badge. Law enforcement put them there, corrections kept them, and if they reoffend, they are going back.

We have heard that this bill does not deal with how much P&P officers are paid. It does not. The Department of Corrections is going to get a bump because of the Governor's budget. Parole and Probation will not. We have separations all over the place here, yet we are trying to combine them because we think that is going to fix everything.

We have heard that we should not keep this the way it is just because it is the way we have always done it. Boy, I could not agree more. Do not keep something just because you have always done it that way; but then in the same breath we hear we are going to change it because 46 or 47 other states do it differently. Both of those arguments are counterproductive, and I think they outweigh each other. Nobody is keeping this just because it has always been done, and we are not going to change it just because everybody else does it differently. Communications, I am told, between P&P—and I have heard testimony earlier in the session—and NDOC are at an all-time high. They are working better than they ever have been before. I have heard no testimony to refute that in any other session, certainly not in this particular Committee. Both NDOC and P&P are deciding who comes into the house. They are both deciding that. This is not a unilateral process where P&P just decides they are going to send so-and-so back to the house; I am told this is a combined effort of communication.

You know what? Again, some people just need to go back to the house. Frankly, I have grown weary of this "let us become a kinder, gentler group to people who have offended us, to people who have taken our property and taken our lives." At some point in time you have a plan when you come out; as a person who is on a P&P plan and you offend, you have a real risk of going back to the house.

Last but not least, the recommendation, as I understand it, to revoke a parole or probation is just that, a recommendation. Who makes the decision to send somebody back to the house? A judge. We are not putting all the power in P&P; we are putting the power in judicial officers to do their job. I am also told, and I can be corrected—we have subject matter experts here—I am told that when they go back to the house, what part of the house they go to is NDOC's decision. No one has taken NDOC out of this. The communication is great; it is wonderful. I once again emphasize this entire process is the subject not of P&P—they do not desire it—and I do not see NDOC anywhere on this bill other than putting a rather large note on it. Thank you.

Acting Chairwoman Cohen:

Certainly, Mr. McCann, passions are going to run high on this bill, but I will remind you that Governor Sandoval's A.B. 497 of the 77th Session was a very similar bill, and not only is he our Governor now but he is a former federal judge. The Speaker has been a prosecutor in

this state, so this is not about public defenders being against everyone else. While I am not a cosponsor of this bill, I am the daughter of a career Nevada state parole and probation officer. This Committee is taking this bill very seriously; we are going to look at all the sides, and we will do what we think is best for the state.

Richard McCann:

If I may respond, thank you for that comment, Madam Chairwoman, and by no means do I think anybody on the Committee is not taking this seriously. I know you are taking it very seriously, and I did preface my comments by saying, With absolute respect to all the presenters of the bill. I just wanted it noted that it is one group of individuals who have themselves, at one point in time or another, been in that area. It is not taking away from what you, as a daughter, might feel, or anybody else up here may feel. I am simply repeating the facts as we know it, and the facts as we know it is that NDOC does not seem to be involved in this process other than to put a big note on it. That is all I am saying. It is passionate for everyone, and pardon me if my passion may have given you that idea, but I am not attacking any particular group.

Acting Chairwoman Cohen:

Right, and certainly we all have the capability to do our homework, do our research, and communicate with the different stakeholders, and we will do that. We will take in the information as presented by the bill presenters and by the opposition, and again with the stakeholders.

Assemblywoman Krasner:

Thank you very much for being here today and testifying and clarifying some things that I had questions about because, even though we can all do our homework, sometimes we get pretty swamped here and we have deadlines. I really appreciate your being here. Can you extrapolate a little bit on why you are testifying in opposition to this? How you think it might be bad for the citizens here in the state of Nevada and their safety?

Richard McCann:

Why am I here? Why am I testifying? I am here because I represent a lot of corrections officers. I also represent a whole lot more probations officers. I did not receive any input from my corrections members that they want this bill. I have received virtually unanimous input from my P&P members that they oppose this bill. I am the mouthpiece for them and I started off by saying, Listen to the experts. Listen to the subject matter expert—Ms. Stieber, who testified a moment ago, and Mr. Ely who is going to testify down south. Those are the people who are on the front lines. Those are the people who not only work this thing every day, but they have also been through several sessions of this attempt in the past. They bring historical perspective; they bring facts that I would not know. I am not in law enforcement; I am a mouthpiece. That is me. I am here because I have members who are vehemently opposed to this and they cannot all be here because they are working, dealing with those offenders. I am here.

Assemblywoman Krasner:

Why are they so vehemently opposed? Can you extrapolate for me?

Richard McCann:

The information I am receiving is partly what you just heard the captain testify to a moment ago. You will also hear Captain Ely testify. It is not a system that is broken. I understand there may be certain situations in which some people may have run into some bad situations with a parole officer or a probation officer, but P&P's best days are ahead of them, as I am hearing from people on the ground. This Committee and other committees have given them rich resources over the last couple of sessions to do the things you want them to do. They have a reasonably new group of people in charge. Give them that opportunity. They are doing the job. They are very passionate about their jobs and they do not take anything away from NDOC, but they see a blending as being a, Wait a minute, is there something we have done wrong in the past and now we are just going to throw the baby out with the bathwater? No, we are giving them the opportunity and giving them the chance; it is not everything they want, but it is a lot. Give them the opportunity to continue to do the good work they are doing. It is their passion that I am here to try to discuss; that what they do is right, what they do is not broken, and their best days are ahead.

Assemblyman Thompson:

I want to follow up with what you are saying. You used the term opportunity. Do you not think this is a great opportunity for our state? Let us focus our thoughts on organizational structure and development. If you look at organizations that deal with the intake and the exit of offenders, would you say that it makes sense for that whole system to be intertwined?

Richard McCann:

It makes sense—in a vacuum—to say that you want the same people looking at you when you get in the door as when you have left the door, or the house, shall we say? That makes sense on paper, but we are talking about a facility that houses you and does the things they do. I think the new director for NDOC is going to do a wonderful job with rehabilitation, which perhaps was not pursued in the past. The Division of Parole and Probation's function, in some respects, is different. I do not think we can blend it all together just because we all do the same thing. Again, the subject matter experts can explain this better than I can, and I will continue to refer back to them.

Assemblyman Thompson:

Again, do you not think this is the opportunity? Of course, there is the opportunity to talk about how we will accomplish this. You would be amazed by the duplication and cross-referencing of services that exist, and you could probably create a more efficient operation if both of those departments were under one roof. It seems like, in my experience, there are some disconnects. I think that this is the opportunity for us to connect.

Richard McCann:

I think anything that is said about an opportunity to connect is great. May I hear exactly where the disconnects are? May I hear exactly what we are going to fix, and then allow the people who do it every day to address it? I am hearing philosophical ideas about how it would be great if these services were all under one umbrella, but I am not hearing specifically what is broken, specifically what needs to be fixed, and specifically what we are doing to give P&P the opportunity to fix it, if in fact it is their fault. I am just a person who wants the specifics and I have not heard it, and today's hearing is not the only place where I have not heard it. You, as legislators, have a whole lot more information than I do.

Assemblyman Thompson:

I will give you one quick example, because I can give you a laundry list. Both of the divisions are saying that it needs to come together; both are talking about reentry. Both are. That is one example.

Richard McCann:

If there is a problem with reentry, then let us have that conversation about reentry; and you have people in this very room who do the reentering. You have people in here who can address that. All I am suggesting is that we address it as opposed to just talking about it. I think it is time that we stop talking, quite frankly. If we are going to do it, let us do it. Let us do it with an idea that we are going to fix something and not philosophically discuss the idea of placing everything under one umbrella. I do not think that gets us anywhere. Let us just go ahead and do it if we are going to do it, and if we are not, let us stop talking about it.

Acting Chairwoman Cohen:

Thank you, Mr., McCann, and I invite you to have further discussions with the bill presenters.

Richard McCann:

We look forward to that.

Mark Smith, Private Citizen, Reno, Nevada:

I am a retired captain with the Department of Public Safety. I am opposed to A.B.302 at this time. I have heard, this morning, that we should be like 47 other states, but as a Nevadan I am proud to NOT be like 47 other states. I am proud to be a Nevadan and do it the way we do it because it works, and it works well. As a matter of fact, it works better than in most other states.

I will address the actual recidivism rate because I actually dealt with that while I was still working with the Division not so long ago. First, I would also like to point out that when we are talking about moving the Division of Parole and Probation over to the Department of Corrections, the caseload of the average P&P officer is approximately 15 percent parolees and 85 percent probationers. We are talking about moving an agency over to NDOC to deal with 15 percent of their caseload, whereas actually the bulk of the parole and probation

officer's work is for the county. Yes, parole is a function of corrections in most every other state, but that is because parole agencies are separate from probation agencies in 47 other states. The department of corrections houses parole; probation is a county function paid for by the county and has nothing to do, whatsoever, with the parole department of corrections.

When we talk about continuity of care and moving P&P to NDOC in order to improve continuity of care, I do not understand this statement because probation and parole has all the records of their community supervision from when offenders were on probation. They have the presentence investigation (PSI) report. They have all the records and all the case notes from whenever offenders were on supervision, depending on their entire lifetime in this state. I am unclear how becoming part of NDOC improves the continuity of supervision for an offender in this state. The Division handles that and handles it better than most any other state.

Assemblyman Thompson asked how we know about our recidivism rates. The Division tracks statewide recidivism rates through the Offender Tracking Information System. That is called OTIS. Offender information is input, tallied, and obtained from every office in this state through that computer system. Yes, our recidivism rates are some of the absolute lowest in the country. If we are doing such a good job, with both probation and parole, again, why are we moving P&P over to NDOC when the Division has amply demonstrated that they are one of the best agencies in the country at supervising offenders in the community? The officers of the Division of Parole and Probation are some of the best-trained, most professional officers in this country. I am proud to have served with them, I am proud to be a retired officer of that Division, and I think they are exactly where they need to be to fulfill the best function for the protection and service of not only the citizens in the community, but the offenders that they supervise; trying to get them to reintegrate into the community.

Assemblywoman Miller:

You said that we have one of the lowest recidivism rates in the country. We have had presentations before where we have asked questions about recidivism rates and the Division was not actually able to provide specific numbers, in some instance claiming that they were not being tracked. I understand that you are saying that we do track these numbers. How much are our recidivism rates affected by parolees who are released and then go to other states? Are we still tracking these individuals when they are in other states? We know that Nevada has high levels of transiency and many of our offenders are not necessarily from Nevada, so if they are being released to other states, are we still tracking their recidivism there? If so, for how long are we tracking it?

Mark Smith:

Remember, I am retired. Yes, offenders that are released on parole are tracked through the Interstate Compact Unit. They are still under the jurisdiction of Nevada and are being courtesy-supervised by the other states where they end up. If they violate their parole, for the

entire term of their parole, they still belong to the state of Nevada. If they violate, they are returned, or if the Division receives a violation report, action is taken and forwarded to the Parole Board. Offenders and their recidivism rates are tracked wherever they are in the United States.

Assemblywoman Miller:

Do we continue to track offenders once they complete their parole? If so, for how long after parole are they tracked? What are the recidivism rates then?

Mark Smith:

Are you asking if we track offenders when they are no longer under our supervision, to determine recidivism rates based on being arrested for a new crime?

Assemblywoman Miller:

Sure.

Mark Smith:

I do not know the answer to that.

Assemblywoman Miller:

Okay, thank you.

Acting Chairwoman Cohen:

Thank you, sir.

Stuart Walker, Private Citizen, Spring Creek, Nevada:

I am a retired officer from DPS, Division of Adult Parole and Probation. It is my sincere belief that the state of Nevada has one of the best, if not the best, system of parole and probation supervision in the United States. Assemblyman Frierson, I believe, used the word "archaic" to describe P&P's motto. He did not actually say what the motto was, and I do not think our agency has an official motto on paper. I can tell you that in May of 1987, when then-District Administrator Patricia Chambers interviewed me for the position of parole and probation officer, she told me the agency's mission statement was: the protection of society, restitution to the victim, and reintegration of the offender into society. I do not consider that to be archaic.

Because P&P is a part of DPS, our state's parole and probation officers are very well trained, and that training greatly enhances our division's professionalism. You are all aware that our country's government has a system of checks and balances. Nevada's criminal justice system also has a system of checks and balances. Our Division of Parole and Probation has always been able to operate independently from the Department of Corrections. The decision on whether to arrest someone for parole or probation violation is based, first and foremost, from a public safety standpoint. Let me be clear—Nevada's parole and probation officers go to great lengths to work with those under our supervision.

There are many in Nevada's criminal justice system who have concerns regarding the proposed transfer of P&P to NDOC. Such a transfer could—and most likely would, in my opinion—lead to and create a conflict of interest. If NDOC becomes the parent unit of P&P, the decision of whether or not to arrest a person for a parole or probation violation could be based, at least in part, on prison-bed space issues and not public safety. It is important to remember the decision to revoke probation supervision is made by a district court judge, and in the case of a parolee, our state's Parole Board makes decisions regarding revocation.

The issue of parole and probation supervision under the auspices of our state's prison system has been considered and rejected on a number of occasions for more than 30 years now, and has always been rejected for very good reasons. I appreciate the time you have allowed for me to speak with you regarding this issue of great importance.

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada; and representing Nevada Law Enforcement Coalition:

I represent the Peace Officers Research Association of Nevada and our Nevada Law Enforcement Coalition. The Nevada Peace Officers Research Association, as Mr. McCann said, is composed of parole and probation officers. The interim president of that association is Richard "Rich" Tiran. I have known Rich for many years. He is a parole and probation officer in Reno and has been around for a very long time. He was involved in a shooting that I covered many years ago when I was working homicide, so I have a pretty good background dealing with parole and probation officers and their ability to do their job. It is a very deadly job. One of our parole and probation officers who is no longer with us found this out several years ago; she had the unfortunate experience of taking action against a parolee in Reno, and ultimately after that transferred to the DPS and was killed in a traffic accident in rural Nevada as a highway patrol officer.

I asked my clients the following question, the same question you are all asking here: Why do we need this bill? Why do we need to do this? Why would P&P have an objection to this? Mr. Tiran said the same thing that I heard earlier from the captain. He said this bill is like putting the fox in charge of the hen house. He said that there currently are not really 47 states that operate in the same way, with all due respect to the Speaker. Mr. Tiran said that, while the Speaker makes it sound that way, in reality states have created different departments, courts, or independent corrections to supervise subjects. The statement about the 47 other states is somewhat misleading. Mr. Tiran said that our parole and probations officers are experts at housing and that corrections has no history of supervising individuals in the community. I thanked him and told him that helped, and he said it is important to note that states throughout the country have created stand-alone departments of supervision that are not housed under corrections.

In 2010, five states proposed merging parole and probation with corrections. Oklahoma, Georgia, South Carolina and Tennessee did not go through with it. New York did, found that they had a flawed system, and it was a flop. There were and are now conflicts of interest, lack of support from law enforcement, and cost savings that did not materialize. Instead, some of the costs were doubled. This was estimated to cost Nevada in excess of \$30 million

in the past: radio systems, training, policies, procedures. All are in conflict. The Division of Parole and Probation is a quasi-law enforcement agency that supports rehabilitation. We have to have the enforcement arm. The Department of Corrections is the fox in that they control the bed space. They release when they are overcrowded, and when they are empty, they kick up the violations and hold the keys and control it all. We need to have an independent group that is part of the checks and balances, independent of the courts and prisons, et cetera.

Mr. Tiran said that he supports the comments by the other individuals, and so do we. We ask that this body oppose A.B. 302 for those reasons. Mr. Tiran is a 40-year law enforcement officer with P&P. He has served with the public defenders and investigators, the deputy sheriff, police officers, NDOC, and has been with P&P in Reno for 26 years. He would have been more than happy to be here today but he could not be here today so I shared that for him. We stand by the other comments that were already stated in opposition to this bill. I have been here at the Legislature for a long time too, and I can tell you that this same attempt to merge has come up in the past. Our parole and probations officers, as well as the corrections officers, have not been in support of the merger.

Michael Sean Giurlani, President, Nevada State Law Enforcement Officers' Association:

I am the president of the Nevada State Law Enforcement Officers' Association. I am a 25-year retired veteran of the Nevada Highway Patrol, and I am also a part of the Nevada Law Enforcement Coalition. I am also the younger brother of retired captain Roy Giurlani who was a catalyst for me going into law enforcement.

I think it is important to understand that the system changes and evolves. The Division of Parole and Probation has done just that; they have evolved and they have changed greatly since 2013. I have heard 2013 brought up many times. I was not here in 2013—I was here last session and I am here this session—but what happened in 2013 is irrelevant. Let us not look at the past; let us look forward. As Mr. McCann stated earlier, P&P's best days are here and ahead of them. They have come so far with training, personnel, and programming, and they have done a great service for the people of the state of Nevada.

When we compare Nevada to other states, I will just go off what Speaker Frierson stated earlier—that there are 47 other states that have different programs. Nevada has always been a unique state. We were unique in that we were the first in gambling. We have many firsts. We are the Silver State, and I am proud of this state. I am proud of the time I gave and sacrificed for the people of this state.

However, if we want to be like everybody else, I dread to think that we would be like California's parole and probation system, which does not correctly or adequately supervise offenders. One case that came to the national forefront several years ago illustrates my point: the locating of Jaycee Lee Dugard, who was kidnapped by a parolee. That person was being supervised by an officer. I suppose whatever failures took place in California are irrelevant for now, but the fact of the matter is that a victim was left to a system that, in my opinion,

was inadequate. As Ms. Stieber indicated, California releases these people when the prisons become too full. Do we want to have that same problem here? In my opinion, that would be a huge risk to public safety and NDOC as well. People overlook this, but NDOC is a law enforcement agency as well. They have more internal issues than many other agencies, and that is why they have their own Office of the Inspector General to oversee what goes on in the prisons. They do a very effective job. I think NDOC's new director has done a phenomenal job. I submit, ladies and gentlemen, that we give these people an opportunity to prove their worth as P&P has already been doing. Let us give the director of NDOC the opportunity to prove his worth as well. Thank you.

Acting Chairwoman Cohen:

Thank you, sir. California, however, splits their parole and probation into two separate entities, correct?

Michael Giurlani:

That is correct.

Acting Chairwoman Cohen:

Okay, thank you. I think we are going to move to Las Vegas. If there is anyone else in Carson City, please come to the table.

Tom Ely, Private Citizen, Las Vegas, Nevada:

I am speaking today as a citizen and registered voter. I am a captain with DPS in the Division of Parole and Probation, and have been employed with that agency for over 23 years. I have more than 30 years in law enforcement. I am opposed to A.B. 302. I actually echo the comments made by each of the speakers up there in Carson City, so I will not re-emphasize each of those points. I do have a few points I want to make, and I also submitted a written statement ([Exhibit C](#)).

The transfer of the Division of Parole and Probation from DPS to NDOC will be very expensive and is totally unnecessary. No compelling reasons have been presented to transfer this division now. If this Assembly is interested in making an investment that will improve our already impressive recidivism rates for Nevada, I would suggest that you do not make the transfer of the agency and instead place that money where it will do the most good: with this Division, and allow us to improve practices that we have not had the finances to handle before.

We should be able to use technology in a mobile format. We should have officers in the field with mobile communications, Wi-Fi hot spots, and a means to use the cell phone technologies and applications that are available and would allow low-risk offenders to report in a different manner or to use kiosks. Invest in us in that manner instead of transferring us.

One of the things that our agency does well is parolee reentry. We have a very high success rate. Where I would like to see this agency improve is through adopting more of the models and programs such as HOPE for Prisoners in Las Vegas, which is based on an extremely successful, national model. We have partnered with them. We are working with them. We refer offenders to them all the time and that agency is doing business the way P&P should be financed. We should be doing the same things.

We are doing a good job, and in this session there is funding for us through the Governor's budget that will allow us to enhance our best practices with the inclusion of the Operational Risk Information System (ORIS) risk assessment tool, and the EPICS community supervision model. We are funded to begin Day Reporting Centers in Las Vegas and Reno, and to establish a new community field office in Las Vegas. If these things are given to us, our already impressive rates will increase.

One of the things I recommended in my letter to the Committee ([Exhibit C](#)) is that the Legislature order a two-year study of Nevada's parole, probation, and correctional agencies, instead of making a decision now without hard facts in front of them. This study would allow the Legislature to look at their practices, programs, and their success rates through a lens of reentry into the community, and then compare those to the national best practices and see where we are. The study should reveal a practice and pattern of significant improvement and success once the ORIS and EPICS programs are put in place. With the results of that study, the Legislature would then be prepared to consider whether P&P should be moved from DPS and, if so, where it would be appropriate to transfer. The Legislature could decide whether the agency should be moved under NDOC or under the Nevada Supreme Court, as it is in some states, or if the agency should become a stand-alone agency and department again, as it previously was. We should not rush to transfer this Division until there are real performance facts in hand, and we know the best location for such a transfer.

The Division of Parole and Probation is already performing at a high level, and we have other states looking at our performance. I urge you to invest in the Division instead of wasting those funds in what will be an unnecessary transfer. I urge the Committee to not pass A.B. 302.

Acting Chairwoman Cohen:

Thank you, sir, and thank you for submitting your testimony. Is there anyone else down south who would like to testify in opposition to A.B. 302? Seeing no one, we will move to neutral testimony in Carson City.

James M. Wright, Director, Department of Public Safety:

I am here in the neutral position to state some comments and facts. I truly understand the policy decision that is before you, and I urge you to look at the total picture here. A move like this is not just a simple unplug, plug back in, and go play with another organization. I have been in state government in two states for 40 years; I have seen organizational changes, and they do not happen overnight. My fear with this is trying to rush an

organizational change. You would lose so much ground on the progress that has already been taking place, moving forward, accomplishing the good things that P&P does out there keeping our communities safe, and that concerns me.

I have a big responsibility, and that responsibility is to keep our communities safe from offenders that are under the supervision of P&P. I have heard the issues related to whether they are "cops," or this or that, but please do not forget that there are some bad people out there in our society that need to be supervised, and that is part of P&P's role. I am very proud of the work that these P&P officers do and the P&P support staff as well. They have just as much responsibility to make these programs work as the officers out there in the streets who need their support.

We have made a change in the Division of Parole and Probation. Several weeks ago, I had the opportunity to present to your Committee about the Department of Public Safety, and specifically about P&P. At that time, I raised my concern about this ever-desire of where the Division should be located. I said that I hoped that the decision would not be based on bad experiences from the past and other things of that nature. When I came to the director's office in 2013, I directed the Division: We are going to change our ways, we are going to change our culture, and we are going to do and make progress on what the Legislature is saying they want to happen. We have done that. This session we included some exciting programs in our budget proposal, and we have heard from other legislators that we are doing what they want us to do. Now, with this proposal, it hurts me to look my employees in the eyes and say, "You know, apparently there are some that do not believe that we are taking care of business, and you are not going to stay with the people at the Department of Public Safety." I urge you to look at the entire picture.

It was previously stated that we are the only state where the P&P function is housed under DPS, but I am glad that it was recognized that there are a couple of other states that operate the same way. As you have heard, there are a whole host of organizational models across the nation. Each has a role, but it bothers me to say that because the majority of those other states operate the same way, we want to be like them. Well, look at their success rates versus ours. Just because they do it one way, does not mean that we have to.

We should be very proud of what we have here in Nevada, and it works very well. Talking for the men and women of P&P, they are so dedicated and I am so proud of them for making that culture change. We have moved away from the "cop" thing—just going out, jacking people up, rolling them up and putting them back in prison. We have taken a different approach. Our people wear two hats—they do. There is the social aspect of the job as well as the law enforcement aspect, because if someone does not comply we need to enforce the law on them.

I will close my statement. I know a couple of other speakers here have some information for you, but I just want you to know that there is a larger decision that needs to be made, with a lot of facts that need to be looked into, and I urge you to look at the total picture. Why fix something that is working well?

Assemblyman Wheeler:

First of all, I wanted to thank you for your service in the United States Air Force—you have to love that. I have a very simple question for you: is it broken?

James Wright:

My professional opinion is that it is not broken.

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

I regret having to do this. It seems like the focus is on the Division this morning, so I am going to have Chuck Callaway speak on my behalf. I am kidding. I see I sent him into overdrive over there.

Since I was appointed as the chief of the Division three years ago, we have worked very hard to develop a new mission and a new vision statement. We continue to work towards reinvestment in reentry and—as I have said in the past—I believe that, just as we are offering offenders an opportunity, the Division needs an opportunity to move out from underneath the cloud. We just do. We now recognize there is a better way of doing business. I think our budget speaks for itself. We have some tremendous programs in there for offender reentry, from placing individuals in the prisons, to Day Reporting Centers, to training on EPICS and ORIS for better assessment tools for our officers.

We have come an extremely long way, and the Governor's Executive Budget supports what we are asking for. I am very grateful for that. We presented our budget. The elephant in the room that keeps coming up—you really need to be in the business to really get your head around it—is the statement that many other states have P&P under the department of corrections. That is not a very accurate statement—and I do not wish to undermine anybody in any way, shape, or form. You really have to be involved in the business to know that many states do it differently throughout the country.

According to the Bureau of Justice Statistics, as of 2015, the 28 states that currently have either parole or probation under the department of corrections have an average success rate of around 57 to 60 percent. Well, Nevada is ranked tenth in the nation right now. We are doing extremely well, and that is according to the Bureau of Justice Statistics. I provided those statistics to the Committee so this should not be a surprise. Today, just from 2015 onwards, our success rate for parolees alone is 79 percent. I will be more than happy to answer any questions you may have in regard to those success rates.

I am unaware of any testimony that has been provided that can show that placing P&P under NDOC would provide a cost savings to the state or improve operational efficiencies. As previously stated and as you are aware, in the Nevada Electronic Legislative Information System (NELIS) there is a significant fiscal note attached to this bill. I am not quite sure what the benefits of the fiscal note are—or they have not been discussed with me. That money could go to veterans, mental health participants, or to education instead. As the director said, this system is not broken.

I have 506 dedicated employees who contribute every single day to the offenders, to their reentry, and to building up the community. I think it is very difficult for them to be in their position right now, because I think we ask them to do a lot with very little. A lot of them are still with the Division; they could very well transfer to other divisions and other agencies, but they are committed to reentry and reinvestment.

I am simply asking that you do not allow past transgressions to impact the progressive movement of the Division. I believe that if this move were to take place, there are obviously, logistically and operationally, some challenges that we would need to overcome and that is going to take time.

Our employees touch the lives of offenders every day, not just in a negative way but also in a positive way. Many of you do not see that unless you are intimately involved with it. We are active participants in drug diversion, mental health and veterans court. We recently developed mobile reporting as an outreach to reach out to offenders in the community who were having difficulty coming in to the Division. We wanted them to maintain their jobs; that is critical for us. We have developed job fairs where we can actually bring our community partners into the Division on the weekends to meet with offenders who are struggling to find jobs. Not every offender who we supervise is the most heinous offender; they are just not. We need to do our part to work with them. We work closely with the Department of Health and Human Services to provide eligibility benefits, and we have brought them into our Las Vegas office. The Division serves as a neutral party that reports to both the Parole Board and the courts.

A misnomer that I would like to clarify, and I have said it multiple times, is that the Division does not revoke anyone. We do not have that power. We make a recommendation that the Parole Board either accepts or denies based off the report, as do the courts. One thing I would like to point out that nobody has mentioned are the special conditions that are imposed. They are imposed by many of the courts when people are placed on probation, some of them for search and seizure, some of them for no alcohol. Many judges across the state will actually order the Division to report a violation within 24 hours. We may or may not agree with that, but we are under court order to do so.

Our purpose and our focus is to work with offenders as much as we can. I am not saying that there have not been past transgressions; we have had some officers who have given up. It is very challenging. I am not going to deny that, but I can tell you that the communication going forward, over the last three years, has been very different. It has been very progressive and very proactive. The concept of transferring P&P into NDOC has been addressed at many legislative sessions, but I can tell you that it impacts morale. Not just from a P&P standpoint, but the NDOC standpoint too. It is almost as if we are pitting two divisions or two agencies against one another when we both function very well. We communicate well; the communication is there. I would respectfully disagree and dispute that current communication is not effective. I think you are correct that it was not effective in the past, but we talked with one another this year when we built our budgets and I was very proud of that communication.

I am very concerned that we are trying to mimic a portion of another state's operations when we are doing so well, and I would really encourage you to reach out and do your own research, or I can provide you with research if necessary on the 47 states. There are not 47 states that have parole and probation under one roof. It is simply not accurate. I can see how the interpretation was made. In California, for example, probation is housed under the counties and parole is under the state. In North Carolina and Ohio, it is different. Some probation is under the judicial branch of government, and parole is under the department of corrections. I have given you the statistics. I will tell you that there is absolutely no statistical correlation identified linking a base organizational structure to performance on parole or probation success rates. That is a factual statement, and I can provide you with the documentation. I respect the work that you are doing day-in and day-out—it is hard enough being up here testifying. I just simply say to you that our officers are very talented, they do a very good job, and I think that there is definitely a purpose in balancing health and human services with public safety. Just because we are unique does not mean we are different. When you try to change an organization the size of ours, you have to understand this is like going into a school system or a law practice and trying to do the same thing. I think you would want that individual in charge to have some internal knowledge of the logistics. With that, I respectfully end my presentation, and I am open to questions.

Assemblywoman Tolles:

I just want to make sure I have the correct statistics. You said that the U.S. Department of Justice rated us as tenth in the nation, and that our success rate was 79 percent. Is that correct? What was the national average?

Natalie Wood:

According to the 2015 Bureau of Justice Statistics report, out of 28 states that currently had some form of parole and probation under the department of corrections, their success rate was 57 percent; whereas Nevada—according to the same report—is ranked tenth in the nation. We are doing an extremely good job.

Assemblywoman Tolles:

Great, wonderful. Thank you so much and thank you for your good work.

Assemblyman Elliot T. Anderson:

I have a question that is going to seem a little bit odd, but I would appreciate it if you could not humor me, but answer it. Do you think that probation and parole is a right to an offender?

Natalie Wood:

Can you repeat the question please?

Assemblyman Elliot T. Anderson:

Do you think, as a matter of right, an offender has a right to be placed on parole or probation?

Natalie Wood:

I personally believe that courtesy supervision is at the discretion of the courts. It is not a P&P decision; we provide a service.

Assemblyman Elliot T. Anderson:

I understand, but I am asking you if you think that an offender has a right to be placed on parole or probation.

Natalie Wood:

I believe everybody deserves a second chance. Yes. That is my personal belief. I am not in this business to be overly law enforcement or overly health and human services. I am in it to do the right thing.

Assemblyman Elliot T. Anderson:

Of course, every offender who is in prison or who is sentenced does not get it, right?

Natalie Wood:

Correct.

Assemblyman Elliot T. Anderson:

Since every offender does not get that opportunity, do you not think that it is good that there is some synergy with the Department of Corrections in determining, in terms of the resources that we have for supervision, who are the most dangerous, and having all the decisions made under one roof to ensure that we are giving the correct people parole and not necessarily filling up jail space with people who are not as big of a problem based upon technical violations?

Natalie Wood:

In this Committee, we had a very open discussion about people's perceptions of technical violations, and those perceptions vary. You really need to understand, individually, each case that comes before you. The Division does not classify anyone. The Department of Corrections classifies a person upon entry into the prison, based on the nature of their crime, their criminal history, and perhaps their affiliations. They receive all the paperwork that supported a recommendation for revocation at the time. That follows the body, but the Division has no control over classification.

Assemblyman Elliot T. Anderson:

It is just that I have had conversations with NDOC, and our prison space is at a premium right now. I am very concerned about prioritization. I think that is one of the major benefits with this proposed change.

Natalie Wood:

I respectfully disagree with you, and I do not think that comes as a surprise. I believe that the Division is in the middle here. I think there is a perception that the Division sentences, revokes, classifies, and is the "Dark Lord" over everything, and that is not the case. Many of

my officers, me included, are in this for reinvestment and reentry. We are certainly not in it for the pay. I think that you really have to understand the operations and the purposes that we serve, and I think that we are very effective at what we do. I respect your opinion on that; I just disagree, sir.

Assemblyman Elliot T. Anderson:

Thank you, Chief Wood, and I always appreciate a good Harry Potter reference, so thank you for that.

Assemblyman Watkins:

This may appear to be a loaded question, but it is not. I do not know the answer to this question. I just heard as I was listening to testimony across the board, and we went from "It is not broken" to "We had a cloud over our department and past transgressions." I have no idea what that is. I have no history here. I am a freshman. Can you enlighten me as to what that cloud was or is, and what the transgressions were or are, and what has been done to remedy them?

Natalie Wood:

What has happened over the years, historically, is that the Division has flipped back and forth between a predominance of law enforcement or health and human services, depending, I guess, on who was at the helm. It has fluctuated, and it has also fluctuated in public opinion and different legislatures and their directions.

When I talk about past transgressions, I have been the chief for three years and I believe past command staff have had positive and negative interactions with Assemblymen and Senators. I think that, to some degree, I am being held accountable for those interactions, which I cannot change. My track record will have to speak for itself over time, but I can tell you that that is what I meant by that.

Assemblyman Watkins:

Thank you for that. I guess the next thing that comes to my mind based on that answer is, would putting P&P under NDOC help to prevent the flip-flop between law enforcement and health and human services that has been occurring over a period of time and get it into one common voice? I guess if asked another way, how would the results that you touted and the statistics that you touted of the good work that the P&P program is doing be affected if it were under NDOC?

Natalie Wood:

The Division is not the only agency that experiences this. The Department of Corrections has also experienced the difference between the current directors and the past directors over the years. The focus now is obviously on rehabilitation and reentry. That was not the focus last session; I am sure there are many people who were around who could bear witness to that. I think there is a good purpose for the balance P&P has with that carrot and stick, but we need to understand that the focus should be on reinvestment and reentry.

The prisons have their own function too, and their philosophy goes back and forth. I think it is inherent in any agency at some point, depending on who is at the head of the division at the time.

Assemblyman Watkins:

Is it your opinion that your role would change dramatically one way or the other, depending on who is on the top of the letterhead for your department?

Natalie Wood:

My role is my role because I innately believe in it. If you are asking me personally, I am here because I truly believe in what we are doing and I believe that there needs to be a balance, and I am happy to fulfill this role. I cannot speak for other agencies. I have just personally seen the flip-flopping in philosophies over the years.

Assemblyman Watkins:

I appreciate that. That is not what my question was trying to get at, and I may have misled you on that. Apart from our prior discussion, do you believe that if P&P is moved to NDOC, that changes in the name on the letterhead or structural, leadership changes will affect your ability to do the job the way you currently do it?

Natalie Wood:

I do. I think there will be a shift in focus, just as California's focus has shifted. I think it is very apparent that bed space is at a premium—you mentioned that. I think it will be more difficult to address violations—appropriate violations, not offenders who needed more work—but I think the focus will be on bed space in lieu of public safety.

Assemblyman Thompson:

I want to make a statement and then I have a question. I just want to say that by no means is this bill meant to be a punishment. Organizational change is always difficult; it just is. I have been there and done that numerous times in the capacity in which I have served, and it is always the uncertainty that is difficult, even when we know that it is the right move to make. It is always the unknown that always creates that stir.

You made it very clear that you communicate well with NDOC. You gave one statement that you got together for your budget, but can you share with us what it means when you say that you communicate well? What is the frequency? I am interested in the synergy. When do you and NDOC collaborate? Can you share with us some clear examples?

Natalie Wood:

Absolutely. We meet with NDOC, the Parole Board, and the Reentry Task Force on a regular basis. I am sure you remember that reentry task force, Assemblyman Thompson. I can tell you that we sit down with NDOC on a monthly basis. We probably actually work with them daily because of the parolees who are expected to be released. That is an ongoing communication that actually takes place. When we are on bigger, larger items such as our budget, we sit down and discuss those. I can assure you—and you can speak with

NDOC and the Parole Board—that communication is frequent, often, and it is taking place. Also, from a fiscal standpoint, our fiscal departments speak frequently to make sure we are accurately reflecting what we need to be working on.

Assemblyman Thompson:

With that being said and, regardless of who is on the top, does it not make sense for the departments to be together? You just said that communication between P&P and NDOC is an everyday occurrence. You talked about fiscal matters and the work you do together. I know you are in an awkward situation because you are where you are at and we are looking to change that, but if you look at the situation organizationally, does it not make sense to have both departments together if you are communicating, working, collaborating, and making great outcomes together? Does that not just make sense?

Natalie Wood:

I would say, sir, that the testimony that has been provided over the last couple of hours has hit every topic and every rationale as to why it does not make sense. I do not think I am going to persuade you one way or another. I am here neutrally. I am telling you that my opinion is that the Division is functioning extremely well where we are and that there is no statistical or fiscal evidence that has been supported to say that this move, other than a personal preference and an opinion from individuals who are not functioning in either division, have presented.

Assemblyman Thompson:

I will respect that, but I also disagree.

Acting Chairwoman Cohen:

You mentioned dealing with the public and public perception. Do you think the public actually knows what your Division does and understands its importance for public safety?

Natalie Wood:

My mother does not understand what I do. I am constantly saying, No, Mom, this is what I do. I think it is two-sided. There are many individuals who want to be tough on crime and prioritize the law enforcement side of P&P, and there are individuals who emphasize reinvestment and reentry. They may have a brother or sister in the system and appreciate the fact that we are working with them and not just tossing them aside. I think some people understand what the Division does, but I think that is because they have made a conscious effort to understand what we do. What I am trying to say is that people do not really think about what we do until it hits home.

Acting Chairwoman Cohen:

Therefore, unless they are involved with family members or are also in law enforcement, or involved in the Legislature, it does not even come onto their radar.

Natalie Wood:

I do not think it is front and center in their minds. I think that a lot of it is the impression they get from the news. I think one of the greatest benefits for this Legislature, truly—I personally mean this—would be to do a ride-along or sit with a P&P officer for one day.

Acting Chairwoman Cohen:

Thank you. Are there any other questions?

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

I am here in the neutral position as I believe this is a policy decision about whether P&P should be moved under NDOC or if the system should stay as it is. I think there are, however, some potential concerns that could arise should this bill pass, which are relevant from a public safety and law enforcement perspective. I wanted to speak to how that might impact my agency.

You all know, because I have said it numerous times during testimony, we are seeing an increase in violent crime in Clark County. As of this morning, we have had 36 murders. Many of those people are repeat offenders who have been through our system and somehow are back out, revictimizing the community. There is always the concern that decisions will be made based on budget and beds versus public safety. I know that each situation is different, and sometimes people deserve to be out and get on with their lives and can be rehabilitated; and other times people pose a risk and that needs to be taken into consideration on a case-by-case basis, not based on budgetary concerns. I am certainly not insinuating that under NDOC, decisions like this would be based solely on budget concerns; I am just bringing that up as a consideration.

Second, we have had a great working relationship with P&P at LVMPD. Our officers, often in the field, encounter people who are on parole or probation and are involved in some type of activity that warrants contact with P&P, and they are always very professional. I think the comments that were made earlier about ensuring that they maintain a high level of POST certification is important in our interactions with them in the field.

Finally, I do believe that there has been a historical flip-flop between health and human services and law enforcement in the Division. I think there needs to be a balance, rather than a flip-flop back and forth, depending on who is in control. The fact of the matter is that when someone is put on parole or probation and the court stipulates rules, if they do not follow the rules, then they find themselves encountered by law enforcement or P&P people; that is the very basic structure of our criminal justice system. If you cannot follow the rules that have been laid down for you, then how can you be reintegrated into society? I think that there needs to be a delicate balance between public safety and health and human services. I believe that the current administration does a very good job of that. Again, we are neutral whether NDOC takes over, but I thought that those concerns should be put on the record.

Natalie Wood:

I just had one final, concluding point to make. I respectfully request that, prior to considering such a large move, the Legislature would consider an efficiency study over the interim or into the next session. I think that would prove valuable to all interested parties.

Acting Chairwoman Cohen:

Mr. Callaway, can you provide clarification about the statistics you gave for murders so far this year? Do you know the correlation of those murders related to reoffenders who have been through our parole and probation system?

Chuck Callaway:

I know that earlier this year we were looking back at our 2016 numbers in our analytical section. We found that a lot of violent crime in general—not just murders but robberies, shootings, other violent crime—many of those offenders had actually been in the California criminal justice system. For whatever reason they are now in Nevada, victimizing Nevadans. That was something that came up on our radar when we looked at some of the data surrounding violent crime. As you know, violent crime is a priority for the Sheriff, and we have been taking a very close look at what is causing it. There are always some elements to violent crime that are difficult to predict or prevent, such as domestic violence and things that happen inside the home. It is very hard for law enforcement to know what is going on behind closed doors in people's houses. When it comes to gang activity, armed robbery, shootings, and those types of things, and we get someone in custody—or in some cases the victim, who is involved in a drug deal gone bad and they end up on the wrong side of a gun—we look at the data and we see that this person was part of the criminal justice system in California. I am not drawing any connections there. I have heard people say that this may be related to Proposition 47, which was retroactive and decriminalized a lot of felonies. I believe many people were released from the prison system in California after its passage.

I believe that, when we look at all of the facts, there is a correlation between violent crime and reoffenders. There are some people who commit violent crimes that have no criminal history, but oftentimes we see that they are repeat offenders or they do have a significant criminal history. Things tend to escalate. We see people start with burglary—breaking into someone's home or stealing a car—and they get away with it and graduate to the next level. It is just something we see in law enforcement and I think there is a correlation.

Acting Chairwoman Cohen:

I just want to be clear because I want to make sure that there is not an inference made that the murders we have seen this year are related to any failures of parole and probation in Nevada. I want to be clear that is not what we are saying.

Chuck Callaway:

No. I will be very clear. I am not in any way saying that we have a high murder rate because P&P is letting people out of jail. I am just saying that the people we see committing those crimes have prior criminal histories.

Acting Chairwoman Cohen:

Thank you. Seeing no one else for neutral testimony in either Las Vegas or Carson City, I will invite the sponsors back to make closing remarks.

Assemblyman Yeager:

I thank you for your indulgence and time. I stand by my recent comments that this is the hardest working Committee in the building—perhaps with the exception of the Assembly Committee on Education last night. I know Education members were here very late into the evening.

I want to address a couple of points. We heard that NDOC is either not pushing or is not in favor of this bill. Of course, as an executive agency, they really cannot take a position on this bill as much, and P&P could not take any position other than neutral. I would ask the Committee not to read into that. I am sure the Director would be willing to have personal conversations, but I understand why they are not here at the table today. I think they simply are not allowed to be.

I would note for the record that we heard that, back in 2013, our then-Governor, who as far as I know has never been a public defender—he had been an attorney general, a federal judge and at the time Governor—proposed something very similar to this. Then-director James G. Cox of the Department of Corrections submitted some fiscal documentation in respect to the 2013 bill, and I want to read just one part of what he wrote in that fiscal statement. He said:

This transition will increase opportunity for released offenders to be successful. It will streamline communications between corrections and parole and with the offender, reducing duplication of costs and services. The realignment will present opportunities for enhanced technology and provide an expanded continuum of care. This will enhance and ensure community public safety and give released offenders a greater rehabilitation opportunity.

Again, that was submitted by the prior director of NDOC about some of the benefits of a plan such as this.

Change is difficult for all of us. This would not be the first time there has been a change at P&P. Some of you may know that P&P used to be under the Department of Motor Vehicles. That change happened in 2001, when they were moved over to the Department of Public Safety. As best I can tell, there were really no hiccups with that transfer or change, so I do believe some of the concerns that were stated today are unwarranted. This is not change for change's sake; this is change for policy consideration.

I do not think legislation that proposes to change the structure of the Department warrants what I perceive as personal attacks on me and my two colleagues who presented this bill here today. At least with respect to Assemblyman Ohrenschall and me, we are doing the business

of the state here. We are on leave without pay, and I do not think it should come as any surprise to this Committee or anyone watching that the three individuals in the Legislature who perhaps have the most direct experience with the Division of Parole and Probation would be bringing forth this legislation. We, just like all of you, have a policy consideration to make here. A policy consideration of whether this is the right move or not. We are elected as citizen legislators for a reason in this state; we bring our experience and our backgrounds with us, and that is why you see this bill. It is based on our experience and our backgrounds. That is what our citizens want, so any implication that this is somehow legislation brought by individuals who are solely, or used to be, public defenders, I think is offensive and not worthy of consideration by this Committee. This is simply a policy decision.

I want to talk about the fox and the hen house analogy. It has been raised a little bit, but keep in mind as other speakers said, we already have a check—the courts make the decision of whether to revoke probation; the Parole Board makes the decision of whether to revoke parole. I want to make that clear. The Department of Corrections would not have the ability to decide whether someone is revoked from probation or parole. They would have the ability to decide whether to institute revocation hearings, they would have the ability to decide whether there is some other option short of revocation that might be appropriate, but they are not the ultimate gatekeepers.

With respect to success rates of parole and probation, we have had a lot of discussion in this Committee about dishonorable discharges, and I think we are going to have a lot more in the future. Remember that we heard earlier that a dishonorable discharge is considered a success by P&P. They consider it a success if somebody does not go back to prison. I just want to make that clear, because I did not hear any statistics about the other states that were raised up as paragons of how to do this model or the states that were raised up as having lower rates of success. We did not hear whether that includes dishonorable discharges or not, so I do not know that we are comparing apples with apples. We might be; I simply do not know because I did not hear that testimony.

In terms of the law enforcement side, this move would still keep parole and probation officers as category I certified officers. They will be able to be law enforcement; they will be able to make arrests; that is contemplated in the move.

Finally, we heard about HOPE for Prisoners. If you do not know about it, HOPE for Prisoners is a great organization but it was not an organization started by P&P. It was not an organization started by NDOC; it was an organization started by one man with a vision, Jon Ponder, to address reentry in this state. I am proud to be an advisory board member of that organization. I want to note that that organization, right now, has to work with both NDOC and P&P on reentry services. They have two chains of command, two structural issues to deal with. That organization is beyond the purview of the Legislature, but would it not make sense for organizations like HOPE for Prisoners to have one point of contact, to be able to work with an integrated system of parole and probation when it comes to offenders?

In closing, Madam Chairwoman and members of the Committee, I thank you for this policy discussion that we are having today; and I urge you to consider A.B. 302 because I believe it streamlines our government, it results in more efficiency, and at the end of the day public safety will be enhanced by this move.

Acting Chairwoman Cohen:

Thank you. I will close the hearing on A.B. 302 and open the hearing on Assembly Bill 291, which revises provisions relating to presentence investigations and reports.

Assembly Bill 291: Revises provisions relating to presentence investigations and reports. (BDR 14-1076)

Assemblyman Steve Yeager, Assembly District No. 9:

I promise you are going to be sick of me by the end of today, but I do anticipate these next two bills will be much quicker than the one we just heard. I bring to you today Assembly Bill 291, which revises provisions relating to presentence investigation reports. Those are commonly known as PSIs. We have talked about those a little bit today. I want to note that this is Chairman Ohrenschall's bill, and I want to thank him for allowing me to present the bill to the Committee today. Just so we are straight and up-front, I submitted some conceptual amendments; they can be found on the Nevada Electronic Legislative Information System (NELIS) and you should have some documents in front of you relating to both this bill and the next bill.

This bill has two major components. One, it seeks to make these PSIs more accurate, and it also seeks to equip defense attorneys to effectively represent their client at the time of sentencing and, to some degree, after sentencing.

So what is a PSI? Unfortunately—well not unfortunately—the reality is that PSIs are confidential under our statute. I would have liked to have given you all a copy of a PSI to look at but I cannot really do that under the statute. I do have some copies that I brought with me—and I would be happy to share those with people offline—and I have submitted some excerpts of PSIs for NELIS. Essentially, a PSI is something that is prepared by the Division of Parole and Probation (P&P) before an offender is sentenced for either a felony or a gross misdemeanor. This report is fairly comprehensive. It goes through criminal history, social background, offense history, and ultimately this document is very important because the judge will use it to determine what sentence to give, and the prisons are going to use it to decide things like classification. This document follows the offender after they are sentenced.

I also submitted a copy of a Nevada Supreme Court Case called *Stockmeier v. Nevada Board of Parole Commissioners*, [255 P.3d 209 (Nev 2011)] on NELIS ([Exhibit D](#)). This case is important because it impacts PSIs and it impacts whether a PSI can be corrected. You can read the case on your own time, but in essence what happened in that case was that a prisoner at the Department of Corrections (NDOC) was disputing whether some of the information in his PSI was accurate. He sued P&P in a civil lawsuit, trying to force them to

make corrections to the alleged inaccurate information. The court, however, said that this document could not be changed once a defendant was sentenced because the court lost jurisdiction to make any changes to it at that point. That is important. Even on the PSI itself there is a notation at the end that says, "Per the Nevada Supreme Court opinion in *Stockmeier*, any changes to factual allegations in the PSI must be made at, or before, sentencing." Accuracy matters in the PSI are important because that information follows the offender. It is also relied upon by the State Board of Parole Commissioners when deciding whether to parole somebody.

I have provided you the section of a PSI that talks about criminal convictions, so that we can break down what this bill seeks to do. There are multiple sections of the PSI. One of the sections talks about and lists criminal convictions: felonies, gross-misdemeanors, misdemeanors. I provided the Committee with a section of a PSI entitled, "Examples of Unsubstantiated Criminal Conduct on PSIs" ([Exhibit E](#)). There is normally a catch-all section that says, "Additionally, the defendant was referred for the following service(s) for which no disposition is noted, the situation was rectified, prosecution was not pursued, or the charges were dismissed," and then it lists a whole block of various offenses.

The original bill sought to remove that section entirely because it only contains unsubstantiated criminal history. Several judges I talked to were not comfortable taking that section out entirely, and it is certainly not my intent to hamstring a judge in making a good decision. In the conceptual amendment ([Exhibit F](#)) you will see that I would like the PSI to be limited to prior criminal convictions; any open, unresolved criminal case, because that is important for the court to know about; any warrants that an offender may have; any failures to appear, because that might be a good consideration for whether an offender is going to be successful on probation; any completion of specialty court programs; and any prior arrests within ten years of the date of the incident offense. This is the result of compromise with the courts. They did not feel comfortable taking the entire block of unsubstantiated criminal conduct out, so we settled on ten years. You may ask how often we see conduct going back more than ten years; I recently saw a PSI that said, "From 1977 to present" and it listed a whole block of different unsubstantiated arrests or convictions. I have seen some that go back 40 years or more. The idea with this bill was that we ought to limit that to 10 years. Of course, criminal convictions will be listed no matter what, so if you have one that is 40 years old that would be on the PSI.

The next part of the bill deals with recommendations in the PSI. I provided some samples of that section as well ([Exhibit G](#)). Written at the top is, "Examples of Recommendation Section of PSI." You can see that there is a lot of information there, but ultimately what happens is P&P makes a recommendation as to whether probation or prison is appropriate, and as to what the sentence should be. If you look at the first page of that document about halfway down, you will see an "Attempt Burglary" charge, a felony. The recommendation there is 12-48 months. When the court would have that, the court would look at that recommendation and then decide what to do.

I sought to remove that section entirely from the PSI in the original bill on the basis that the judge could simply read the facts, look at the case, and make a judicial determination about what the sentence should be. Again, I had some conversations with some of the judiciary and I learned that some judges really do rely heavily on the recommendation made by Parole and Probation. I think we should keep this section in, but I do believe that P&P should be required to provide, at the time they provide the PSI, the basis for that recommendation, meaning the scoresheet ([Exhibit H](#)).

I provided the scoresheet to you as well and I will not go into detail, but there is a scoresheet that is used by the individuals who write the PSIs. It is a three-page document, and it is essentially a questionnaire that is filled out. The first part is "Probation Success Probability" [page 1, ([Exhibit H](#))]. It asks a series of questions about the offender and then it has a score at the end, and it either recommends probation, describes the offender as borderline, or recommends that probation be denied. Along with that, there is a sentence recommendation selection scale [page 3, ([Exhibit H](#))]. The Division of Parole and Probation gets the numbers that they include in the PSI from the score on the scoresheet. There is a section on the bottom that indicates that P&P can deviate from what is recommended, but they are supposed to provide substantiation for why they deviated from that score.

The law currently states that defense attorneys can obtain these documents, but it is a very burdensome process. Attorneys have to issue a subpoena to the Division of Parole and Probation. Attorneys have to go onto P&P's website and fill out a document request for these documents, and then they have to write a letter on their letterhead asking for the documents again. I will tell this Committee that one high-ranking member of our judiciary, who has appeared in front of the Committee at times, has made a suggestion—and this is not a confidential communication, he made this in public—that if a defense attorney did not obtain those documents, review those documents, and check the accuracy of the documents, it was his belief that defense counsel was acting deficiently and was not providing adequate representation to their client.

I can tell you that most of the time these documents are correct, but there are times that they contain inaccurate information. This bill seeks to say that P&P can make whatever recommendation they want to make, but they need to provide the documents at the time they provide the PSI—which right now is 14 days before sentencing—and that would give counsel a chance to be able to check the accuracy and potentially contest something in the documents. For instance, maybe P&P recommended more time because they felt like the offender was not cooperative in the interview. That would be helpful to know because the judge would have a say in whether that is a good reason to give a bigger sentence or not. That is what the amendment seeks to do; it just says give us that documentation.

Right now P&P believes there is a barrier in the statute that prevents them from giving that documentation out. I think, legally, I disagree with that interpretation, but to make it clear we should put it in statute that this information can be provided.

I wanted to let the Committee know there were a couple of other amendments that I decided to forego. Originally, the bill contemplated augmenting the amount of time before sentencing in which P&P would have to provide a PSI. Just by way of background, we have had that battle the last couple of sessions. We had it in 2013, and we had it in 2015, and in the interest of not making this too complicated and too difficult, I am foregoing that amendment. I would like the timing to stay exactly the same as it is now. The original bill drew a fiscal note from Clark County because of the timing issue; they have indicated that they are going to withdraw the fiscal note with that amendment, so we are going to retain the current time frame of 14 calendar days.

Finally, I have made a proposed amendment to both this bill and the next bill, which I have talked to Chief Wood about, and I think we are going to get to a place where we are comfortable with this amendment. Essentially, the amendment seeks a very limited exception for the *Stockmeier* case. Remember, the *Stockmeier* case said that PSIs could not be changed after sentencing is complete. I added the amendment because there have been some egregious examples of errors that really impacted offenders.

I became aware of a case where, for some reason, the PSI listed the wrong race for the defendant. I think the defendant was white and it said Hispanic, or Hispanic and it said African American, but it was something that was very important to the offender and had some bearing on his classification at the prison. They were unable to go back and change the PSI, so that document that had an incorrect racial determination followed the offender throughout the system.

The second and perhaps more egregious example was a recent case where a defendant went to trial on multiple charges. One charge involved a weapon, but the defendant was found not guilty. Everyone missed it at the time of sentencing; it remained in a section that indicated that the defendant was convicted of a weapons offense, and that had major implications at the prison. The offender was not able to go into minimum security, the offender was not able to get into programming, and there was no mechanism to come back to the court and have it corrected. In that circumstance, everybody agreed that the situation was wrong. The district attorney agreed it was wrong, the defense attorney agreed it was wrong, and the court agreed it was wrong, but there was simply no jurisdiction to do anything because of the *Stockmeier* case. This amendment would provide a limited exception, after sentencing, for a defendant to come back to court, with a stipulation of the district attorney—so the district attorney has to agree that it is a major error in the PSI—to allow the court to make that correction or to order P&P to make the correction. In talking to Chief Wood, she was concerned about how open-ended that language was that apparently you could come back 10 or 20 years later. That is really not my intent, so I think we are going to come up with some language to the effect of six months after entry into prison. That would give the offender a chance for it to sink in how these matters in the PSI are affecting the offender.

I want to go over the other parts of the bill very quickly. In section 1, subsection 1(b), I took out the section about needing to describe the defendant's financial condition, mostly because there is really no verification of financial condition. It is just a question that is asked of the

offender and, truthfully, most of these defendants are public defender clients so the court knows that their financial condition is not good. In subsection 2 on the top of page 3, I indicated that when the Division describes the conduct of the offense they need to say where they obtained that information. Typically, this information comes from the police report; I think it is helpful for the court to know that these facts, as alleged, came straight from the police report and not from outside sources. We do sometimes have some issues when somebody goes to trial. As you may know, the facts may be very different at trial from what is listed in the police report, so we are trying to work out how to accurately state what the facts were, based on the jury's determination, so that something in the offense synopsis does not affect the offender long term.

I think that is everything I wanted to discuss with this bill. I know I have covered a lot of information, so maybe before I get to questions, I will try to preempt one question: When a defendant goes to sentencing with the assistance of defense counsel, there is an opportunity to comment on the PSI at that time and raise objections to the PSI. The judge can order it changed at that time and that does happen, but there are circumstances where, for whatever reason—perhaps the volume of cases in the criminal justice system—something really significant slips through the cracks and then the court loses jurisdiction. The proposed amendment tries to address that. With that, Madam Chairwoman, I will stop talking.

Assemblyman Elliot T. Anderson:

I am trying to get my head around the proposed amendments. I initially had some concerns with removing financial information, because I thought it could make it more difficult for the courts to determine whether restitution would be appropriate, among other things. I would like to get some clarity on that. I think you said you took the section out, but if you could make sure that I have that right, I would appreciate it. Was there something I missed, because on the face of it, it seems like that might be a good piece of information to include in the PSI.

Assemblyman Yeager:

I know I went through that quickly. As it stands right now, the bill would still eliminate information about financial condition. I will tell the Committee it is certainly not a hill to die on for me. My point with eliminating that—and the Division can certainly correct me—is that I just do not think there is any verification of financial condition. I think the Division simply asks the offender what their financial condition is. If the Committee would like to keep that information in the PSI, we can certainly put it back in. I do not know that, typically, it impacts the court one way or another. There are offenses that require a mandatory fine, such as a felony DUI—there is a \$2,000 mandatory fine—and it does not really matter what your financial condition is because you will get that fine anyway. I think courts in our jurisdiction, at least in southern Nevada, do not really impose fines. The courts will impose restitution as they have to by law, and then on the back end, when the offender is being supervised, P&P will do a more comprehensive financial picture of the defendant to figure out how much restitution they can pay on a monthly basis.

Assemblyman Elliot T. Anderson:

I think it would be good to leave it in. There could be examples where justice would be served just by restitution. I understand your point, though, about ensuring there is some level of verification. It would be great if we could get some better information about that. I could see several scenarios where it would not make sense to lock someone up when we could just make the victim whole through restitution, if that were to fit in the circumstances.

Assemblyman Yeager:

I am certainly willing to consider amending the amendment to keep that information in the PSI.

Acting Chairwoman Cohen:

I am going to take the opportunity to piggyback on what Assemblyman Anderson was asking about. I think I was also somewhat interested in the financial section. I was thinking about restitution as well as housing, which we have discussed repeatedly. Obviously, PSIs are created prior to sentencing and conditions change over the years, but it gives people working with offenders ideas if there is something in there about financials, or physical assets such as property. When they eventually leave the system, the courts would know if there is a place for them to go.

Assemblyman Yeager:

I think that is a good suggestion. Perhaps we could have P&P indicate if any of that financial information is verified or unverified, and then the court would know. For instance, I think there is a section about whether an offender has a child support obligation. I think, by law, that needs to be in the PSI, and I believe that is verified through our system. That would be a piece of information that would be verified. In terms of assets and liabilities, maybe we could include that in the PSI, but also know whether it was verified.

Assemblyman Fumo:

I have a question about the subpoenaing of records. You said the defense attorney has to subpoena records from the Division of Parole and Probation. Does the state have to do that same thing, or are they freely turned over?

Assemblyman Yeager:

I should note that I formally made an inquiry as to how defense attorneys can obtain these documents, and the Division's response has been posted on NELIS ([Exhibit I](#)). In their response, P&P indicated what they perceived as barriers from just turning the information over, which led in part to this legislation to correct the barriers. Assemblyman Fumo, I do not believe the state needs to send a subpoena to P&P. They could certainly answer when they come up, but I believe they have some kind of a more streamlined document and information sharing where they will just turn those documents over, but again I am not 100 percent sure about that.

Assemblyman Fumo:

I noticed in the PSIs that we deal with, they have aggravating factors—criminal history, failures to appear, things like that. I never see mitigating factors in there: the defendant showed remorse when he was interviewed, the defendant sought treatment by himself. Did you discuss the ability to put aggravating and mitigating factors in there so the judge has a fair opportunity to look at the report, or is that going to be incumbent upon the defense attorney to bring those things up during sentencing?

Assemblyman Yeager:

I did not have that conversation with them. I will note there is a catch-all in the statute that they can essentially include whatever other information they believe would be helpful to the court. I do agree with you that we do not often see mitigating factors; it tends to only be aggravating factors. Right now, P&P would have the ability to include this if they wanted to. Part of it, and this is no disrespect to the PSI writers, because they write a lot of these PSIs and they are time-consuming, but I think that sometimes it is a little harder to get some of those mitigating factors. They may have to search a little harder, so a lot of the information on the PSI comes from the district attorney's case file because that is essentially how this process works. The district attorney takes their case file and hands it over to P&P, and that is what they use to start building the PSI.

I think having disclosure of the scoresheets would be helpful. I have seen many PSIs, and I cannot tell you how many depart from what the recommendation should have been, because it is very rare that I have acquired that documentation. Even when I have subpoenaed it, I often have not received the part that talks about if there is a departure and why; that part tends to not come along with the scoresheet. I bring that up because it would be interesting to know how many times the departure is upwards from a recommended sentence versus downwards. I do not know that because we do not have access to it. That could certainly be a place where we might expect to see mitigating information. If P&P said, Well, the scoresheet recommends this sentence, but I think something less is warranted because of cooperativeness, because of drug treatment, et cetera, I think that is where we would be likely to see that, so I think disclosure of that information would help us make that analysis.

Assemblyman Pickard:

I do not have any philosophical problems with what we are proposing here. I just have a question with respect to making PSIs accurate at any time, before or after sentencing. I do think that probably has some value. What is the current process if someone is sentenced, they are in jail, and they somehow come across their PSI and discover that there is all sorts of information that is inaccurate? What is the process for addressing that? Do they get to come back to the court and request a hearing? How would that come up? Assuming that is the case, am I understanding correctly that even if the sentencing judge recognizes that they relied on bad information, he is unable to make that change?

Assemblyman Yeager:

I think you hit the nail on the head. There is no ability to change. Once the judge pronounces sentence on the individual, that individual either goes to start probation or goes to prison. That PSI follows the individual; it is electronic following, but it follows the individual. There is no ability to change it. There is no ability to get back into court, even if the parties stipulate, the judge simply loses jurisdiction to change it. That is why in the *Stockmeier* case, when that individual filed an actual civil lawsuit and said the courts should make parole and probation change this, and the court said, Sorry we cannot do it because the jurisdiction is lost. Right now, there is no way to do it.

The example I referenced about the weapons charge when there was not really a weapons offense—that was not addressed by correcting the PSI; it was addressed by the defense attorney and the prosecutor jointly sending a letter to classification at NDOC saying, "Look, we know it is there but can you please pretend it is not there when you are making these determinations, because we all agree it is wrong?" As it stands right now, that PSI is incorrect. This bill would at least try to say, for some period of time after the offender is sentenced, there should be a mechanism for egregious errors, not for small errors. Small errors are not important, but egregious ones that impact classification or likelihood of parole, with district attorney stipulation, could be corrected.

Assemblyman Wheeler:

I saw that this is Assemblyman Ohrenschall's bill. Before he came back into the Committee room, you kept saying that you were okay with this amendment and okay with that amendment, and you really liked this, et cetera. I was just wondering if the bill's sponsor is okay with all of these amendments.

Assemblyman Ohrenschall:

This has been a very lucky day for me. I have had a very able interim chair and another very able chairman present my bill for me. Yes, I had a chance to review all the amendments; they are very agreeable to me. I think this is very important legislation, providing for that very limited exception—especially to the *Stockmeier* decision, as we know. We are all humans, attorneys are humans, judges are humans, writers of these reports are humans, and errors can happen. I think that is hugely significant. Thank you very much for presenting this legislation and for working so hard with all the partners on it, Vice Chairman Yeager.

Acting Chairwoman Cohen:

Would you like to make any further comments about the bill in general, Assemblyman Ohrenschall?

Assemblyman Ohrenschall:

No, I think Vice Chairman Yeager said it all.

Acting Chairwoman Cohen:

Do we have any other questions from the Committee? [There were none.] I will now open the meeting for testimony in support of A.B. 291 in Carson City and ask anyone in Las Vegas in support to come up to the table.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

Since we are short on time and another bill is going to be heard, I will say that we, from our office, welcome the changes that are going to be made during this process; and I think it will make for a smoother, more efficient and more accurate sentencing process with the information in front of us. I particularly want to hone in on keeping the scoresheets with the PSIs. If we are to keep the recommendations, I feel like we should know where those recommendations came from and get to look at the evaluation process that the person used in putting this PSI together and how they came to their recommendation. That way we can see what they missed and what they hit.

To answer Assemblyman Fumo's question, mitigating factors generally are not included in PSIs. It is our job as defense attorneys to dig out those mitigating factors; and we do that by sitting down with our clients, going over their PSI, and talking about their life experiences that may have been missed through that interview with the PSI writer. If we are able to see that scoresheet we could say—oftentimes our clients are not well-spoken—we can say, well you did not even tell the writer about this that you did. You did not tell the writer about your drug addiction; why did you not say that? You did not tell the writer that you were abused when you were a child—sexually abused, for that matter. We can bring all of that to bear by being able to look at those scoresheets and see what the writers missed when making the recommendation. We fully support this legislation and urge the Committee to pass it.

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

I too want to echo the comments and sentiments of my colleague, Mr. Piro, and I want to home in on the scoresheets as well, if I may. I have reviewed a number of scoresheets over the years, and it is incumbent upon getting this right. Again, the system is not infallible, but when looking at these PSI scoresheets—the matrix and the points that are assigned to the various areas—I have noticed errors, critical errors. I am able to raise this with the district attorney, the judge, and—if it is critical and necessary—I can have the PSI writer come into court and put that person on the witness stand and subject them to cross-examination as to why they assigned certain point values to the various areas.

I once had a case that involved what we typically refer to as a strong-arm robbery—meaning no weapon was used—but right there, in the PSI scoresheet, it indicated that a weapon was used. I was able to go in and show this to the judge and the district attorney and litigate this issue, and the PSI writer actually said that they consider a fist a weapon. I was able to flesh out that issue and show the judge why there should not have been points assigned to this area. These are critical issues that are litigated, and we should be provided these scoresheets just to make sure we are checking the math and making sure that the match is accurate.

These reports follow offenders. They follow them into federal habeas corpus review; they follow them into state habeas corpus review. They follow them into the granting of parole and the parole revocation. I have been at parole revocation hearings where I was the actual trial lawyer and I would see an inaccuracy in the PSI report that I was looking at, at the parole revocation hearing, and just fortuitously, I was able to correct it right then and there. I was able to say, "Members of the Parole Board, this is an inaccuracy. I made corrections in district court and now I want to make corrections here before the board."

This is a very important piece of legislation and we wholeheartedly support it.

Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada:

Few documents are more pivotal in determining a defendant's future than their PSI report. We believe that A.B. 291 will improve the ethical and evidentiary standards of PSIs in Nevada by improving sourcing of the information they include. If a defendant cannot be assured that the information in their PSI is completely reliable, trust in sentencing justifiably erodes. While we appreciate the potential these reports have to soften sentences by offering a fuller understanding of a defendant's character and history, there is a risk of judging a defendant by his history rather than by the charge at hand. We, therefore, applaud the effort to protect defendants from potentially misleading information in their reports. If the principle of innocent until proven guilty means anything, it is that we should avoid making assumptions about unsubstantiated criminal conduct in a person's past. The Libertarian Party of Nevada believes that any information in a presentence report must be transparent and reliable for the satisfaction of justice, and we believe that A.B. 291 improves the law in these respects. We are, therefore, happy to support it.

Acting Chairwoman Cohen:

Thank you. Is there anyone else in support in Carson City? [There was no one.] I am not seeing anyone in Las Vegas either. We will now move on to testimony in opposition of A.B. 291.

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

Under the rules of the Committee, I am here in opposition to the bill as written. However, the amendments provide me a level of comfort with some clarification on the record so I believe that we can be neutral.

For the knowledge of the Committee, the average length of time offenders spend in our corrections facility, the Clark County Detention Center (CCDC), from the time that the PSI process begins until sentencing, is an average of about 70 days per inmate. This whole PSI process can have a significant impact on the length of time inmates stay in the CCDC and of course, as we know, there is expense associated with that.

I would like to get clarification of one issue on the record. I believe that the amendment bringing the amount of time back down to 14 days helps with the issue of cost. In section 1, subsection 2 where it says, "The Division shall include in the report the source"

I just want to confirm, on the record, that this just means that the Division will include the source of their information in the report, but that it does not mean that they will provide all the documentation in the report to back up that information. For example, if that were the case and they said that they got the information from a police report, would they then have to obtain that police report from us and include that police report in the PSI report? In section 1, subsection 2(c) where it says, "Any other source available to the Division," my only concern there is to confirm that that does not mean we are going to have to have a detective show up at sentencing to verify that this information is in the report because it was relayed verbally from a detective to a PSI writer, or something of that nature. I just want to make sure that this is just saying, in the report, that the source of the information will be noted, not providing the source at the time of the hearing.

Finally, my only concern after talking with some of the other stakeholders is that there could be increased litigation over the scoresheet. That, again, could increase the length of time that our inmates would be staying in the CCDC.

Acting Chairwoman Cohen:

Thank you, Mr. Callaway, and I will just suggest that you get in touch with the sponsors and have those discussions with them directly.

Is there anyone else in Las Vegas or Carson City who would like to testify in the neutral position to A.B. 291?

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:

I am here in the neutral position. We were originally opposed to the bill, but then we saw the proposed amendments by Vice Chairman Yeager and Chairman Ohrenschall to reduce the calendar days to 14 for the disclosure of the PSI. Therefore, with that said, we will also withdraw our fiscal note that we had on this bill.

Andres Moses, Staff Attorney, Eighth Judicial District Court:

I will echo what Alex Ortiz just said. We were originally opposed to the bill, but with the amendments, the criminal division of the court is much more comfortable. The PSI plays a very vital role in sentencing, and that is a big responsibility that we elect our judges to do. I just want to thank the Chairman for working with us on this, and we are neutral on the bill.

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

Nevada Revised Statutes (NRS) 176.145 addresses the contents of the PSI. The Division does not have any control over that. We are guided, per statute, on what goes into the PSI. The defendant is allowed to offer mitigating statements, which we actually photocopy and attach to the PSI. I have talked to the sponsor of the bill concerning some of the amendments. In addition, I think that by statute we are authorized to disclose the PSI to the sentencing court, the district attorney, and the public defender.

I know that scoresheets have been contentious over the last two years, and I certainly understand why attorneys would want to request them. The Division's concern, and it is actually being litigated at the district court level, is that all we do is provide a recommendation. It is just that. The court can either accept our recommendation or not. I know that our recommendations are heavily relied upon in plea negotiations, and I think that is where some of the concerns come in. If we start subpoenaing PSI writers on their impressions after interviewing a defendant—they have asked them if they have an alcohol problem or substance abuse problem, and they note that—we will now have to have an evidentiary hearing on top of the sentencing hearing to discuss whether the public defenders agree or disagree with the writer's opinion. Yes, we can override the recommendation. The writer has to discuss that with their supervisor to see whether or not the override is justified and what those reasons are. We are really just providing a recommendation.

We currently ask for a subpoena before releasing scoresheets. This allows the Division to identify the requestor, and the request form is used for our own auditing purposes. That streamlines the process and allows us to identify who is asking for this information because it is confidential. That is the purpose of the subpoena; it is not to try to circumvent the process. That is the Division's stance; we are neutral, but again I have a huge concern of having another hearing on top of a hearing to decide whether the defense attorneys agree or disagree with one of my writers' assessments for a recommendation.

Acting Chairwoman Cohen:

Thank you. Are there any questions? [There were none.] I will invite the Vice Chairman back up to make concluding remarks.

Assemblyman Yeager:

I want to answer a couple of questions and address Mr. Callaway's concerns. I do not anticipate that P&P would have to provide the actual source of the information in the PSI. It would just simply be Parole and Probation indicating where they got the information. Typically, it comes solely from the police reports, so they would just indicate that.

I believe this particular bill has a plus side; contrary to what you have heard, I think we are going to have less litigation and people are going to move through the system more quickly. The way the process is set up right now, if, as a defense attorney, I am being told by the judiciary that I have no option but to get the scoresheets and vet them, that is going to require a delay because I am going to have to get a subpoena, I am going to have to send a letter, and in all likelihood individuals who are currently staying at the CCDC or local facilities will stay there pending obtaining those documents. I see this bill, on the flip side, as actually speeding this process up.

In terms of whether additional hearings are going to be required and whether we are going to be bringing P&P officers into court, I just do not see that as likely. Most of the factors on the scoresheet are things that can only be challenged in court. For instance, maybe there is a mistake on the one scoresheet that the district attorney, the public defender, the court are all

working off. In this instance, the argument could be made that the judge should depart from the recommended sentence because it looks like maybe this scoresheet was not accurate. I do not think that would require someone to be subpoenaed from P&P to come to court. The scoresheet is simply another tool when it comes time for arguing. Again, the district attorney would have that option as well; if they thought something was scored too leniently, they would be able to point that out to the judge. As P&P noted, this is just a recommendation; the judge is under no obligation to follow the recommendation. In the interest of transparency and accuracy, I think it makes sense for all parties to have access to the scoresheets. I will continue to work on the amendments that were suggested by Assemblyman Anderson and Acting Chairwoman Cohen, and I will get back, as soon as I can, with something for the Committee.

Acting Chairwoman Cohen:

I will go ahead and close the hearing on A.B. 291 and open the hearing on Assembly Bill 326. I will invite Assemblyman McCurdy to the table and ask him to begin whenever he is ready.

Assembly Bill 326: Revises provisions relating to reports of presentence investigations. (BDR 14-1117)

Assemblyman William McCurdy II, Assembly District No. 6:

Thank you, Madam Chairwoman and members of the Committee. I will try to make this quick because I do not want to stand between you and your lunch.

Assembly Bill 326 says that existing law authorizes the Division of Parole and Probation (P&P) of the Department of Public Safety (DPS) to include in the report of any presentence investigation (PSI) any information that they believe may be helpful in sentencing or in granting probation or in correctional treatment. Existing law also generally requires the Division of Parole and Probation to disclose to the prosecuting attorney, counsel for the defendant, the defendant themselves, and the court, the factual content of the report of any presentence investigation and the recommendation of the Division of Parole and Probation.

Assembly Bill 326 provides that if the Division of Parole and Probation includes in their report information related to the defendant being affiliated with or as a member in a criminal gang, they are required to provide that evidence before the defendant is sentenced. Additionally, A.B. 326 provides that if the Division of Parole and Probation also believes that the criminal gang membership or affiliation is disputed by the defendant, then they are also required to provide that information before the defendant is sentenced.

I will not keep reading about what the bill does because you have it in front of you. I do want to note, however, that I am from west Las Vegas. I am a native Nevadan, and I could have easily gone down the path that could have easily ended up in prison, given me a prison sentence, or death. Many of my friends that I grew up with were in gangs. I grew up with a lot of gang members. I have seen the worst of the worst. About eight years ago, one of my friends was shot 23 times, so I do know about the negative things that happen when you get

involved in things that you are not supposed to be doing. There are a lot of factors that go into that. I also understand the desire to hand down harsher punishments for those who are in gangs. However, we all have a duty to make sure that Nevada's criminal justice system is fair and equitable for everyone. I thank you for hearing this bill, and I have to my left Vice Chairman Yeager, who will explain what this bill does in more detail.

Assemblyman Steve Yeager, Assembly District No. 9:

Thank you, Assemblyman McCurdy. This presentation will be very brief and piggybacks off the last bill we just heard. Essentially what this bill seeks to do is put into statute a process that will streamline disputes about whether someone is a member of a gang. The inclusion of gang membership in the PSI is very important because it is used to classify defendants at the prison. You cannot have rival gang members being housed together; that is a legitimate public safety and prison safety issue.

Let me tell you why we need this bill. I provided an example of the gang membership section from a PSI to the Committee. It is entitled, "Example of Disputed Gang Membership on a PSI" ([Exhibit J](#)). If you do not mind, I want to ask you to put yourself in a defense attorney's shoes for just a second. Imagine it is 14 days before sentencing. Your client is at the Clark County Detention Center (CCDC) or maybe up here, locally, in Reno. You receive a copy of the presentence report and it says the following under gang activity, "The defendant denied that he is a member of any street gang. He indicated that they have seen him with a gang member and he is now on file as being a gang member. He inquired as to how he could be removed from the gang list . . . ," and then it goes on to say that according to the Las Vegas Metropolitan Police Department (LVMPD), the defendant is a confirmed, active member of a certain gang, with last contact being such and such.

I think you would agree that it is fairly obvious that this is going to lead to a dispute in court. When we come to sentencing 14 days later—maybe less than 14 because, remember, defense attorneys get the PSI in 14 days—I have to get the PSI over to my client at the jail, which is probably going to take a few days if we do it by mail. When we show up for sentencing, we have a defendant who is sitting in custody, ready to be sentenced. We also have a judge who is ready to do the sentencing, a prosecutor who is ready, and the defendant is saying, "Judge, that information is incorrect. I am not a gang member." At that point, the judge will continue the sentencing and keep the offender in custody for probably another 30 days minimum. The judge will go to the district attorney or P&P to obtain whatever underlying documentation exists that substantiates LVMPD's opinion that that person is a gang member. We will come back to court 30 days later, look at the documentation and make arguments, and the court will decide whether to strike that section from the PSI.

That is the current process, and it is not a good process. It takes a lot of time and resources. I want the Committee to know, however, that this example of gang membership is the exception and not the norm. Most PSIs, I would say, do not show any gang membership, and defendants oftentimes do not dispute that information when it is included. It is a rare case indeed when we have this kind of language, but when it happens it is significant.

This bill seeks to say that in situations where it is really obvious to the PSI writer that there is going to be a dispute—such as what you see in front of you ([Exhibit J](#))—let us have the PSI writer provide the underlying documentation when they provide the PSI, so that when we go to sentencing 14 days later the judge can make that determination right then and there and either send that defendant to prison or put him on probation. That is essentially what the bill seeks to do. I submitted the same amendment that was submitted on the prior bill with this bill ([Exhibit K](#)), just in the interests of making sure that we have all the bases covered that would provide the exemption for the *Stockmeier* decision ([Exhibit D](#)). Again, I am willing to work with Chief Wood on tightening up that language, and I appreciate Assemblyman McCurdy allowing me to attach that amendment to the bill. With that, I would answer any questions the Committee may have.

Assemblyman Pickard:

Mr. Callaway's comments from the prior bill raised a question in my mind. As a preface, I am surprised to hear that most criminal defendants who are alleged to be gang members would not deny that flatly, up front. I am coming from an uneducated position, but I thought that gang membership was a potential enhancement to sentencing, so it would be in the defendant's best interest to deny it from the get-go. Of course, that would mean that everybody, prior to trial, would know that this is an issue of dispute. Mr. Callaway mentioned that he hopes we are not asking for a whole pile of documents to be transferred along to the courts, so what we did not do in the prior bill it looks like we are trying to do here. Do the same problems exist? Obviously, I will let Mr. Callaway discuss that from LVMPD's side, but I just wonder if you could address that.

Assemblyman Yeager:

In response to your first comment, some gang members are very proud to be gang members. They want that information in their PSIs or they simply do not dispute it. It is pretty rare that someone would dispute it. I would say, in the cases I have seen, it is probably 50-50. When it is disputed, 50 percent of the time the documents come back and it is pretty obvious that the person is a gang member. Fifty percent of the time, the documents come back and even the district attorney says that the evidence is just not there and they agree to strike that language.

With respect to the process that this bill envisions, I will go into a little more about how it works now. If we tell the judge that there is a dispute and the judge wants to get the documentation, the district attorney either goes directly to LVMPD or prepares a subpoena to LVMPD and asks them to give us what are called "FI cards," or field interview cards. Mr. Callaway can speak to that, but those are essentially the field notes officers write after

they have contact with individuals. The information on these cards provides the basis of why officers believe that person is a gang member.

We are usually talking about four or five photocopies of a card, not a substantial amount of documents. The information on the cards can range from, "this person admitted to me they are a gang member," all the way to, "I saw this person standing with someone else who was wearing a red shirt in a bad part of town. Therefore, I believe they are a member of this gang." It ranges the whole gamut. I do not think, procedurally, we are talking about a huge number of cases, and I think the documents that would be turned over are not voluminous by any means—at least not in cases where I think gang membership would reasonably be in dispute. For instance, if a defendant was previously convicted of a crime that had a gang enhancement, that is a pretty good indication that he is a gang member or at least used to be. Mr. Callaway can speak a little bit more to that. I have had conversations with him about this bill because I know he had the same concerns as Assemblyman Pickard, but I do not envision that it would add too much process up front. Rather, I envision it will save a lot of time on the back end. Additionally, just so you know, when we have hearings about field interview cards, officers do not come in to testify. The hearing is simply the judge and everyone else looking at the interview cards, deciding whether they substantiate the claims in the PSI. We do not get into who authored the card and what made them include that information.

Acting Chairwoman Cohen:

Are there any other questions from the Committee? Seeing none, I will open up for testimony in support of A.B. 326 in Carson City. If there is anyone in Las Vegas, please come down and fill up the chairs.

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

Again, we are in full support of this measure. What it really boils down to is just making sure that the reports are accurate and, if there is a dispute, that both sides—the defense attorney and the prosecutor—can get the information and litigate the issue if necessary. I will submit to you an analogy. Just like restitution, if there is an issue concerning restitution it is always helpful if the Division provides restitution facts and figures, billing statements, and things of the like, up front, prior to us coming to court for sentencing. That way we can review it with our client prior to court, and if there are any disputes, we can raise those disputes at the time of sentencing. If there is going to be a dispute concerning the gang affiliation, if we have the cards that Vice Chairman Yeager spoke about—or any information that would tend to show that the person may or may not be involved in a gang—we can have that up front, get that information and be ready to go with our arguments at the time of sentencing. I think Vice Chairman Yeager is accurate when he says that this will streamline the process and we can litigate these issues at the time of sentencing if necessary, rather than causing a continuance of the sentencing and keeping the offender in custody longer. For that, we support this measure. Thank you.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

I wanted to tack onto the Vice Chairman's answer about gang denial, in response to Assemblyman Pickard's question. Gang classification also matters for prison classification. If you are part of a gang, you definitely do not want to be in an area of the prison where a member of another gang would be. You would subject yourself to danger, so that is why it is not readily denied in matters. I can understand denying it if gang membership was part of a defendant's charges, but typically if it is a plea deal and we are at sentencing, it is not.

I think this process, by providing information, will not result in the situation that Mr. Callaway spoke of involving all this information and taking all this extra time. If you are simply forced to substantiate the information by stapling three extra pages to the PSI report when you deliver it for sentencing, it is actually going to speed the process up because it will reduce the time that we are waiting to get that information. This is a common-sense, reasonable, measured approach to providing accurate information for sentencing that we are fully in support of and urge your support as well.

Acting Chairwoman Cohen:

Thank you. I want to be clear for the record, were you referring to Mr. Callaway's comment on A.B. 291?

John Piro:

Yes, that is correct.

Wendy Stolyarov, Legislative Director: Libertarian Party of Nevada:

The Libertarian Party of Nevada is in full support of A.B. 326. Given the weight that PSIs and accusations of gang affiliation carry in determining a defendant's future, justice requires that they be unimpeachably accurate. Hearsay or unsourced allegations would not be sufficient in a court of law and should not be sufficient in a report that determines a person's fate. We believe that A.B. 326 improves the evidentiary standards these reports ought to meet for the satisfaction of due process and justice, and we encourage the Committee to support it. Thank you.

Acting Chairwoman Cohen:

I see no questions. Is there anyone else in support of A.B. 326 in Carson City or Las Vegas? [There was no one.] Is there anyone who wishes to testify in opposition in Carson City? If there is anyone in opposition in Las Vegas, please fill up the chairs.

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

First, let me say that I did have a conversation with Vice Chairman Yeager about the bill, and his comments provide me a level of comfort. But again, under the rules of the Committee and for the purposes of being on the record, I am here in opposition to A.B. 326.

First, I want to say that we at LVMPD want PSI reports to be accurate, and we are also concerned about the safety of offenders. If someone is a gang member and for whatever reason they deny it—because they think it may have a negative impact on their sentencing—and then they get classified in the general population in the prison, or maybe even in with other gang members of a rival gang, that is a safety concern for those offenders. I believe that is a significant issue.

My primary concern with this bill is exactly what I spoke about in the last bill, only in A.B. 326 it is clearly stated that the attorneys would want copies of all documentation. The last bill said, "list sources;" this bill says copies of all documentation. When our officers are out in the field dealing with someone on a field interview, 99 percent of the time my experience has been that if they are a gang member they tell the officers that, because they are proud of it. Then, when they get into the criminal justice system and they are being booked into the jail or they are facing sentencing, now all of a sudden they do not want to admit that they are a gang member because they believe it is going to have a negative impact on their sentencing or potential sanctions handed down by the court.

In those cases, the defendant may have a tattoo on his arm that says he is a Crip or Blood or a Hell's Angel, or whatever, but yet he will say he is not a gang member. He will say that he used to be but he is out of it now. This is because he does not want to be labeled as such.

As concerns the field interview process, let me first say that the field interview card is something that our officers complete. It is a small card about the size of this [Mr. Callaway held up a Post-It Note pad]. We complete them digitally now, as well. They can be entered into the computer in the officer's car. The purpose of the cards is not to document gang affiliation; the purpose is to document field encounters or field interviews. There may be some information of an intelligence factor on the card that is forwarded to our gang intelligence section. For example, say an officer responds to a call about a fight on a school playground or a basketball court. The officer shows up and there are 20 people there, and there is reason to believe that the fight was gang-related. In fact, some of the people say they are gang members and the reason they fought is because one person is a member of the opposite gang. There may also be other people around who do not admit they are gang members. The officer would conduct field interviews, and based on the verbal indications from the interview, the officer may or may not believe a person who says they are in a gang or denies it. The information on an FI card is not just based on "the guy has on a red shirt so we are going to say that he is a gang member." There have to be articulable facts that would lead an officer to believe that a person is a gang member, and then those facts are put on the field interview card. That card is sent up to the detective bureau; it goes to our gang intelligence section.

Our gang intelligence section reviews all of those cards to determine if they believe the information on that card warrants a person being subject to entry into the gang database. If the gang unit believes that there is enough information on that card—and I can tell you that just saying that the guy was wearing a red shirt does not cut it—if that person is an adult we send a registered letter to them and say that we received information that they are associated

with a gang or are a gang member, and their information will be put into the gang database. We give the individual an opportunity to rebut that. That person then has an opportunity to make contact with our gang intelligence section and explain why they are not a gang member or why the information on the card is not correct. If they can show us that, then we will not enter that information in the gang database.

If the person is a juvenile, we do a home visit. We go to the home of that juvenile and meet with the parents and have a discussion with parents to try to do diversion. Part of our gang unit policy not only talks about documentation and intelligence gathering, but it also talks about diversion. We want to get people out of gangs, especially juveniles and children. Sometimes we take faith-based community members or ex-gang members who work with our agency on the visit, we meet with the children and the families, and we try to get them out of that scenario.

If individuals do end up in the gang database, we follow all the federal rules of 28 CFR [*Code of Federal Regulations*, Title 28, Part 23], I believe it is, in regards to intelligence information gathering. If a period of time goes by where there is no additional information that comes forward that that person is a gang member, they are removed from the database. If there is no criminal predicate that that person is still a gang member and they are not involved in some sort of crime involving gang activity, they are removed from the database.

My point in telling you all of this is that the field interview card is just a snapshot of that. We do field interview cards if somebody calls in and says they see a guy going door to door selling magazines and they do not think he has a license. An officer will show up and interview that individual and fill out a field interview card. A field interview card is not directed solely towards gang activity.

I just want to state on the record that, although I have some comfort in the discussion I had with Vice Chairman Yeager, I still have concern that if the PSI writer is required to get police reports, documents, or field interview cards that indicate gang affiliation, our people are going to have to gather that data, potentially redact information from it because those reports may have victim information in them or other confidential information in them, and I see that as potentially lengthening this process rather than shortening it. In the end that would have an impact on the CCDC.

I support what the Vice Chairman and the sponsor of the bill are trying to do, but I just have some logistical concerns. I have reached a level of comfort, but I am not 100 percent there yet. I just wanted to put that on the record. Thank you.

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

I echo Director Callaway's comments and just want to put on the record that the Washoe County Sheriff's Office has a policy that outlines everything that he said. As he was stating it, I was reading it in Policy 442, specifically the review and purging of criminal

street gang information into that file. Policy 442.4.1 covers that specifically and then 442.4.2 covers the 28 CFR Part 23, which is the code of federal regulation that allocates how long we can keep information in those files. I would be happy to provide this to the Committee if you want the policy.

Assemblywoman Tolles:

I would be happy to receive that copy if it is provided. Thank you.

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

I just wanted to clarify something for your educational purposes. When the PSI writer meets with the offender, most of the time, or nine times out of ten, the defendant readily acknowledges that they are an active member in a gang or that they are no longer affiliated with them. That information is provided in the PSI because there are other agencies such as NDOC and the State Board of Parole Commissioners that use that information. It is primarily NDOC for classification purposes.

The Division does not have any data. We actually already provide in the PSI that the offender self-disclosed they are either a gang member or that we got the information from LVMPD or another source. We do not personally keep field cards; we get that information from local agencies. I just wanted to clarify that for the record.

Acting Chairwoman Cohen:

Thank you. Are there any questions? [There were none.] I do not see anyone else in the neutral position in Carson City or Las Vegas, so at this time I will invite the bill sponsors back up to make concluding remarks.

Assemblyman Yeager:

I think everyone who came to the table is saying the same thing, which is that we need to be accurate here because this is important information. It is a question of how we get there and what process we use. I do not think the process we use now is effective or efficient. It is certainly not cost effective.

I want to note for the Committee that I think everyone has agreed that this is a very rare circumstance. Most gang members readily admit membership, but in the times where they do dispute it, I do not think it is too much to ask to get the documentation, and I was encouraged to hear that the documentation exists electronically now too. That should really facilitate production of the documents. I think Chief Wood mentioned that they do not maintain the documents at P&P. I do know that to be true. I think when there is a dispute they typically pick up the phone or send an electronic inquiry to LVMPD or the other respective police agencies to ask what their records show in terms of gang membership. Again, when we go to court to dispute affiliation, it is based merely on those field interview cards; that is how the judge makes a decision. I am not trying to amplify that decision-making process or include more documentation; it would simply be a copy of the field interview cards.

As I stated earlier, there exist some really egregious instances. I have personally seen the field interview card that said, "This individual was wearing a red shirt and standing in a certain part of town," and that was the basis that was provided to the court for the substantiation for gang membership. Even in that circumstance the district attorney said that this did not make any sense and agreed to take it out of the PSI. I am not here to disparage the gang membership or the gang information, but sometimes it can be wrong. It is a rare circumstance, but when it happens, we need to be able to correct it fairly and efficiently, and that is what A.B. 326 seeks to do.

Assemblyman McCurdy:

Thank you again for hearing this bill. I will be open to any suggestions that would be needed to move this legislation forward. Again, this bill is important. Everyone knows that this is rare, but if you are charged with that or if you are labeled with that, you should have an opportunity to right that wrong. It is important. It affects how you are housed in jail. We need to make sure that our justice system is fair and equitable for everyone. Thank you.

[A letter in support of Assembly Bill 326 was submitted by the Nevada Attorneys for Criminal Justice and is available on Nevada Electronic Legislative Information System (NELIS) ([Exhibit L](#)).]

Acting Chairwoman Cohen:

At this time I am going to close the hearing on A.B. 326 and invite anyone in southern Nevada or Carson City to come up for public comment. Seeing no one, we will bring this hearing to a close. This meeting is adjourned [at 11:30 a.m.].

RESPECTFULLY SUBMITTED:

Devon Isbell
Committee Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is written testimony presented by Tom Ely, Private Citizen, Las Vegas, Nevada, in opposition to Assembly Bill 302.

[Exhibit D](#) is a copy of a Nevada Supreme Court decision *Stockmeier v. Nevada Board of Parole Commissioners*, 127 Nev. Adv. Op. No. 19 (2011), dated May 19, 2011, submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit E](#) is a document titled, "A.B. 291: Examples of Unsubstantiated Criminal Conduct on PSIs," submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit F](#) is a proposed amendment to Assembly Bill 291, submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit G](#) is a document titled, "A.B. 291: examples of recommendation section of PSIs," submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit H](#) is a document titled, "Probation Success Probability," submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit I](#) is a letter dated March 15, 2017, in response to questions about presentence investigation reports and supporting documentation, to Assemblyman Steve Yeager, authored by Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety.

[Exhibit J](#) is a document titled, "A.B. 326: Example of disputed gang membership on a PSI," submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit K](#) is a proposed amendment to Assembly Bill 326, submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit L](#) is a letter dated April 5, 2017, in support of Assembly Bill 326 to members of the Assembly Committee on Corrections, Parole, and Probation, authored by Jim Hoffman, Nevada Attorneys for Criminal Justice Legislative Committee.