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The Advisory Commission on the Administration of Justice
Assemblyman Steve Yeager, Chair

Assemblyman Yeager,

During the commission's meeting on February 2, 2018, several questions were presented to the Nevada Department of Public Safety Division of Parole and Probation. The Division offers the following in response to the questions posed:

(1) What is the status of the Division's risk assessment instrument? What is the specific implementation date and validation date for the Division's risk assessment?

The Department of Public Safety (DPS) has finalized the contract with the University of Cincinnati (UCCI) and the contract is scheduled to be reviewed by the Board of Examiners during the March 2018 meeting.

Prior to the finalization of the contract, the Division was able to include staff in user and instructor level training in conjunction with a grant received by the Nevada Department of Corrections (NDOC). Trained personnel have been completing offender risk assessments in the Nevada Risk Assessment System (NRAS) beginning in October 2017. As additional personnel are trained, they will only conduct assessments within the NRAS tool.

As part of the Division's Offender Tracking Information System (OTIS) Modernization Project, the NRAS case management tool has been developed initially as a stand-alone application that will later integrate into the deployment of updated OTIS. The training plan is scheduled to ensure all personnel who conduct risk assessments will have completed NRAS training by the July 23rd deployment of OTIS.

The validation process for the risk assessment tool will take approximately eighteen months. The first twelve months consists of data collection on an identified group of offenders assessed under the NRAS criteria. Performance while on supervision and recidivism will be compared to a control group of similar demographic offenders not assessed under the NRAS criteria. UCCI will analyze the data to validate the assessment scoring metric.

(2) Provide information and data on the Division's efforts at restitution. What is the status of collections? How many defendants are being released or discharged without having completed restitution obligations? What are the Division's efforts at collecting restitution?

Division officers make every effort to collect restitution payments from the inception of the offender's supervision grant until their discharge date. Restitution balances are discussed during the offenders reporting appointments with their officer. If the offender lacks the funds to pay the full monthly restitution payment, officers work with

the offenders to develop a realistic budget based on their income and existing expenses. If restitution payments are not received, offenders are not eligible for earned compliance credits. In addition, the failure to pay restitution may be addressed with intermediate sanctions up to and including incident reports and/or violation reports.

Upon an offender's expiration from supervision, the sentencing judges and the Parole Board are apprised of the offender's outstanding restitution balance and their efforts to pay while under the Division's supervision via the discharge paperwork.

After the offenders are discharged from supervision, the restitution becomes a civil matter per NRS 176.275. Instances of outstanding restitution owed by discharged offenders are not tracked since the restitution is not owed to the Division and the Division has no authority for enforcement of the collection. Although restitution payments can be collected by the Division after discharge, it is possible for restitution payments to be made through the District Attorney's Office, or directly to the victim. Because of instances such as these, the Division is unable to maintain an accurate balance owed.

(3) What is the extent to which the Division is involved in supervising individuals who are in prosecution deferral programs or specialty court programs?

The Division is heavily involved in the supervision of individuals who are in deferred programs. Officers participate in comprehensive case planning staffing/conferences with specialty court case managers/court personnel as well as attend/participate in specialty court hearings. Attendance at hearings varies depending on the Judicial District; however officer participation can be from one day to four days per week. In addition to officers' participation in the court setting, they also conduct monthly office reporting, verify compliance with special conditions, verify employment, conduct drug tests as necessary, and contact the participants in their residence.

Individuals who are participating in specialty court programs are not supervised according to the Divisions supervision model. That model was approved during the 2018/2019 Legislative Session, restructuring the supervision of low risk, moderate risk and high risk offenders. Specialty court participants are supervised at much lower officer to offender ratios based upon programs that assists individuals who have higher risks and/or needs such as Veterans Court and Mental Health Court. The higher risk/need specialty court programs are supervised at a 30:1 ratio. Other specialty courts such as drug and diversion are supervised at 75:1 ratio. These ratios vary throughout the state depending on Division's current staffing levels.

(4) What is the Division's source of data for criminal history in PSI's? Do you have any input on issues relating to the reliability of the criminal history repository? How does the Division resolve conflicting information concerning an individual's criminal history? Are there instances in which the criminal history information supplied to the sentencing judge is inaccurate because the system has inaccurately reported it?

The Division's source of criminal history is information reported in NCIC/NCJIS databanks and local repositories within the state. NCIC/NCJIS information contains juvenile and adult data entered into the repository by local, state and federal agencies throughout the country.

The reliability of the information pulled in criminal history documents is dependent upon the agency entering the information. For example, if an agency has a data entry backlog, the records may not be current to the present date.

As a result of *Stockmiere v. Nevada*, the Division is required to provide the PSI to the defendant 14 days prior to sentencing. This allows the defendant and their attorney to review the PSI, and address and correct any errors in the report to include criminal record discrepancies prior to sentencing. If a defendant wishes to dispute information obtained by the Division from the criminal history database, the defendant is encouraged to contact the submitting agency to resolve the disputed entry. The courts may also order the Division to request further records from a particular agency as part of the dispute process. If the Division finds a discrepancy in criminal history information, we attempt to have it resolved through the entering agency.

The Division reports the criminal history as entered into the repository information systems. The Division considers this information correct as entered, unless otherwise disputed as allowable within the sentencing process and proven to be incorrectly entered by the originating agency.

(5) What are the supervision ratios for sex offenders under lifetime supervision and the supervision ratios for each tier of sex offender?

The supervision level for sex offenders is not impacted by the tier level assigned during sex offender registry. Pursuant to the State of Nevada Community Notification Risk Assessment and Rating Manual, prepared by the Community Notification Advisory Council, the purpose of a risk assessment scale is to provide a standard for notification to the public so as to address the public safety concerns of the community regarding the location of convicted sex offenders who pose a risk of committing further offenses. While the Division pays close attention to the tier level of each sex offender, the Division also uses its own risk assessment tool as well as additional assessment tools such as VASOR and STATIC 99 to determine the appropriate supervision level.

Lifetime sex offenders are supervised at a ratio of 200:1 due to limitations of supervision allowed under the McNeill decision (*McNeill v. State*; Nevada Supreme Court Advance Opinion No. 54 on case number 66697; July 28, 2016). McNeill prevents the Division from monitoring lifetime sex offenders in any regard other than residence verification, collection of supervision fees, electronic monitoring, and monitoring to ensure the offender has no contact with their victim(s). Furthermore, the Division received guidance relative to the supervision of lifetime sex offenders under Attorney General's Opinion 2017-02.

Although the McNeill decision has severely limited the authority the Division has over lifetime sex offenders, officers continue to conduct special operations (such as Operation Scarecrow and Operation Safer Streets), as well as work with the sex offender registry/counties to ensure that offenders are in compliance with their registration and residency requirements. These operations are focused on protecting the community within the narrow supervision parameters defined by McNeill.

(6) Do you have suggestions for statutory changes that the Commission should recommend to the Legislature? Do you recommend any enhancements to the financial support or programs of the Division?

At the last Advisory Commission meeting, the Division discussed future concepts on Slide 11 of our presentation. Specifically, the Division mentioned updating the statutory language to define General Discharges rather than Honorable and Dishonorable Discharges. Additionally, the Division believes updating the statutory language regarding the frequency by which an offender's supervision level must be reviewed while they are under the

supervision of the Division would be beneficial. The suggested statutory changes have been attached as for your review (Addendum A).

Furthermore, the Division mentioned increasing the funding and participation in the Day Reporting Centers, State Funded House Arrest Program and Indigent Fund for Transitional Housing. We believe any potential increase to these programs would be of great benefit in reducing recidivism and enhancing reentry.

The Division is extremely appreciative of the support the Advisory Commission continues to offer the Division and it is hoped the aforementioned responses clarify any outstanding questions.

Addendum A

Proposed Changes to Statutory Language

Relating to General Discharges:

SUMMARY – Revises the type of discharge that a probationer or parolee may receive upon expiration of community supervision.

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to the Division of Parole and Probation of the Department of Public Safety; revising the type of discharge that a parolee or probationer may receive when they complete supervision.

Legislative Counsel's Digest:

Existing law creates the Division of Parole and Probation of the Department of Public Safety, which is generally responsible for the supervision of parolees and probationers.

Section 1 of this bill: (1) Amends statute to allow a probationer to receive a general discharge upon completion of their supervision and meeting certain requirements, rather than an honorable discharge. (2) Requires the Division to prepare a report which describes the performance of the probationer while under supervision.

Section 2 of this bill: Removes dishonorable discharges from statute.

Section 3 of this bill: (1) Amends statute to allow a parolee to receive a general discharge upon completion of their sentence and meeting certain requirements, rather than an honorable or dishonorable discharge. (2) Requires the Division to prepare a report which describes the performance of the parolee while under supervision.

Section 4 of this bill: Allows the restoration of rights to any parolee who discharges from parole.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY DO ENACT AS FOLLOWS:

Section 1. NRS 176A.850 is hereby amended to read as follows:

NRS 176A.850 ~~Honorable~~ discharge from probation: When granted; restoration of civil rights; effect; documentation.

1. A person whose term of supervision has expired or who is recommended for earlier discharge by the Division ~~who:~~

~~—(a) Has fulfilled the conditions of probation for the entire period thereof;~~

~~—(b) Is recommended for earlier discharge by the Division; or~~

~~—(c) Has demonstrated fitness for honorable discharge but because of economic hardship, verified by the Division, has been unable to make restitution as ordered by the court;~~

may be granted a ~~an-an-honorable~~ discharge from probation by order of the court. At least 30 days prior to expiration, the Division shall prepare for the court a written summary of the performance of the person while on probation to include:

(a) Whether conditions of probation were fulfilled;

(b) The status of fees, fines and restitution owed.

2. Any amount of restitution remaining unpaid constitutes a civil liability arising upon the date of discharge and is enforceable pursuant to NRS 176.275.

3. Except as otherwise provided in subsection 4, a person who has been ~~honorablely~~ discharged from probation:

(a) Is free from the terms and conditions of probation.

(b) Is immediately restored to the following civil rights:

(1) The right to vote; and

(2) The right to serve as a juror in a civil action.

(c) Four years after the date of ~~honorable~~ discharge from probation, is restored to the right to hold office.

(d) Six years after the date of ~~honorable~~ discharge from probation, is restored to the right to serve as a juror in a criminal action.

(e) If the person meets the requirements of NRS 179.245, may apply to the court for the sealing of records relating to the conviction.

(f) Must be informed of the provisions of this section and NRS 179.245 in the person's probation papers.

(g) Is exempt from the requirements of chapter 179C of NRS, but is not exempt from the requirements of chapter 179D of NRS.

(h) Shall disclose the conviction to a gaming establishment and to the State and its agencies, departments, boards, commissions and political subdivisions, if required in an application for employment, license or other permit. As used in this paragraph, "establishment" has the meaning ascribed to it in NRS 463.0148.

(i) Except as otherwise provided in paragraph (h), need not disclose the conviction to an employer or prospective employer.

4. Except as otherwise provided in this subsection, the civil rights set forth in subsection 3 are not restored to a person ~~honorablely~~ discharged from probation if the person has previously been convicted in this State:

(a) Of a category A felony.

(b) Of an offense that would constitute a category A felony if committed as of the date of the ~~honorable~~ discharge from probation.

(c) Of a category B felony involving the use of force or violence that resulted in substantial bodily harm to the victim.

(d) Of an offense involving the use of force or violence that resulted in substantial bodily harm to the victim and that would constitute a category B felony if committed as of the date of ~~honorable~~ discharge from probation.

(e) Two or more times of a felony, unless a felony for which the person has been convicted arose out of the same act, transaction or occurrence as another felony, in which case the convictions for those felonies shall be deemed to constitute a single conviction for the purposes of this paragraph.

A person described in this subsection may petition a court of competent jurisdiction for an order granting the restoration of civil rights as set forth in subsection 3.

5. The prior conviction of a person who has been ~~honorablely~~ discharged from probation may be used for purposes of impeachment. In any subsequent prosecution of the person, the prior conviction may be pleaded and proved if otherwise admissible.

6. Except for a person subject to the limitations set forth in subsection 4, upon ~~honorably~~ discharge from probation, the person so discharged must be given an official document which provides:

- (a) That the person has received ~~a an-honorable~~ discharge from probation;
- (b) That the person has been restored to his or her civil rights to vote and to serve as a juror in a civil action as of the date of ~~honorably~~ discharge from probation;
- (c) The date on which the person's civil right to hold office will be restored pursuant to paragraph (c) of subsection 3; and
- (d) The date on which the person's civil right to serve as a juror in a criminal action will be restored pursuant to paragraph (d) of subsection 3.

7. Subject to the limitations set forth in subsection 4, a person who has been ~~honorably~~ discharged from probation in this State or elsewhere and whose official documentation of ~~honorably~~ discharge from probation is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore the person's civil rights pursuant to this section. Upon verification that the person has been ~~honorably~~ discharged from probation and is eligible to be restored to the civil rights set forth in subsection 3, the court shall issue an order restoring the person to the civil rights set forth in subsection 3. A person must not be required to pay a fee to receive such an order.

8. A person who has been ~~honorably~~ discharged from probation in this State or elsewhere may present:

- (a) Official documentation of ~~honorably~~ discharge from probation, if it contains the provisions set forth in subsection 6; or
- (b) A court order restoring the person's civil rights, as proof that the person has been restored to the civil rights set forth in subsection 3.

Section 2. NRS 176A.870 is hereby removed:

~~**NRS 176A.870 Dishonorable discharge.**—A defendant whose term of probation has expired and:~~
~~—1. Whose whereabouts are unknown;~~
~~—2. Who has failed to make restitution in full as ordered by the court, without a verified showing of economic hardship; or~~
~~—3. Who has otherwise failed to qualify for an honorable discharge as provided in NRS 176A.850;~~
~~È is not eligible for an honorable discharge and must be given a dishonorable discharge. A dishonorable discharge releases the probationer from any further obligation, except a civil liability arising on the date of discharge for any unpaid restitution which is enforceable pursuant to NRS 176.275, but does not entitle the probationer to any privilege conferred by NRS 176A.850.~~

Section 3. NRS 213.154 is hereby amended to read as follows:

NRS 213.154 Division to issue ~~honorably or dishonorable~~ discharge to parolee whose term of sentence has expired; unpaid restitution constitutes civil liability.

1. The Division shall issue ~~a an-honorable~~ discharge to a parolee whose term of sentence has expired. ~~The discharge must include a written summary of the performance of the person while on parole to include:~~

- (a) Whether conditions of parole were fulfilled;
- (b) The status of fees, fines and restitution owed. ~~if the parolee has:~~

~~—(a) Fulfilled the conditions of his or her parole for the entire period of his or her parole; or~~
~~—(b) Demonstrated his or her fitness for honorable discharge but because of economic hardship, verified by a parole and probation officer, has been unable to make restitution as ordered by the court.~~
~~—2. The Division shall issue a dishonorable discharge to a parolee whose term of sentence has expired if:~~

- ~~—(a) The whereabouts of the parolee are unknown;~~
 - ~~—(b) The parolee has failed to make full restitution as ordered by the court, without a verified showing of economic hardship; or~~
 - ~~—(c) The parolee has otherwise failed to qualify for an honorable discharge pursuant to subsection 1.~~
- 2.3.** Any amount of restitution that remains unpaid by a person after the person has been discharged from parole constitutes a civil liability as of the date of discharge and is enforceable pursuant to NRS 176.275.

Section 4. NRS 213.155 is hereby amended to read as follows:

NRS 213.155 Restoration of civil rights after ~~honorable~~ discharge from parole; limitations.

1. Except as otherwise provided in subsection 2, a person who receives a ~~an honorable~~ discharge from parole pursuant to NRS 213.154:

(a) Is immediately restored to the following civil rights:

- (1) The right to vote; and
- (2) The right to serve as a juror in a civil action.

(b) Four years after the date of his or her ~~honorable~~ discharge from parole, is restored to the right to hold office.

(c) Six years after the date of his or her ~~honorable~~ discharge from parole, is restored to the right to serve as a juror in a criminal action.

2. Except as otherwise provided in this subsection, the civil rights set forth in subsection 1 are not restored to a person who has received an ~~honorable~~ discharge from parole if the person has previously been convicted in this State:

(a) Of a category A felony.

(b) Of an offense that would constitute a category A felony if committed as of the date of his or her ~~honorable~~ discharge from parole.

(c) Of a category B felony involving the use of force or violence that resulted in substantial bodily harm to the victim.

(d) Of an offense involving the use of force or violence that resulted in substantial bodily harm to the victim and that would constitute a category B felony if committed as of the date of his or her ~~honorable~~ discharge from parole.

(e) Two or more times of a felony, unless a felony for which the person has been convicted arose out of the same act, transaction or occurrence as another felony, in which case the convictions for those felonies shall be deemed to constitute a single conviction for the purposes of this paragraph.

A person described in this subsection may petition a court of competent jurisdiction for an order granting the restoration of his or her civil rights as set forth in subsection 1.

3. Except for a person subject to the limitations set forth in subsection 2, upon his or her ~~honorable~~ discharge from parole, a person so discharged must be given an official document which provides:

(a) That the person has received a ~~an honorable~~ discharge from parole;

(b) That the person has been restored to his or her civil rights to vote and to serve as a juror in a civil action as of the date of his or her ~~honorable~~ discharge from parole;

(c) The date on which his or her civil right to hold office will be restored to the person pursuant to paragraph (b) of subsection 1; and

(d) The date on which his or her civil right to serve as a juror in a criminal action will be restored to the person pursuant to paragraph (c) of subsection 1.

4. Subject to the limitations set forth in subsection 2, a person who has been ~~honorablely~~ discharged from parole in this State or elsewhere and whose official documentation of his or her ~~honorable~~ discharge from parole is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his or

her civil rights pursuant to this section. Upon verification that the person has been ~~honorably~~ discharged from parole and is eligible to be restored to the civil rights set forth in subsection 1, the court shall issue an order restoring the person to the civil rights set forth in subsection 1. A person must not be required to pay a fee to receive such an order.

5. A person who has been ~~honorably~~ discharged from parole in this State or elsewhere may present:

(a) Official documentation of his or her ~~honorable~~ discharge from parole, if it contains the provisions set forth in subsection 3; or

(b) A court order restoring his or her civil rights,
as proof that the person has been restored to the civil rights set forth in subsection 1.

6. The Board may adopt regulations necessary or convenient for the purposes of this section.

Relating to Review of Supervision Level:

SUMMARY – Revises the language regarding the frequency by which an offender’s supervision level must be reviewed while they are under the supervision of the Division.

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

Legislative Counsel’s Digest:

Existing law requires the Division of Parole and Probation of the Department of Public Safety to conduct a review the level of supervision for offenders. The current standard is that the supervision level is to be reviewed, “At least once every six months, or more often as necessary.” The review of the offender’s supervision level is performed through a risk assessment tool; the results of this assessment are used to determine the supervision level for the offender. The basis for the frequency defined by statute was the Wisconsin Risk Assessment System that had been in use by the Division since the early 1980’s.

The Division is in process of adopting a modern risk assessment / supervision tool developed by the University of Cincinnati. This tool is called the Ohio Risk Assessment System (ORAS). As this tool is adapted for, and validated against, Nevada’s offender population, it will become the Nevada Risk Assessment System (NRAS). Under ORAS/NRAS, the criterion for the review of an offender’s supervision level is once a year, or more often as necessary.

Section 1 of this bill: (1) Amends statute to remove the calendar reference by which a review of a probationer’s level of supervision shall be conducted. Instead, the frequency of the review of supervision would be based upon the criterion of the specific assessment/supervision tool utilized by the Division. This language change would allow the Division to implement future updates to risk assessment methodology without the necessity to seek future statutory language changes if the frequency of the assessment criteria were to change.

Section 3 of this bill: (1) Amends statute to remove the calendar reference by which a review of a parolee’s level of supervision shall be conducted. Instead, the frequency of the review of supervision would be based upon the criterion of the specific assessment/supervision tool utilized by the Division. This language change would allow the Division to implement future updates to risk assessment methodology without the necessity to seek future statutory language changes if the frequency of the assessment criteria were to change.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY DO ENACT AS FOLLOWS:

Section 1 & 3 of NRS 213.1078 is hereby amended to read as follows:

NRS 213.1078 Level of supervision of probationer or parolee; review; notice to probationer or parolee of change in level.

1. Except as otherwise provided in subsection 2, the Division shall set a level of supervision for each probationer. ~~At least once every 6 months, or more often if necessary, the Division shall~~ A review of the probationer's level of supervision *shall be conducted on a schedule according to the specific assessment tool being utilized by the Division, or more often if necessary*, to determine whether a change in the level of supervision is necessary. The Division shall specify in each review the reasons for maintaining or changing the level of supervision. If the Division changes the level of supervision, the Division shall notify the probationer of the change.

2. The provisions of subsection 1 are not applicable if:

(a) The level of supervision for the probationer is set by the court or by law; or

(b) The probationer is ordered to participate in a program of probation secured by a security bond pursuant to [NRS 176A.300](#) to [176A.370](#), inclusive.

3. Except as otherwise provided in subsection 4, ~~at least once every 6 months, or more often if necessary~~, the Division shall review ~~a~~ *the level of supervision for each* parolee's. *A review of the parolee's* level of supervision *shall be conducted on a schedule according to the specific assessment tool being utilized by the Division, or more often if necessary*, to determine whether a change in the level of supervision is necessary. The Division shall specify in each review the reasons for maintaining or changing the level of supervision. If the Division changes the level of supervision, the Division shall notify the parolee of the change.

4. The provisions of subsection 3 are not applicable if the level of supervision for the parolee is set by the Board or by law.