

**MINUTES OF THE
2015-2016 INTERIM
ADVISORY COMMISSION ON
THE ADMINISTRATION OF JUSTICE
FEBRUARY 4, 2016**

The meeting of the Advisory Commission on the Administration of Justice was called to order by Nicolas C. Anthony at 9:34 a.m. at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada and via videoconference at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Senator Aaron D. Ford, Senatorial District No. 11
Assemblyman John Hambrick, Assembly District No. 2
Paola Armeni, Representative, State Bar of Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Phil Kohn, Clark County Public Defender
Lisa Morris Hibbler, Victim's Rights Advocate

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Senator Mark A. Lipparelli, Senatorial District No. 6
Justice James W. Hardesty, Nevada Supreme Court
Connie Bisbee, Chairman, State Board of Parole Commissioners
Judge Richard Glasson, Justice of the Peace, Tahoe Justice Court
Mark Jackson, Douglas County District Attorney
Adam Laxalt, Attorney General
E.K. McDaniel, Interim Director, Department of Corrections
Jorge Pierrott, Lieutenant, Division of Parole and Probation, Department of Public
Safety
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Holly Welborn, Policy Director, ACLU of Nevada, Inmate Advocate

COMMITTEE MEMBERS ABSENT:

Assemblyman Elliot T. Anderson, Assembly District No. 15
Judge Lidia S. Stiglich, Second Judicial Court

STAFF MEMBERS PRESENT:

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel, Legal Division,
Legislative Counsel Bureau
Diane Thornton, Senior Research Analyst, Research Division, Legislative Counsel
Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Linda Hiller, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Tonja Brown, Advocate for the Inmates, Advocate for the Innocent
Mona Lisa Samuelson
Clyde Means
Natalie A. Wood, Chief, Division of Parole and Probation, Department of Public Safety
Jim Wright, Director, Department of Public Safety
Mike Patterson, Director of Advocacy, Lutheran Episcopal Advocacy in Nevada
Dee Williamson

Nicolas C. Anthony:

I will bring the first meeting of the Advisory Commission on the Administration of Justice (ACAJ) to order at 9:34 a.m. I will open with Item III, public comment.

Tonja Brown (Advocate for the Inmates, Advocate for the Innocent):

I am here under Agenda Items V,VIII, and XII to consider some things that did not happen which were presented during the 2015 Legislative Session. I am asking for a Public Integrity Unit Commission to look at wrongful convictions.

In the 2015 Session of the Nevada Legislature, Assemblyman Harvey Munford and Assemblyman John Moore presented Assembly Bill (A.B.) 401, the courts of inquiry ([Exhibit C](#)).

ASSEMBLY BILL 401: Authorizes the establishment by district courts of courts of inquiry that may be used to exonerate convicted persons. (BDR 14-101)

I testified on this bill ([Exhibit D](#)). It had some support but there were concerns. I amended those concerns ([Exhibit E](#)) but it did not get heard. A new study came out for 2015 showing that there were 149 exonerations that year; 58 of those were homicide convictions. Every year the exonerations seem to increase. There are 3,100 counties in the U.S., and out of that, 24 district attorneys are implementing to look and review wrongful convictions. Nevada does not have such a system.

The Public Integrity Unit Commission (PIUC) I am asking for would be similar to what the ACAJ is. Section 1 of A.B. 401 describes the PIUC's duties and powers ([Exhibit C](#)).

The 2015 Assembly Committee on Judiciary asked how we would compensate people who have spent years in prison for crimes they did not commit. I submit a figure of \$100,000 for each year the person has been incarcerated. How much is a person's life worth for something they did not do?

In most cases, the district attorneys are doing their job. A lot of these wrongful convictions—72 percent of these individuals—have been based on eyewitness identification. If you go back to the July 8, 2014 meeting of the ACAJ, you will see an exhibit from Rebecca Brown who submitted a study regarding the 17 percent of false confessions and the 72 percent of eyewitness identifications in Nevada. It was DNA that was exonerating these people.

I recall that in the minutes of that meeting, someone asked about eyewitness identification and what was the wrongful conviction on that. I became involved with this issue because my brother was wrongfully convicted through a tainted eyewitness photo lineup. That photo lineup array is no longer being used throughout the U.S., including Nevada, because it has led to wrongful convictions.

Some of the concerns in A.B. 401 were that a grand jury could handle a wrongful conviction. I already did that. I filed a writ of mandamus in 2010 ([Exhibit F](#)) asking for a grand jury look at this issue. Judge Flanagan denied it ([Exhibit G](#)).

The recent Netflix documentary, "Making a Murderer," is about a case very similar to my brother's case. I have provided an order from the Nevada Supreme Court signed by Justice Hardesty ([Exhibit H](#)). In 2011, our attorney filed a petition for exoneration. The courts dismissed it because they lacked jurisdiction since Nevada has no laws granting petitions for exonerations.

I have given you three areas we can focus on to do something about wrongful convictions. I believe a committee like this should be formed on this issue because we have 17 counties in Nevada and most do not have the funding to look into this issue. I heard Clark County is looking into it, but that is the only one. I have tried to work with the Washoe County District Attorney's office, but the feedback I get from Mr. Hicks is that it did not happen during under his administration. It does not matter. He is aware of it now.

I am asking that legislation be created so we can look at wrongful convictions. On Agenda Item XIII, looking at the DNA of arrestees, I have proposed bills over the years that deal with this issue. One of the submissions reads, "In the event the court denies the petitioner their genetic marker analysis testing, the petitioner may go forward with testing without the court's permission, bearing the cost themselves. The petitioners requesting to have DNA testing conducted must have been convicted of an A and B felony category."

People have said it was not fair that inmates would have to pay for the cost, but I said, "So we just leave them in prison because you do not think it is right?" Many courts now are denying DNA testing and if the courts deny it, there is no chance to get their DNA. There are organizations that will pay for it, or families can raise the money. It is relatively inexpensive compared to even 10 years ago.

The submission also reads, "Once the defendant is arrested and charged, the law enforcement agency must provide the accused with a copy of all exculpatory evidence in the possession of the prosecution at the time of arrest and after the arrest, copies of any additional exculpatory evidence that is provided the prosecution be simultaneously provided the accused." I say this because there are times when the district attorney (D.A.) will not provide that to the defense and then it is discovered many years later. In our case, it was 21 years later. All the exculpatory evidence was found hiding in the Washoe County D.A.'s files. That is in the writ of mandamus. You can see the exhibits online. In 2011, I did find the police a prime suspect in this case. He did have knowledge of this crime and the other crimes that were all hidden from the defense. That is all I can say at this time.

I added a petition for exoneration so there are other avenues: "When a living or nonliving inmate who has continually maintained his or her innocence throughout their criminal and civil proceedings becomes aware of newly discovered evidence that has come to light, the living or nonliving inmate, either by or in proper person, attorney, executor of an estate, a relative of said inmate can file a petition for exoneration to the district court judge or the Nevada Supreme Court.

"The district court judge or the Nevada Supreme Court must rely on all the facts of newly discovered and old evidence presented along with every possible grounds that have been raised on direct appeal post-conviction, writ of habeas corpus or any other pleading on file.

"A hearing must be held and all parties representing both sides must be able to present the facts of the case. If the Nevada Supreme Court requires no hearing, then the Nevada Supreme Court must grant a petition for exoneration.

"When the district court judge of the Nevada Supreme Court orders a hearing for the petition for exoneration, then every ground that has ever been raised in any criminal or civil proceeding that has been before any court, whether state or federal, must be fully addressed, cited by supporting law in order to deny the petition for exoneration or it must be granted.

"Every petition for exoneration must be a published opinion."

Mr. Anthony:

Ms. Brown, your comments have been submitted for the record and the members do have those. Thank you very much.

Ms. Brown:

OK, I am finished and I will just come back under the public comment on something else. I have submitted written testimony ([Exhibit I](#)).

Mona Lisa Samuelson:

I am a 25-year resident of Nevada and a longtime marijuana patient and advocate. I am here to ask whether this Commission will have a subcommittee on medical marijuana like last interim. I was not sure that it would be every interim. When I went to the Legislature and asked about it, I did not get many answers except that the ACAJ will be overseeing a subcommittee. Is that for just this year or will it be ongoing?

As patients, we are very interested to be part of the legislative process. We come to these meetings to build better relationships so we have a good understanding. My hat is off to the woman who spoke before me. It takes a lot of courage to come up here with what you are passionate about. I hope we can help you understand what we as patients need. We have a lot of representation from the business sector and we do not have enough of a patient's voice. If a meeting has anything to do with medical marijuana we want to be there and have a voice.

Mr. Anthony:

Thank you, Ms. Samuelson. The new chair may decide to take up that question after he or she is elected.

Clyde Means:

I am here to address an antiquated entity—the State Board of Parole Commissioners. Most states and the federal government have done away with it. An inmate is sentenced, adjudicated, does his minimum sentence, his parole, and then the Division of Parole and Probation takes over.

In Nevada, an inmate goes before State Board of Parole Commissioners. I have three examples: first, Steven P. Holstrom came to the Parole Board having accomplished many programs. He earned his GED, earned a Cold Canyon High School diploma, and is currently attending Great Basin High School while he is housed at Lovelock Correctional Center. He was denied parole even though he had negative one point. The caseworker said, "I do not understand why you were not granted parole." I have the videotape of that hearing. That Parole Board made him feel worthless. The only thing you do not see on this video was them wearing black robes. They re-adjudicated him, and many other men.

My second example is Harold Harter, who was sentenced to 5 years to life. He has now served more than 18 years and is denied, denied, denied parole. This is a travesty of justice. That Parole Board needs to be done away with.

I do have some good news. A gentleman up at Lovelock who served 40 years and was denied parole 17 times has just been granted parole. Of course, because he is institutionalized and goes back to prison, our Governor may make another statement to the newspaper saying, "See, these inmates really do not want to go home."

I have a copy of the budget for the State Board of Parole Commissioners. Currently, the 2016-2017 request by the Governor was \$2,557,838 which could be transferred to the Division of Parole and Probation (P&P). My understanding is that within P&P each parole officer is supervising more than 80 individuals. That money could easily be transferred over. It is time we get with the 21st Century. Most states do not have it. I ask this body here to listen to public input and seriously consider making a recommendation to do away with something that no longer serves a useful purpose.

Mr. Anthony:

I will close public comment and open Item IV, election of a chair and vice chair for this Advisory Commission.

Connie Bisbee (Chairman, State Board of Parole Commissioners):

I am excited to be here and think we can make some good recommendations to the next legislative session.

MS. BISBEE NOMINATED JUSTICE JAMES HARDESTY AS CHAIR.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Hardesty:

Thank you for the opportunity to serve as chair of this Advisory Commission on the Administration of Justice (ACAJ). It is a unique responsibility we have to examine the criminal justice system. What I found interesting from the last Session of the Legislature was the number of statutes referring subject matters to the ACAJ, which seems to expand the scope of our responsibilities.

It is important that we identify priorities among those topics forwarded to us before the 2017 Legislative Session begins. We need to evaluate and properly assess the various topics and prioritize them. To the extent that subject matters can be addressed through available information, we can move to other topics.

I have a few examples. One is the review of arrestee DNA, which is a statutory responsibility for the ACAJ to look at. That issue could be addressed through a simple presentation from law enforcement and others about how the statute is working. I think there are lots of examples like that which could shorten the work of the ACAJ and allow us to focus on bigger areas.

JORGE PIERROTT NOMINATED MARK JACKSON AS VICE CHAIR.

ADAM LAXALT SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Mark Jackson (Douglas County District Attorney):

Thank you everyone. Last interim, I do not think we accomplished what we could have. I agree there is so much on our plate. One of the things we looked at last interim was the Ohio Risk Assessment System (ORAS). I know the Nevada Supreme Court is taking that on, vetting that issue and spending more time on it than we ever could. That is one topic I would suggest we just receive a report on instead of more than that.

Chair Hardesty:

I will open Item V, approval of the minutes from the last ACAJ meeting on Oct. 21, 2014. This may be a problem for new members to approve minutes of a meeting you did not attend. If you did not attend, please abstain. I have no edits to the minutes.

Mr. Jackson:

I also have no edits and move to approve.

MARK JACKSON MOVED TO APPROVE THE MINUTES FROM OCTOBER 21, 2014.

CONNIE BISBEE SECONDED THE MOTION.

THE MOTION CARRIED (ABSTENTIONS INCLUDED: SENATOR FORD, ASSEMBLYMAN HAMBRICK, ADAM LAXALT, SENATOR LIPPARELLI, HOLLY WELBORN AND E.K. MCDANIEL.)

Chair Hardesty:

I will open Item VI, with a summary from ACAJ Counsel, Nick Anthony.

Mr. Anthony:

This is a brief overview and history of this body, especially in light of the fact that the body has so many new members. The State of Nevada used to have a sentencing commission that was enacted when truth in sentencing was passed in the mid-1990s. In 2007, the Legislature saw fit to transform the sentencing commission into this current body, the Advisory Commission on the Administration of Justice (ACAJ). The Commission currently has 18 members; one member was added during the last Session of the Legislature—a judge of limited jurisdiction, which is Judge Richard Glasson for this interim. A quorum is 10 members and it takes at least that many members to take action on any item. The duties of ACAJ are spelled out in Chapter 176 of *Nevada Revised Statutes* (NRS) ([Exhibit J](#)).

The specific duties are listed in NRS 176.0125. These lengthy duties include studying the criminal justice system from top to bottom including parole, the Nevada Department of Corrections (NDOC) and any fiscal issues relating to this system.

There are five statutory subcommittees. One subcommittee for this interim only, Parole, was added this past Session via Senate Bill (S.B.) 449.

SENATE BILL 449: Revises provisions governing the Advisory Commission on the Administration of Justice. (BDR 14-1140)

The other four subcommittees are: Juvenile Justice, Victims of Crime, Review Arrestee DNA, and Medical Use of Marijuana.

By its very name, this Commission is advisory only. Any recommendations that come out of this Commission are then forwarded on to the Legislature for the next Session, the 79th. There are no bill drafts allocated to the ACAJ. In the past, Commission members who are Legislators and committee chairs have chosen to use some of their personal Bill Draft Requests (BDRs) to carry measures on behalf of the ACAJ.

As you are aware, NRS 176 spells out the Commission's deadlines. It is a 2-year interim but the Commission got a late start this this year due to the Special Session in December. Typically, the ACAJ holds approximately six meetings per interim, subject to legislative appropriation. This past interim, the Legislature appropriated approximately \$4,700 as our budget. That is not a lot, but it should get us through six to seven meetings, wrapping up this coming fall with a final report distributed in advance of the 2017 Legislature which begins in February.

Chair Hardesty:

Before we move on, can you identify subject matter areas and statutory references to other referrals to the Commission during the 2015 Legislature? I understood there was a referral dealing with the civil justice program. Is that correct?

Mr. Anthony:

I believe you are referring to a bill that was discussed during the Session but ultimately did not pass. The one piece of legislation that passed relating to ACAJ was S.B. 449, which added one member to the Commission and requires the subcommittee on parole.

Chair Hardesty:

I will open Item VII, a review of our final report from last interim.

Mr. Anthony:

The final report is lengthy. We had 21 recommendations at the final work session. Ultimately, nine recommendations for the drafting of legislation were approved. Of those, most were combined into three BDRs.

Assembly Bill (A.B.)114 arose out of the subcommittee on Victims of Crime and was passed unanimously by the ACAJ.

ASSEMBLY BILL 114: Revises provisions governing restitution. (BDR 14-560)

The Legislature acted affirmatively on this bill, passing it into statute. It provides that restitution judgements do not expire. This way, there is no need for victims to continually go back to court and reapply for restitution judgements.

The other two measures failed to pass, including S.B. 454.

SENATE BILL 454: Revises provisions relating to criminal justice. (BDR 14-559)

That bill was basically an omnibus measure, with seven different recommendations from the ACAJ including driver's licenses for inmates, victim notification, sexual assault exams, study of sentence credits and information sharing, etc.

The other measure the ACAJ sent to the Legislature that did not pass was BDR 557 which would have required a study on the use of sentence credits for certain category B offenders. That bill draft request was not acted on by the Legislature.

There were other measures the ACAJ supported, either by submitting a letter or policy statement in the final report. Those were acted on affirmatively. Both S.B. 514 and S.B. 483 dealt with specialty court funding issues. The Advisory Commission recommended the Legislature support the Nevada Supreme Court's request for \$3 million augmentation for specialty court funding.

SENATE BILL 514: Makes various changes regarding state financial administration and makes appropriations for the support of the civil government of the State. (BDR S-1288)

SENATE BILL 483: Revises provisions relating to governmental financial administration. (BDR 32-1182)

One other measure we supported was S.B. 459, dealing with the Good Samaritan Drug Overdose Act. That passed.

SENATE BILL 459: Establishes an opioid overdose prevention policy for Nevada. (BDR 40-1199)

Finally, S.B. 449, as we have discussed, was passed by the 2015 Legislature. I have submitted a list of these bills introduced on behalf of or impacting the ACAJ during the 2015 Legislative Session ([Exhibit K](#)).

Chair Hardesty:

We are taking the next Agenda item out of order by request so I will open Item XI, a presentation by the Division of Parole and Probation.

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

Before I begin our presentation ([Exhibit L](#)), I would like to differentiate between parole and probation. Parole is a conditional release by the State Board of Parole Commissioners of an inmate serving a felony term of incarceration with the Nevada Department of Corrections (NDOC). The inmate is paroled under the supervision of the Division of Parole and Probation after serving part of the term for which he or she was sentenced to prison.

Probation is the conditional suspension of a defendant's sentence by district court following a conviction for a gross misdemeanor or felony offense. That person on probation is also under the supervision of the Division of Parole and Probation.

Regarding our statutory mandates, we are covered under NRS 176, NRS 176A, NRS 209, NRS 213 and Nevada Administrative Code (NAC) 213 (page 2, [Exhibit L](#)).

The next page is a snapshot of our Division's supervision caseloads (page 3, [Exhibit L](#)). These numbers change daily. There are currently 10 officers in our general supervision unit in Las Vegas. These officers supervise approximately 2,000 cases.

Due to the high number of vacant officer positions, the Division has adopted a team approach to supervising offenders in general supervision. We have a low risk supervision unit with a ratio of 220 offenders to 1 officer. In our team concept, the ratio is 208 offenders to 1 officer. In approximately 2 weeks I will have 16 additional officers which we released from the field training officer (FTO) program into general supervision and our specialized high risk caseload. This should alleviate some of the burdens.

Due to the vacancies and our critical staffing needs, we have brought back retirees to assist with the administrative functions. They work with the low risk supervision unit and the team concept approach in general supervision. This has been very helpful to us as we are running about 18.5 percent below full staffing, which includes the retirees. Almost 12 percent of the shortage is sworn officer positions; the majority of which are in Las Vegas. The lowest supervision unit has approximately 661 offenders being supervised by retirees, three sworn officers and a sergeant. We did submit a letter of intent for that to the Legislative Counsel Bureau the end of January.

Chair Hardesty:

Can we get a copy of that letter to the LCB Interim Finance Committee?

Ms. Wood:

Yes.

Mr. Jackson:

How would these numbers of offenders currently under supervision by the Division of Parole and Probation (P&P) compare to other states? The general supervision ratios between Las Vegas, where it is 208 offenders to 1 officer, and Reno, where it is 81:1, are quite different. Have there been any studies on a national or local level to recommend a certain optimal supervision ratio?

Ms. Wood:

At the end of the 2015 Legislature, we formed several committees, one of which was an offender management to case supervision committee to look at national trends regarding caseloads and ratios specifically. Historically, the focus has been on particular ratios like 80:1 in general supervision, 45:1 in sex offenders and 30:1 in intense supervision. But if you look at national trends, the focus is shifting to go with less supervision on low risk offenders and more attention on the medium and high risk offenders. I believe we need to start doing business differently with our caseloads.

In most states, their lowest supervision units and team concept approach are more effective. If you overanalyze the low risk offenders, there is a tendency to almost push them into technical violations. Whereas, if you focus your attention on the more egregious offenders including sex offenders and gang offenders, you can have more success affecting recidivism and victimization, which is the greater cost to corrections across the nation.

From the Division's standpoint, we have to look at our caseload sizes, how we are doing business and start focusing on justice reinvestment and reentry because that is where the dollars are going to be saved. Currently, I am dealing with the vacancy issue and we are addressing it to the best of our ability. The team concept approach in the low risk supervision units are very good tools to provide an enhanced level of supervision short of going to an administrative bank which I do not think is a good way to do business.

However, I understand the necessity for it if you do not have the bodies to supervise people. We have formed a committee to look at national trends and we will be meeting next week. I anticipate several presentations on our supervision caseloads and what they need to look like in the future.

Chair Hardesty:

We would like the results of that committee's efforts when available, along with their recommendations.

Ms. Wood:

Absolutely. They do encompass part of our budget priorities so there will be some sensitivity in the time release of those. When I am authorized to do so, I will gladly provide the ACAJ with that information.

Chair Hardesty:

Yes, under statute, the ACAJ has the responsibility to evaluate that same information and make recommendations to the Legislature. I do not want to invade your budget decisions, but I will say that I have been of record for some period of time on this Advisory Commission, expressing concern that the Legislature underfunds your Division, which leads to some of the supervision issues and numbers you have identified today. It is important to have that statistical information so we can evaluate your funding, which affects the decisions you make in how people are being supervised.

Another issue that would be worthwhile for the Advisory Commission is for you to describe how you make decisions between offenders who are under general supervision and those who are under risk control. That is important for us to understand the difference between those supervision categories and precisely how you supervise them.

Ms. Wood:

You are correct in regard to the offender supervision and the caseloads. I would appreciate your support and I very much appreciate what you are attempting to do for the Division. Regarding an in-depth report on supervision, I can present a report at the next meeting of this ACAJ. In general, we look at the offender's prior supervision history, their criminal history, the actual offense they are incarcerated for and anything they have disclosed in the Presentence Investigative Report (PSI) that would cause us to elevate the individual to a specific risk category.

Chair Hardesty:

I hope we can schedule that for next meeting. Also, at the top of page 3 ([Exhibit L](#)), how do you perform the lifetime supervision of sex offenders? Is there a difference between how the Division must supervise sex offenders under lifetime supervision? My impression, but I could be mistaken, is that the supervision of those with lifetime supervision may differ. I do not know if it differs between offenders but if it does, I would

like to understand why. Part of why I am asking these questions is because this subject is specifically called out in the statute that directs this Advisory Commission. For that reason, it is really critical to understand these issues during this interim.

Ms. Wood:

I can explain the background to you now or do it at the next meeting.

Chair Hardesty:

Go ahead and introduce us to it now with an overview and then we can get into the specifics at a later date.

Ms. Wood:

Lifetime supervision is a sensitive topic. We supervise our sex offenders at 45:1. There are mixed caseloads between individuals who are on for the statutory requirement of lifetime supervision where we have a certain amount of crimes that fit that category. It is a special sentence. Once they are done with their regular supervision, they roll over to lifetime supervision. If an individual on the caseload commits a crime while under this lifetime supervision, it is charged as a new crime. There has been some difficulty, and that is an understatement, in supervising lifetime supervision because when you have an individual on that type of supervision, they may come back into legal trouble on a technical violation like showing up inebriated or under the influence of a controlled substance, so we process the new charges. Depending on where they are in their supervision, we submit the new charges and attempt to have the offender revoked from lifetime supervision, but we are not always successful. It varies across the state.

There are unique challenges because the sex offenders themselves know that. It is very difficult to get an individual revoked from their lifetime supervision. We have certain people on lifetime supervision who repeatedly push the envelope. We attempt to work with them, but they know our limitations. The way the law is now, there is an impression that we have a lot more discretion in regard to our power to supervise these individuals than we really do. It has been challenging from a supervision standpoint.

Chair Hardesty:

That is what I would like you to share with us at our next meeting.

Ms. Wood:

I will, and I appreciate you bringing up that topic. It is a sensitive topic because the majority of the community believes that this person is on for an egregious crime. It is lifetime supervision, but there is a difference between our span of control and what we can and cannot control with these offenders. Someone on probation or parole for a sex offense can be taken back to the Parole Board or the court if they re-offend, but with the lifetime supervision offenders, we have to file new charges against them. As you can appreciate, a lot of the new charges are more egregious than just drinking alcohol or being under the influence of controlled substances.

Chair Hardesty:

One other area on page 3 ([Exhibit K](#)), is the relationship between the Division of Parole and Probation and the State Board of Parole Commissioners and those who are granted parole.

Ms. Wood:

Our relationship with the State Board of Parole Commissioners and Commissioner Bisbee is very good. We communicate regularly and know some of the challenges regarding inmates preparing for parole. Commissioner Bisbee appreciates the challenges we have from a supervision standpoint. There is excellent communication between the two of us on appropriate courses of action.

If there are concerns regarding our revocation rate, we have adjusted how we supervise individuals to exhaust some of our options. Some of our available tools for intermediate sanctions have improved that. I think Commissioner Bisbee would agree we do exhaust a lot of our resources before we bring someone back before the Parole Board. When an offender does receive a revocation, it is because of a new crime rather than a technical violation.

Chair Hardesty:

A meaningful part of your Division's responsibility is the preparation of Presentence Investigation Reports (PSI). Do you want to delay that discussion until you finish your presentation?

Ms. Wood:

If I finish the presentation, it may answer some of your questions. If not, we can address those afterwards. I do want to talk about A.B. 11 and where we are. We submitted a letter of intent to that bill and where we stand with it.

There were two bills which were enacted by the 2015 Legislature, S.B. 37 and A.B. 11 (page 4, [Exhibit K](#)).

SENATE BILL 37: Authorizes GPS tracking of parolees, probationers and certain other offenders who are subject to electronic supervision. (BDR 14-354)

Statewide numbers for GPS tracking is 37 for individuals being tracked. There are 41 individuals on a combined GPS and breath alcohol program. This is not a huge number statewide.

ASSEMBLY BILL 11: Revises provisions governing reports of presentence investigations. (BDR 14-356)

This bill required us to report via a letter of intent to LCB when we were successful. The January 2016 highlights of our letter of intent, which we report to the Interim Finance

Committee every three months, includes the total number of cases referred statewide with regard to presentencing investigations (PSIs) was 2,467. The total PSIs completed was 2,573. The Division-wide timeliness was just short of 80 percent for submitting PSIs in compliance with A.B. 11 as of November 15, 2015. The primary reason for this is the constantly shifting timelines from the 8th Judicial District Court between arraignment and sentencing. At the time we testified regarding A.B.11, we were at about 53 days. This is a significant reduction in the number of days we have seen since this time. We were recently down to roughly 59 days, which has actually been shortened. It fluctuates over the months. From the time I testified last year until now, we are looking at a 6 day reduction, which is just short of a week. So we are down to 52 days now. Division continuances were three, which is good statewide. For Fiscal Year (FY) 2014, we completed just over 10,000 PSIs, averaging just over 850 per month. For 2015, we were over 10,000 PSIs again, averaging around 860 per month.

Chair Hardesty:

One of the issues that came up in previous ACAJ meetings was the risk assessment instruments used by the Division in the formulation of its PSIs. Can you talk about the status of the use of those instruments and their validation? For new members to ACAJ, one of the concerns raised last interim was the fact that there was an instrument being used since 1991 that had not been validated. There were issues in 2014 and 2015 about downsizing or limiting the subject matters covered in the PSI. Can you speak to that also?

Ms. Wood:

We agree on the scoring of the PSIs. Even though the tool we currently use is validated, we could use more appropriate and accurate tools to not only complete the PSIs but also assess our offenders from a risks and needs standpoint. We are looking at the Ohio Risk Assessment System (ORAS), which was mentioned earlier. That was part of the offender management committee we created. Regardless of how the legislation turned out, we agreed we needed to look at our tool and reevaluate. In our last budget, we were approved to upgrade our offender tracking information system. With ORAS, we are looking at implementing it and incorporating it into our Offender Tracking Information System (OTIS). In order to do that, there will need to be some changes to the Nevada Administrative Code (NAC), which is a lengthy process. It is my intent that this will be one of our priorities in funding. Even though ORAS is web-based and not costly, it requires some significant training statewide to implement it appropriately. We are moving forward on it, though. When the budget closed last Session, that committee was established immediately. This is the right path to go down and it will not only provide a more accurate tool for the PSI, it will provide us a better way to predict recidivism.

Chair Hardesty:

Who is on that committee?

Ms. Wood:

Every captain within my command is delegated to one of the specific committees. We have Captain Sheri Sliva in the south as chair.

Chair Hardesty:

Have there been any reports or recommendations from that committee yet?

Ms. Wood:

It is evolving. There is no final report yet. We have a summit meeting coming up shortly where the captains will present their final recommendations. We will be looking at a new supervision module and also looking at where we are from a risks and assessment setting and from a training aspect. If we go to a new supervision module, it will allow us an opportunity to really introduce some evidence-based practices for training. That would enhance the officers' ability to reach out on the social work side of the house and embrace some of those traits that we have more on the law enforcement side.

Chair Hardesty:

I have a commitment from the U.S. Department of Justice (DOJ) to provide the necessary training and financial support to implement a risk assessment instrument for pretrial release. It is not confirmed yet, but looks like ORAS will be the primary instrument. One of the frustrations for those in the criminal justice system is the different instruments used from department to department. We need a cradle-to-grave instrument that is specific to Nevada, capturing information from the very beginning of an individual's involvement in the criminal justice system. Let us get those committees together and see if some of that information can be coordinated so we do not end up with all these duplicate risk assessment instruments. I realize they have different purposes. It even extends over to Mr. McDaniel's operation where he classifies people, and ultimately, to Connie's operation where they parole them. It is about time we get these instruments lined up. We might have some substantial assistance from the DOJ to bring it about.

Ms. Wood:

I agree. This is long overdue. As you know, ORAS is just one tool. There are others that are more expensive, but the elephant in the room is that it is dependent on the cooperation from everyone from every stage—from pretrial, through the court system, into probation, into the prisons and their classifications, coming back out on parole and then to supervision. That would be quite the legacy. I agree this tool could be very effective, but it will require a significant amount of collaboration.

Chair Hardesty:

I was thinking of offering a motion to the Advisory Commission to force all parties into a room and lock you up until a solution has been reached. Sorry for the digression. I want to ask Phil Kohn in Las Vegas what the experience has been in the 8th Judicial District Court with respect to this issue. Has the timing improved from your perspective?

Phil Kohn (Clark County Public Defender):

Yes, they are getting them to us on time. We are seeing fewer continuances at sentencing. I would ask the Chief if now that we are at 14 days, is it something the Division of Parole and Probation can live with?

Ms. Wood:

Thank you for publically acknowledging the effort. We have made a significant and collaborative effort to come into compliance. The open communication between us can help not only your staff, but my staff, too. We have worked diligently to fill vacancies immediately. We have been proactive if we know about an upcoming vacancy, looking at recruiting ahead of time instead of after the fact when the position is vacant for several weeks. That was not doing us any good. We streamlined our internal operations, reorganizing and streamlining how quickly we request rap sheets. We have looked at this from the beginning to the end on what we can do as a Division to improve the process. It seems to be working for the staff. We have cut overtime. Obviously, in a perfect world, we would be staffed at greater than 80 percent. We are working daily to improve those statistics. Once we are fully staffed, we can make a tremendous impact.

Chair Hardesty:

What about the content of the PSI report? Any changes or downsizing?

Ms. Wood:

We stuck with the original content. From a legal side, not only did the district attorneys appreciate it, the judges appreciated the PSI content. We would also be doing a disservice to the offender by reducing it. When you have three major entities that agree on it, we are producing an extremely high quality product. We disagree on little things now and then, but it is a solid product.

Regarding the staffing issue, the Division is working diligently to fill our vacancies (page 5, [Exhibit K](#)). We have a total of 499.5 positions with an overall vacancy rate of 9.6 percent. Since January 2015, we have lost 38 sworn positions; 23 of those out of southern command. Staffing attrition rate causes us to constantly reorganize, readjust and reevaluate. From a department standpoint, we are increasing recruiting and are looking at an additional academy in the south. The directors have formed a committee which we believe will capture a greater number of recruits from the south if they are not required to come north for 15 weeks to attend the academy. We are looking at putting out a recruitment video, but again, the elephant in the room is that it is extremely difficult to compete with local jurisdictions and their pay scales and benefits.

Chair Hardesty:

When was last time the Division had a pay and class study?

Ms. Wood:

To be honest, I do not know. I can tell you that the Division, in conjunction with the Nevada Highway Patrol (NHP), has been keeping statistics for the past year regarding local recruitment efforts. The monetary amount we lose from recruiting, training and then providing students with specific training related to the divisions, is significant. We recognize that we have a retention problem and that pay is definitely an issue. We are trying to fix that internally from a recruitment standpoint and also by putting on the additional academy in southern Nevada, but that does not solve the immediate problem. For example, when Las Vegas Metropolitan Police Department (Metro) advertises, both my Division and NHP know we will lose officers. What is unique to my Division is that we have caseloads to supervise. You cannot just put those off to the side. We are constantly readjusting from an operational standpoint.

Chair Hardesty:

Ms. Bisbee just handed me a note that the last time her division had a pay and class study was in 2007. I would like to know the same for your department and also for NDOC.

Mr. Jackson:

If I were to hire a prosecutor in my office, on the very first day I can put that prosecutor in court and they can try a case. If you hire someone, they have to go through the academy, obtain a minimum of a Category II classification, and then how long are they in training before you release them to do their work?

Ms. Wood:

We are Category I certified. It is a 15-week academy, but going through the background investigation alone can take several months. We are streamlining that process by bringing retirees back to speed things up. We have identified areas in the backlog regarding polygraphs and how long they take. By the time we get someone on board and ready for the academy, they have been waiting 6-8 months. The academy takes 15 weeks and is very challenging. They have to pass certain proficiencies including firearms and physical challenges. The academy serves NHP, Nevada Division of Investigations, Capital Police and my own Division.

When they graduate from the academy, our trainees go into P&P specifics, which takes another 10-12 weeks of in-service training where we teach them how to be parole and probation officers. We then put them on line. We do not want to rush the Field Training Officer (FTO) program because you will end up with an unqualified officer and they will do an ineffective job supervising and could get themselves injured. The FTO program we have is excellent. It evaluates them on a weekly and monthly basis. From beginning to end, the training process takes about 18 months. From a vacancy standpoint, I can ask for 20 more positions to make the Division perfectly staffed, but that will do me no good if I am losing employees faster than I am hiring, especially if it takes me 18 months to get them fully trained and on line.

Mr. Jackson:

Do you have any recommendations for solutions? We understand the situation with understaffing and underfunding in your Division. What would you need to be as efficient as you would like, especially in connection with the PSIs?

Ms. Wood:

At the last Legislative Session, we were approved to conduct a PSI study and we are actively rolling that out now. Within the next 2 months, we will have a greater understanding of the operational challenges for completing the PSIs. This will give us an accurate assessment of the amount of work that goes into preparing such a document and tell us if we are overestimating or underestimating the time needed to complete the task.

There are a lot of variations in PSI data collection. For example, what is the time it takes us to go to a jail to interview an offender, only for the jail to be on lockdown? What is the time involved when we go to interview an offender only to find that person is not available because he or she is in the medical unit? Travel time in our rurals is considerable as we travel to certain court venues. It is over two-and-a-half hours for my Tonopah writer. It is a challenge to complete these tasks and I do not think it has ever been accurately assessed from the urban and rural areas.

We may also learn what the standard number of PSIs is that need to be completed every month. Is it 18? Is it 13? Do we need to account for the rural dynamics of that? This study will be very illuminating about what our challenges are and what is realistic for us to produce.

Chair Hardesty:

Mr. Jackson's question should be expanded to what do you need with regard to supervision staffing, in addition to the PSI study.

Ms. Wood:

Absolutely, and that is part of the offender management committee. It will provide me with a high level overview of what we believe are the areas we need to focus on and the areas that may need less focus from the supervision standpoint. That was not part of our budget funding going into the last Legislative Session, but it is something we can do internally. I cannot wait until the next Session to have a study such as the PSI one done, so we made the decision to do it internally.

Jim Wright (Director, Department of Public Safety):

Thank you for the question about the timeframe of our last salary analysis for the Department of Public Service (DPS) paid officers. This issue of our vacancies is truly our priority issue within the DPS. We are not the only department in law enforcement dealing with this issue. It seems to be cyclical. It occurred in DPS in the mid-1990s, and again in the early 2000s. When that happened, our officers received pay raises. We are

now approaching that 12-year mark where we find ourselves right back in the cyclic issue.

I am often asked what we are doing about our vacancies. A few weeks ago, I went before the State Board of Examiners (BOE) where we appreciated the support they gave us in asking for critical field designation for our DPS officer 1 and officer 2 positions. That highlighted the problem we are facing. Asking for this designation was the first time this has been done as far as we can tell from looking at records. We had to do that because I have to do everything possible from the DPS level to deal with this.

You heard mention of utilizing retirees. This allows us to bring back a retiree to avoid the cap that is on them with their Public Employees Retirement System (PERS), allowing them to work additional hours and help us without jeopardizing their retirement. These dedicated people want to come back and help the department they left and we are very appreciative. This is a short-term fix, I hope, but it is to those extremes that we have to go to address these staffing issues. It has saved our Capitol Police Division with their staffing. We have moved it into the Division of Parole and Probation (P&P) where we are utilizing those retired officers to deal with the office functions that an officer would do. This allows the active officers to get out on the street and deal with the offenders. This is helping, but it is not the absolute fix. We have looked at our process and what we can do better with recruiting and retention, but it is hard to compete with the 20 percent to 30 percent differences in salaries and benefits that are out there.

Chair Hardesty:

So you would say it has been at least 12 years since your Department has had a pay and class study?

Mr. Wright:

Correct.

Senator Ford:

Ms. Wood, you may recall our past conversation on the PSI bill. I was adamantly opposed to reducing the timeframe between when public defenders and defenders of people in prisons were allowed to receive the PSI so they could properly prepare for their criminal trial. Obviously, we have a limit now, and it sounds like it is working. I am glad to hear that. But you will recall from your testimony and my questions that I thought the solution was not to reduce the time, but instead to properly fund your Division. I said that on the record then, you heard people on the dais up north say that now, and I am repeating it. I am interested in understanding from a numerical perspective, an actual monetary number. I heard the Director mention a 20 percent to 30 percent pay differential. What does that amount to for P&P? What do you need monetarily to fill these 48 vacant positions? Is there a number you can give me?

Ms. Wood:

I will defer to the DPS Director. It is a sensitive topic. Our vacancy rate is a huge issue and I think what it comes down to is pay and benefits. We are filling the vacancies as quickly as we can. We are being as proactive as we can be. We have a vast amount of knowledge going out the door through retirements because some of those retirees are more likely to see the benefits quickly in retirement than they would if they remained with the Division. That is a challenge for us.

Senator Ford:

The reason I am asking you the question is because I think we are responsible to give you the tools you need and to properly fund your Division. You have these vacancies and if they are leaving because of money, I want to know how much money you need to keep them. I know that is probably a more complex question than it sounds, but I am interested in understanding the challenge so you can have an advocate from the legislature trying to get you the monies you need to properly fund your Division.

Mr. Wright:

Thank you for those comments. To clarify the range of 20 percent to 30 percent, we know the local governments are paying retirement for their employees where our employees pay their portion of their retirement. We have found that a good 20 percent of the difference is basically those retirement benefits being paid. In some cases, there is an additional 10 percent salary increase on top of that. That is where we get the figure of 20 percent to 30 percent, from salary and benefits.

To give you a dollar figure is complex, but we would be willing to provide this Commission a continuing report on how we are doing. We are hopeful this designation we just received from BOE will help us with the utilization of retirees, but as I said, that is not a permanent fix. We do have to look forward to do this because there are many things we need to do and we are having a hard time just making sure we can continue with the level we have now. We want to look forward and see what we should be doing. It all takes the dollar and we understand the competition for those dollars within the state. Your support is definitely appreciated.

Senator Ford:

I know how the process works. You will present your executive budget to the Governor and he will make a recommendation to the Legislature. Absent something contrary to what he presents us, though—i.e. knowledge of whether you need more money than has been requested—there is nothing I am going to be able to do or that the Legislature is really able to do to help get your Division funded if what is requested is not going to properly fund it. I say that as earnestly as possible, because I need you to understand that until you give us an actual number of what you need—I understand the constraints of other people getting money—but in a perfect world, what would you need to properly fund your department? If you cannot give the number today, I would hope that sometime before this ACAJ is over, you will be able to give me a number.

Jorge Pierrott (Lieutenant, Division of Parole and Probation, Department of Public Safety):

What other benefits are local agencies providing their employees that the state is not able to provide? As an employee for the DPS, I understand there are pay differences or bonuses given by other agencies that the state is not able or allowed to do. Can you give some examples?

Mr. Wright:

Yes, a lot of local government entities offer education stipends, bonuses for specialty pay, etc. We have had some of those within DPS. For example, our motor officers and investigators received a 5 percent increase, which we still have. I am asking for approval to reinstitute our field training officer pay stipend which was 5 percent when officers are training new recruits. That was taken away with budget reductions and we have these people who have been doing this out of the kindness of their hearts. We need to start bringing back some of these incentives.

Beyond those pay and benefits, there are other stipends that local governments are able to provide their employees as well. We know we are not the only ones in law enforcement facing this. I have talked to counterparts in other agencies who are having just as tough a time recruiting as we are. We are in a time where the issues facing law enforcement—the attack on law enforcement that is happening now—may be impacting people wanting to even pursue a career in law enforcement. When you have situations where officers are being ambushed in their cars, I think people are rethinking whether or not they want to go into law enforcement as a career. The families are probably saying, “We do not want you to pursue a job with that type of risk.”

We have so many hurdles we are trying to overcome to keep the agencies filled. It is also the times we are in. It is tough but we are not giving up and we will continue on. It is a good career. We just have to get the people in. By the time we get them through background checks, passing physicals and polygraphs, it takes us an average of 1,000 applicants to get 50 people into the academy.

Eric Spratley (Lieutenant, Washoe County Sheriff's Office):

At the Washoe County Sheriff's Office, for our rural positions like Incline Village and Gerlach, we offer some incentives like a take-home vehicle, pay stipends and housing, because it is hard to fill those positions. We get the best of the best from your Department. You may send them through the academy and when they finish the academy if we have an open and competitive recruitment, they will apply. We then get a fully trained person, paid for by the state and we will gladly take them. The same happens to us when we pay for someone to go through the academy and they go to the Reno or Sparks Police Department instead of with us. We do get your best candidates. Equalizing the departments would certainly be an answer. Maybe a stipend for rural locations would help you.

Mr. Kohn:

What will it take financially to avoid the problem of two Nevada's? On page 3 ([Exhibit K](#)), the difference in general supervision ratios is huge—208:1 in Las Vegas and 81:1 in Reno. It is my understanding that you still have probation officers in court every day in communities outside Las Vegas and we certainly do not in Las Vegas. What would it take to make it the same all over the state?

Ms. Wood:

We have revisited this question multiple times in the last year; definitely at the Legislature. The answer is additional funding and additional bodies. No county is the same, so trying to find a balance between north and south is the million dollar question. We do not have court service offices in the courts down south for a couple reasons. Number one, the calendars are a lot longer. Sometimes the calendars have gone all day and I would have to double my staff, which means I would have to physically request an additional 18 bodies to sit there all day like we do in Washoe County, where the court calendars are significantly less. It is very difficult to treat the two entities the same when you are dealing with different things demographically and operationally. The volume of the cases alone is extremely difficult. I can appreciate you wanting it to be identical. I am sure the district attorney's office and the public defender's office north and south have differences, too. It is not up to the Division to fix something that is an issue across the board.

Mr. Kohn:

What kind of funding would it take to do that? If you are saying that 18 officers would need to be in court maybe that is something we should address. Instead of saying we cannot treat everyone the same, I think we should aspire to treat both places the same. I would ask Ms. Wood and Mr. Wright to at least look at it and let us figure out what it would take. Maybe we need changes in the court processes too, but we could work together to get this because it would make us all a lot more efficient.

Chair Hardesty:

One of the things I appreciate about this Advisory Commission is that although those who appear here are sensitive to politics and guarded about their remarks, the focus of the Commission is to drill down into the facts. What is the truth? The truth is, the efficiency in the criminal justice system, particularly at sentencing, depends on the input of P&P in court, much like the rest of the state enjoys, and Clark County does not. That is an area we need to examine.

What is the truth? Does it lie in the number of people? Does it lie in the fact that someone else's operation is inefficiently run? At the risk of offending someone, I am going to ask you to answer Mr. Kohn's question. With a combination of responses if that is what it takes. If the court needs to be more efficient, we welcome your input and suggestions. If you need more staff, I wish you would tell us that.

Ms. Wood:

In order for us to run our operations in southern command similar to that in the north, without doing a study, speaking candidly, you would have to physically have an additional body in that court, assigned to that court, to function in that capacity full time throughout the day. That would be one body times that many courts. That is not a very thought-out response and I cannot put a fiscal number to that right now, because that would be irresponsible. Certainly, if a study was conducted to look at that, I think that is where you would start.

Chair Hardesty:

Well, we have a few months to work on that.

Mr. Wright:

I agree. We need a service level study to figure out what is the service level that needs to be established here. That is what makes it hard on us. We are expected to do a lot of stuff and we are fronted only at a certain level so we have to pick and choose those priorities. We have to look at this entire criminal justice system and say what is the service level that DPS and P&P needs to provide. Then we can build those resource needs from there. Establishing some sort of review and a desired service level would be the best place to start. Then we could build toward accomplishing that goal.

Chair Hardesty:

Maybe we can make recommendations in that area. At the end of the day, this is a public safety issue. If we are going to be serious about public safety in the state, we ought to be serious about how we fund our protection and how efficiently it operates.

Adam Laxalt (Attorney General):

You have discussed the training pipeline, especially when the state pays to send someone through this 15-week class. In the military, if you go to an academy, there is a dollar figure of what that costs and there is then a period of time you are committed to active duty service to basically recoup those costs. For example, once you are in the military, if you are going to be an aviator and they are going to send you to three additional years of training, you cannot go to the private sector until you have recouped those costs. Has it ever been brought up that if the state is going to send someone through this 15-week academy, there would be a figure attached to how long a commitment they would be required to do in either state corrections or highway patrol employment to recoup those costs?

Mr. Wright:

Yes, it has been discussed. To get a cadet through an academy, it costs, conservatively, just under \$60,000. This includes the salary of the individual, the uniform and equipment necessary for training. This does not even take in the hard costs of the system in place to hire the person or the training academy. We have kicked around getting the commitment through a contract. But we have also discussed how it could

work against us. Putting a condition on a potential employee might make that person decide not to go to the academy. We are finding that it is not the cadet or officer finishing the academy who is immediately leaving. Instead, it is that journey level group that has been with us 5 years and is not getting their step increases. These individuals are at their maximum performance with us and they are the ones who are leaving. At that point, we have pretty much gotten our money's worth from the training we provided.

There was talk that we were losing trained cadets the day after training, but that is not the case. We are losing our journey-level employees. There has also been talk about whether the agencies should charge each other to recoup costs, but if you are losing a person who has been on the job 5 or 6 years, that is not going to happen. And, you cannot charge the individual. Los Angeles Police Department (LAPD) got in trouble last year for trying to charge employees who were finishing their academy and leaving for other agencies. We even thought about tying their post certificates to the DPS for a certain amount of time. The counter to that is that you are putting on issues that could cause a potential employee to decide to train elsewhere where those conditions are not imposed.

Ms. Wood:

Regarding the P&P Division's budgetary issues (page 6, [Exhibit K](#)), we are developing our main priorities. Some of the research and concepts discussed have been centered on evidence-based practices and research from the Pew-MacArthur Foundation. We are excited to incorporate some of their suggestions into some of our budget priorities, including a review of our caseload ratios, risk assessment tools and some of the intermediate sanctions we could better enhance which would benefit the Division, the local community and Nevada. Some of the fiscal savings from this process could be staggering when you look at the numbers.

Some of these practices include assessing and sorting offenders by their risk levels to determine the appropriate type of supervision. Nationally, parole and probation agencies have started to refocus resources on higher and medium risk offenders rather than the lower risk offenders. I am excited about the forward progress the Division is making in those areas. I am excited about our upcoming budget actually hitting on some of the focus areas this Commission brings up on a regular basis with us. We recognize there is some need for change, but we have to prioritize internally and operationally what our priorities are and what we can control. Budget, benefits, salaries and attrition are not something within our immediate control. I do not mean to be evasive, but everybody can recognize that when you compare what Metro, Sparks and Reno officers make, it is evident that pay is a significant issue.

Chair Hardesty:

Are you currently receiving support and recommendations from the Pew-MacArthur Foundation?

Ms. Wood:

We have an individual, Capt. David Helgerman, who is participating in the initiation of that research group and committee, so yes, we are actively participating in it. The research we initiated was just before the close of the last Session of the Legislature. When I became Chief, we looked at our internal operations and a lot of the recommendations from the Pew-MacArthur Foundation were significant. I felt the Division would benefit from some of the top priorities that came out of their research nationwide.

Chair Hardesty:

Please add some of those evidence-based practice recommendations into your next presentation to the ACAJ.

Ms. Wood:

I will.

Chair Hardesty:

I will open Item IX, a presentation by the Nevada Department of Corrections (NDOC).

E.K. McDaniel (Interim Director, Nevada Department of Corrections):

Our mission at the Nevada Department of Corrections (NDOC) is to protect the public by confining convicted felons according to the law while keeping staff and inmates safe (page 2, [Exhibit M](#)).

The NDOC organizational chart (page 3, [Exhibit M](#)) shows the Department breakdown. We have four divisions, including Operations that run the facilities and institutions in the state; Programs that deal with classification and planning; Industrial Programs that include the prison industries and ranch; and Support Services which is responsible for fiscal issues. We have a subcategory, the Inspector General's Office, responsible for our investigations and audits.

There are seven institutions in the state (page 4, [Exhibit M](#)), nine conservation camps and two transitional housing centers. This is one change from our last ACAJ meeting. The Northern Nevada Restitution Center in Reno was moved a couple blocks to a new location that opened in September, 2015. We now call it a transitional housing center. The other transitional housing center is Casa Grande in southern Nevada.

Nevada State Prison was closed in 2012. There was a bill passed during the last Session of the Legislature which will allow us to turn that site into a museum-type property. Southern Nevada Correctional Center has been closed since 2008, along with the Silver Springs Conservation Camp, which is still assigned to NDOC but will be going off our list and out of our budget process soon.

Page 5 ([Exhibit M](#)) shows the projected inmate populations. The projection for inmate populations for FY16 was 12,890, but right now we have 13, 658 inmates. We are over projection.

Page 6, ([Exhibit M](#)) shows information about our inmate population. The in-house offenders are in custody and not on house arrest. The 15.16 percent figure of the minimum custody inmates are those in conservation camps and transitional housing centers. The 61 percent of inmates in medium custody facilities represent our largest population. The 20.41 percent of inmates in close custody are mostly at Ely State Prison. The 3.08 percent of inmates in maximum custody are our smallest population. There is also a breakdown of the sex, age and ethnicity on that page.

Chair Hardesty:

Maybe I am missing something, but the total inmates you show is 13,270 for in-house offenders by custody level, but the other two charts show a total of 13,570. Why the difference of 300?

Mr. McDaniel:

The in-house offenders are inmates inside our facilities. We have people in custody that are not in-house, but on house arrest or some other program that allows them to not be in a facility. That accounts for the difference of 300 individuals.

Chair Hardesty:

Is it fair to conclude that 300 inmates are under the supervision of NDOC but in another supervision arrangement?

Mr. McDaniel:

Yes, some inmates are also under the supervision of P&P. Ms. Wood had people in her presentation ([Exhibit K](#)) who were called inmates, still assigned to us and yet under her Division's supervision.

Chair Hardesty:

I saw that, but it was 70 inmates, which still leaves 230 running around.

Mr. McDaniel:

There are some directly under our supervision and some that are under P&P. It depends on the program.

Chair Hardesty:

It would be useful to new members of this Advisory Commission to have an understanding of what those programs are, how many people are in them, what the basis is for how an individual gets into those programs and how the prison makes that determination.

Mr. McDaniel:

We can provide that. Looking at the chart on page 6 ([Exhibit M](#)) of inmate ages, we have seen that our population is aging. This creates some challenges for us.

Chair Hardesty:

Has the NDOC done a study on the medical support needed for the aging prison population?

Mr. McDaniel:

I am not aware of a study, but we do deal with it when it comes to budget time, specifically regarding our medical budget. We have done some things that help us accommodate the aging population. We got approval from the last Session of the Legislature to start a hospice program within the system which would include adding staff and resources for that program at Northern Nevada Correctional Center, where we have inmates with serious illnesses. We have enhanced some of our other programs toward the older inmate population.

Chair Hardesty:

I would like a presentation about the aging population and its projected financial impact on the prisons. This would help the ACAJ and the State Board of Pardons Commissioners. I have a vision of someone sentenced to life for first degree murder who is 82 and in a wheelchair with considerable medical assistance and I am wondering how much of a public risk is that person.

Mr. McDaniel:

We have quite a few individuals who meet that criterion.

Chair Hardesty:

The expense to the state should be looked at in the context of whether there is an ongoing public safety risk or where there are alternatives to incarceration and supervision.

Mr. McDaniel:

We can do that.

Our total inmate population was 13,080 in FY 14 (page 7, [Exhibit M](#)), 13,280 in FY 15 and based on projections from the JFA Institute, we are budgeted for 13,270 in FY 16 and 12,714 in FY 17. The projections go down even though our inmate population is actually up, so we continue to deal with these issues.

The average daily operating cost per inmate is also on that page. A minimum security inmate costs less than a maximum security inmate.

The NDOC operating budget includes monies from the general fund and other funds (page 8, [Exhibit M](#)). It is \$289,973,447.00 for this year, FY 16, up 5.69 percent from last year. There were studies completed regarding our staffing patterns that include the shift relief factor, so we acquired some additional officers and money for that. The costs for the hospice program and mental health counselor costs are on page 9 ([Exhibit M](#)). We are heavily involved in our reentry programs and were able to get positions to help with that. We have a new e-filing program that is not required by federal courts but strongly encouraged. We experimented with that at one facility and now the suits that inmates file and all the information they file can be done through e-filing instead of by hand. It eased the burden for the courts and helped them be more efficient and effective. We have expanded that to a second facility. We are working to get that to all our institutions.

Chair Hardesty:

Is e-filing only for federal court filings? Have you looked at what would be involved in using it for district court filings and Supreme Court filings?

Mr. McDaniel:

No, it would not be too difficult, but the courts have not asked us to do that. We could do it, though. It would just be a matter of getting the computers to talk to each other. The federal cases are so numerous, which is what makes it more efficient using e-filing.

The staffing changes at NDOC (page 10, [Exhibit M](#)) began with a staffing study (page 11, [Exhibit M](#)) in two phases. One phase looked at the number of staff needed for a relief factor for our officers, covering their days off, sick leave and vacations. The officers work 5 days a week, have 2 days off and they also get sick and annual leave. The actual mathematical formula used to determine how many employees you need has to include relief workers. We had not updated that relief factor since 1971. We added two holidays but those were not even on the calendar in 1971.

We had an outside study done for every one of our institutions and we hired additional staff accordingly. We got the budget approved in the 2015 Legislature. We were allowed to hire 45 extra staff in 2016 and we will hire 55 more in FY 17 (page 10, [Exhibit M](#)). We do have to go back to the Interim Finance Committee to get the FY 17 employees approved based on our current vacancies. We have seen a big difference in our staffing patterns now that there are more people to cover officers when they are on their weekends and leaves.

Chair Hardesty:

How long has it been since your Department had a pay and class study?

Mr. McDaniel:

I really do not know and have not been able to find that information. I have been in this Department since 1993 and I think there was one done in 1995 or 1997. I am told there was probably one done in 2007, but I do not know that for sure. I do know that one of

the concerns we had was that the study was only done for correctional officers, not the support staff.

The two parts of the staffing study included the aforementioned relief factor and also the posts (page 11, [Exhibit M](#)). The study looked at the current posts and what the national standards were for staffing each of our facilities. The chart shows each institution's recommended staff numbers and we prioritized those.

As an agency, we do not 100 percent agree with this study. There are some posts we do agree with and will add, and there are some we do not think we need. The total number recommended by the study was 399 additional officers statewide. We have a commitment from the Board of Prison Commissioners and the Governor's Office to continue to look at this. One thing we wanted to do was implement the study again after the relief factors have been in place. When they did the initial study, they did a snapshot, taking a look at who was on duty at a particular time on a particular shift at a particular facility. That was before we had the relief factor in place. We want to revisit that and compare the two studies to help us come to a figure of how many new officers we really need. We will be submitting requests for additional officers in our upcoming budget.

One thing the study did not show was the uniformed, sworn officers assigned to run the post office and the property room in an institution. We think we could convert those positions to a different level position. Instead of having a sergeant in place, we could use a warehouse worker or supervisor to instead staff that post. You do not need to go to the firing range to manage property; we do not need sworn officers to do these jobs. We want to convert those positions in the next Legislative Session. We will save money and utilize those sworn officers at posts where they are supervising inmates as they were trained to do.

Chair Hardesty:

Is that what a pay and class study reveals?

Mr. McDaniel:

Yes, it should. We have similar issues in recruiting and retaining qualified staff (page 12, [Exhibit M](#)) as you heard earlier from Chief Wood of the Division of Parole and Probation (P&P). Our issues are a little different, though. We are going to propose restoring some of the pay cuts made during the budget crisis. For example, the rural differential pay, which is a 5 percent pay increase for correctional officers working in our rural facilities including Lovelock Correctional Center, Ely State Prison and our nine rural conservation camps. That was taken out with the budget crisis and it makes a big difference in our recruiting in those areas.

We had a program called Paid Rural Area Differential (PRAD), which mainly covered staff in southern Nevada working at High Desert State Prison, Southern Desert

Correctional Center, Three Lakes Valley Conservation Camp, all of which are approximately 40 miles outside of Las Vegas. Those officers were paid \$7.50 per day for travel expenses. That was also done away with and we would like to restore it. Our biggest problem with recruiting and maintaining staff is in our rural areas. We are doing fairly well retaining staff in Las Vegas and Carson City, but institutions in Ely, Lovelock, Wells and Carlin are hard to staff. If one person retires or leaves, we are in a difficult situation. One person missing can create a lot of overtime when others on staff are covering for that person's shift.

We have used numerous recruiting efforts in the last 2 years to increase our staff. As of this morning, we are short 61 officers in Ely State Prison. This affects our overtime pay and many issues. We are also in the process of going to the State Board of Examiners to ask for the ability to hire retirees back and have it not affect their PERS retirement. Late in the 2015 Legislative Session, we were not successful in getting some of the things we needed, but we will soon ask for sign-on bonuses. If someone is willing to transfer or go to Ely, that person could get a sign-on bonus. There would be a stipulation that they work in Ely for 2 years so they would not just move, take the incentive and leave. The rural incentive pay is also important to restore.

Chair Hardesty:

What percentage of the total Ely staff is your 61 person shortage?

Mr. McDaniel:

We have about 260 officer positions at Ely, so that would be about 25 percent. It does not affect the actual operations of the facility because we operate under a minimum staffing requirement, which is how many people have to be on duty every minute of every day. That changes, depending on the operations of the facility. We have staff there operating the facility, but when we have less numbers, we have to have people work overtime, use callbacks and if several people call in sick, it can become a crisis. We cannot drop below the minimum staffing requirement, so we will call people back to work.

Chair Hardesty:

When Mr. Skolnik was NDOC Director, I posed questions to him about overtime. It was my understanding that the overtime being spent during that period exceeded what it would have been if they had just paid regular staff to fill those positions. Is that right?

Mr. McDaniel:

I would say that is pretty close to right, yes.

Chair Hardesty:

So the overtime was actually costing the state because they did not have full staff.

Mr. McDaniel:

Many times it is a wash because when we do not have the position filled, we get vacancy savings in the budget. The problem in the past has been that if we have a vacancy savings for any period of time, it is temporary so we cannot count on it. Then we have to ask for money to pay overtime. Department-wide, I would say what you said is not true because we do not have the vacancies at all the other institutions. But at our rural camps and at Ely, we have a difficult time just getting people to work there. The individual Ely budget would be true for what you said, but over all of the NDOC, it would not be true.

Chair Hardesty:

Going back to page 5 ([Exhibit M](#)), these projections were provided by JFA Institute, is that correct?

Mr. McDaniel:

Yes.

Chair Hardesty:

You are exceeding those projections by almost 800 inmates. Are there any institutions listed on this page where the number of inmates exceeds the capacity of the facility? In the late 2000s, there was a situation where inmates were put in hallways and restrooms.

Mr. McDaniel:

No, we do not have that issue. Occasionally, depending on the inmates we receive from Clark County, we have a transportation issue, but not a capacity issue. Sometimes we will run a little over capacity at our intake center for a day or two, but it is not over the facility operational capacity. We have the beds but the capacity number is less because we do not single cell inmates.

In a couple of different populations, we are getting close to having to open some additional areas within the facility. For example, in our women's correctional facility, we have two housing units that have never been opened. There are 300 beds there, but we do not operate those, so we have never asked the staff to run them. We are getting extremely close to having to open one of the units. The problem is, each unit has 150 beds, but we will only need 20 beds yet we cannot operate a unit with any less staff if there are 20 inmates instead of 150. We will be asking the upcoming Legislature to approve funding for opening one of those units.

Chair Hardesty:

You have young people under the age of 18 sentenced to prison under an adult finding. You are required to segregate that group, right?

Mr. McDaniel:

Yes, we have nine inmates in a separate unit in Lovelock that has the capacity for 15 inmates. If we got more than 15 in there, we would have to look at sending them out of state. In March, three of those inmates will age out of that unit and then go to other facilities.

Looking at page 13 ([Exhibit M](#)), you can see some of the capital improvement projects we have had approved in the last Legislative Session. Some of the projects listed here are completed and some are in process. The biggest ongoing project was to create an execution chamber at Ely State Prison. Our main ongoing problem with the corrections facilities is that they get old and wear out. Items like air conditioners, refrigeration units, furnaces, etc., all wear out and cost big money to repair and replace.

Chair Hardesty:

Regarding the Ely execution chamber, are you aware of any study that has determined whether any of the death row inmates are near their execution warrant where execution is even in the near future?

Mr. McDaniel:

I would not say it was a study, but we have an ongoing process that we are briefed on by the Office of the Attorney General. These cases are in litigation, going back and forth to different levels of the court system. We work with the Attorney General's staff to advise us where we are at in the process with each inmate on death row. There is no way for them or for us to say when the anticipated date is that each person would come up for execution.

Chair Hardesty:

I believe the Office of the Attorney General publishes a report that lists each inmate as to their age, status, etc. Could we get a copy of that report?

Mr. Laxalt:

Absolutely. The last time I was briefed on this timeline, there is no one expected to come up for execution inside a year. The thinking was 18 months to 2 years would be the time when the first inmate was finally through all the process.

Chair Hardesty:

There was a demographic prepared by NDOC that identified the number of inmates by category of offense. That would be useful for this Advisory Commission to see. I am also aware of past information that identifies inmates by their length of stay, which relates to issues about the need to construct new prisons. I would also be interested in information on medical needs and age-out issues. Also, if you have information on staffing needs and the ability to be competitive with respect to some of the vacancy questions, that would be helpful. You mentioned alternatives to having inmates in buildings. Could you break down some of those programs for us? Additionally, we would

like information on some of the remedial programs such as educational programs and drug and alcohol programs. Finally, it would be useful for us to know the relationships that exist between the prisons and schools for GEDs, etc.

Mr. McDaniel:

I can get all that information for you. We have an excellent relationship with our educational community. Many people might not be aware, but the way the educational program works in NDOC is that the school district in the county where the prison is located is required to provide adult education programs within the prison facility. This also takes place in all the rural counties. We have that in all of our facilities.

In Clark County, the CCSD has a large presence in our school system for GEDs, high school diplomas, etc. Pershing County provides an outstanding educational program at Lovelock Correctional Center, offering college courses so inmates can earn an associate degree. Some of those programs have been coming back with the changes in the Pell Grants which are becoming available for offenders to try and obtain for funding assistance.

I produce a weekly document that addresses length of sentence offenders by custody level. I have a breakdown I could give you now if you like.

Chair Hardesty:

I think we want to do that at a subsequent meeting so we can put it all in context. I also want a status report on reentry programs, if there are any, for those who expire their terms. I would also like to hear of your relationship with the Department of Motor Vehicles (DMV) in providing IDs. We have talked about that before. It would also be useful for this Advisory Commission to be educated on the subject of credits, including the credits via Assembly Bill 510 of the 74th Session extending back to 2009 and how those work. No new commissioner should be allowed to sit here unless they sit through a presentation on prison credits. One needs to be a tax specialist to understand the legislative construct for prison credits.

ASSEMBLY BILL 510: Makes various changes pertaining to offenders. (BDR 16-1377)

I think it is difficult for the system, inmates and victims to understand how that operates. We should look at that this Interim.

Mr. McDaniel:

That would be great. It is confusing because those things change throughout the years, but the inmates remain at the facility. We have inmates who got credits a certain way in 1950 and others who got credits in 1970. Even up to the last Legislative Session they changed, based on their sentence, what they can get, when they can get it, how old they are, etc. It is extremely complicated.

Chair Hardesty:

I would not want to be a district attorney and have to explain to a victim how these credits operate.

Mr. Jackson:

I saw a presentation in September from the Office of the Attorney General called "Prison Math," I believe. It took everyone through all the different types of credits. It gave us a closer look at truth in sentencing in Nevada. It took an hour and included all the legislative changes from 2015, so it could be good for us to see that. One of the presenters, Garrit Pruyt, is now with the Carson City District Attorney's Office and will be doing a presentation this month for the local judges. He would be a good contact.

Holly Welborn (Policy Director, ACLU of Nevada, Inmate Advocate):

I am curious about a study that was required by Senate Bill 107 from the 77th Session.

SENATE BILL 107: Restricts the use of corrective room restriction on children in confinement. (BDR 5-519)

I am unable to find data on adult statistics for the use of isolation in the Nevada prison system. That report was supposed to be completed in the 2013-2014 Interim. I found a lot of information on juveniles and youth offenders in the adult system, but nothing on the general adult population. Was that study completed, and if so, can we get the report?

Mr. McDaniel:

My recollection is that it started out as a juvenile and adult corrections study but during the Session, it was changed to just juvenile. Therefore, it was never required or commissioned for us to do the study regarding inmate segregation for the adults. I know there were changes in the law for juveniles. We reported back to that 2013 Session and were told they did not need that information. As far as the study goes, there was never one completed in regard to the segregation.

Ms. Welborn:

I have a copy of the bill as enrolled and it may be that my information is wrong. The way I understand the bill is that the practice of isolation among juveniles was severely limited and only used in extreme circumstances. It also directed this body to complete a study. If we could look into that ...

Mr. McDaniel:

I do not know where I would look. All the stuff we did in regard to that bill was completed and submitted to the Legislature. I am not aware of any additional studies that were commissioned, or if this Advisory Commission did that or not.

Chair Hardesty:

We will ask Mr. Anthony to look into that question.

Paola Armeni (Representative, State Bar of Nevada):

Can you tell us what the criteria is for an inmate to be put into the hospice or palliative care program?

Mr. McDaniel:

The hospice program is a new program, so we are in the beginning stages. We have been given permission to hire staffing for that program. The criteria for entry into the program would be when the doctor or medical department says an inmate needs hospice care. There would be some consideration on classification. We would have to look at that to see if an inmate could physically be at the location where the program is based. Most of it would be based on the inmate's illness.

Ms. Armeni:

Does the budget you provided to us (pages 8-9, [Exhibit M](#)) account for pregnant inmates? How does it account for their medical care while in custody including the delivery of their baby?

Mr. McDaniel:

The total budget absolutely covers all the medical costs for all inmates. We have contracts with the local hospitals near the facilities that cover all aspects of the pregnancy including the delivery.

Senator Ford:

I have a bill draft request in that pertains to prison education. I would like to talk to you more about that.

Mr. McDaniel:

Sure, no problem.

Mr. Spratley:

Regarding Ms. Welborn's question about the segregation study via S.B. 107, during that Interim we were caught up on issues like O. J. Simpson and other issues that were not within our purview, so I do not know if we even got around to doing that study.

Chair Hardesty:

I will now open Item X, a presentation from the State Board of Parole Commissioners.

Connie Bisbee (Chair, State Board of Parole Commissioners):

The statutory duties and regulatory procedures of the State Board of Parole Commissioners (Parole Board) are found in Chapter 213 of *Nevada Revised Statutes* (NRS) and Chapter 213 of the *Nevada Administrative Code* (NAC). We delve into

NRS 179D for the tier panel appeals, but we are not involved in the tier panel appeals since the recent upholding of Assembly Bill 579 of the 74th Session. We will now have less to do with NRS 179D other than for lifetime supervision.

ASSEMBLY BILL 579: Makes certain changes to provisions relating to sex offenders and certain offenders convicted of a crime against a child. (BDR 14-499)

As a Parole Board, we hold between 8,000 and 9,000 hearings per year. This includes hearings on time supervision, parole violation, discretionary mandatory parole hearings and tier panel appeals.

The 2015 Legislative Session was very quiet for the Parole Board. Nothing in legislation that Session added duties or changed our processes. We did get a program officer staff position back for our sex offenders. We lost that position in the budget cuts. That person works closely with the Division of Parole and Probation (P&P) and is responsible for ensuring that we comply with the lifetime supervision and special condition for sex offenders. There are ways off of lifetime supervision if sex offenders have done everything required of them for 10 years and have met the statutory requirement to get off. These individuals can go through the Parole Board and P&P to be released. Having this program officer added back to our staff enables us to examine lifetime supervision cases more assertively, resulting in a large number who have been removed from the lifetime supervision caseload.

When it comes to budgetary issues, I.T. is going to be a big thing in the upcoming Legislative Session. The computer platform we rely on, the Nevada Offender Tracking Information System (NOTIS), is going dark, according the NDOC at the last Session. We are working on how we will go forward without NOTIS. There will be computer technology database requests for funding in the next Session.

The Parole Board is also aging since people usually become Parole Commissioners at the top of their game, usually retiring and then coming to the Parole Board. We will have a problem because members of the Parole Board and its executive secretary are unclassified state employees that then require pay funding by the Legislature. There has not been a pay raise for Parole Board Commissioners and the executive secretary since 2003. There are no steps to climb, no promotions, and I will ask the upcoming Legislature to address this because it is hard to recruit great people at that pay. We need to bring it up to at least today's standard.

If we get the database upgrades completed, in the next biennium, we would like to start webcasting all hearings. Our hearings are open to the public now and anyone can sit in on the hearings in Las Vegas and Carson City. We are a very transparent agency. If you go to our website under the State Board of Parole Commissioners, you will see our statistics, which we put on the website quarterly. You can also find information on hearings, agendas and our parole grant rate, which is 47 percent overall right now for

the last quarter. Women have a higher parole rate at 65 percent compared to 45 percent for men. The grant rate for women used to be higher, but the crimes women are committing in the last 20 years are very different. There is also a smaller population of female inmates compared to men, so that affects the statistics.

The Parole Board is responsible for emptying the prisons of about 2,500 inmates per year. The likelihood of getting paroled at any time is about 50:50. It depends on the case. In Nevada, parole is an act of grace by the state and we have a significantly higher parole grant rate than most states.

We are putting in for some help for the executive secretary of the State Board of Pardons Commissioners. We are now having a second Pardons Board with only one person producing all the information packets and necessary paperwork for those meetings. We have asked to increase that support staff by a minimum of one employee.

Chair Hardesty:

What is the status of consolidating consecutive sentences?

Ms. Bisbee:

That is aggregated sentencing. Nevada is unique in having consecutive sentences where an offender serves each sentence consecutively, completing one and then going on to the next. In 2009 we aggregated life to life and in 2013, we aggregated all sentences. This means that instead of seeing the Parole Board for every sentence, either being granted or denied parole each time, all the sentences that an offender is charged with are aggregated or put together. For example, if an offender had six cases all running together consecutively for a sentence of 2 to 10 years each, for aggregate sentencing we add all the minimums, in this case 12 years, and also the maximums, in this case 120 years. The offender would then only see the Parole Board for the first time when the 12-year minimum has been met at which time the Parole Board would decide if the person is ready to be released on parole.

The upside of this aggregate sentencing is that sometimes offenders with long sentences can be totally disruptive at first, so the first time they come to the Parole Board, they will likely be denied parole. They have not figured out how to do time yet. With aggregate sentencing, if an offender comes before the Parole Board after their 12 year minimum, and the decision is being made about whether to release this person, what they did 3 years into their sentence is much less significant. Maybe in the first 3 years they had some write-ups and were a behavioral problem, but in the last 7 years, they got their GED or worked and have not had a write-up, so they are more likely to get parole and cut the time they spend in prison. It also cuts down on the time they spend before the Parole Board.

There are questions of interpretation regarding who qualifies for aggregation. We are working with the Office of the Attorney General (AG) on that issue. On the whole, it is

easy for us to see someone on an aggregated sentence and we see the positive impact it has on behavior over the years. Many of these offenders get granted parole their first time before the Parole Board.

Ms. Welborn:

Can you speak to the outcome for some of the juveniles eligible under A.B. 267? Have there been any issues understanding the new law and administering those parole hearings?

ASSEMBLY BILL 267: Revises provisions concerning the sentencing and parole of persons convicted as an adult for a crime committed when the person was less than 18 years of age. (BDR 14-641)

Ms. Bisbee:

The NDOC is working closely with the AG as to who qualifies, when they qualify and how they qualify. The NDOC is happy to get those Parole Board reports and the Parole Board is happy to have them seen very quickly. It is a work in progress. It is the technical details of getting the sentence structures in there properly, getting them on the eligibility list and having the agencies work together to get them all seen.

There had been questions earlier. The Supreme Court of Nevada made some decisions recently, including the December 2015 *State v. Boston* decision, which the AG's office has looked at again. In the next couple of months, you will probably see that the vast majority of those eligible cases will be seen.

Chair Hardesty:

Can you quantify the number of juveniles in this group?

Ms. Bisbee:

They are not juveniles anymore. Some have served up to 40 years already. We are compiling a list. There are different lists because of differing interpretations, but the Supreme Court has pretty much tacked down how they want us to look at it.

Chair Hardesty:

I will now open Item XII, potential topics for us to cover this interim.

Senator Ford:

We have had correspondence from the Innocence Project about taping witness interviews. I believe law enforcement is amenable to it. I would like to see that topic covered.

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

I have also had those conversations with the Innocence Project on this topic. As we did with witness identification a couple interims ago to make sure law enforcement is using modern, best practices. I had a conversation with them about their desire that law enforcement is using best protocols regarding videotaping witness interviews and suspect interviews. The devil is in the details, but we are certainly open to having a discussion to ensure that best practices are being used.

Chair Hardesty:

Several states are currently undergoing significant review and evaluation of their criminal justice systems and reform. They are collecting interesting data as to what their existing statutes do or do not do. I would like a presentation on that issue. In California, they have assembled a list of all the statutes which make behavior a crime as well as the number of enhancements to those criminal statutes. The number becomes staggering.

Also, I would like to know if our categorization of crimes is in concert with other states. I would expect to go through the statute that specifically calls out certain areas and schedule those for agenda items. Our Advisory Commission is served by getting people within our state as well as experts from a group like the Pew-MacArthur Foundation or similar groups that know what is happening nationally on these issues. We need sound data to move forward.

Mr. Jackson:

In 2015, the Nevada Supreme Court created a statewide commission on the rules of criminal procedure. That commission is being chaired by Justice Michael Douglas and Justice Michael Cherry. There are four subcommittees—the Death Penalty Subcommittee is chaired by Clark County District Attorney Steve Wolfson; Motion Practice is chaired by Washoe County Public Defender Jeremy Bosler; Jury Instruction is chaired by Reno District Court Judge Scott Freeman and Discovery is chaired by Clark County Public Defender Phil Kohn. Some of the work being done by the subcommittees will likely require legislation. It would be important to have at least an introduction from one or both of the chairs of the statewide commission, plus presentations from the chairs of the four subcommittees.

I am working closely with Jeremy Bosler on the Motion Practice subcommittee. We are hoping to have, for the very first time, some pattern jury instructions in criminal cases.

Senator Ford:

I would like us to look into a presentation on restoration of rights. I do not know if that is within our purview of statutory mandate. I would like to know what the current status is of our statutes when it comes to restoring voting rights, jury opportunities, etc., for ex-offenders.

Chair Hardesty:

I know just the source for that. I will now open Item VIII, discussion of possible subcommittees for this Commission. With respect to the subcommittee on Juvenile Justice, not to ignore the statutory provision, but The Nevada Supreme Court has had in place the Juvenile Justice Reform Commission, co-chaired by Justice Nancy Saitta and myself. It has made recommendations to the Legislature, which have been largely accepted and endorsed. My thought is to have a presentation made to the ACAJ by the Supreme Court Commission. Then if we choose to, we could make a subcommittee, but otherwise the Supreme Court is already doing it.

Assemblyman John Hambrick (Assembly District No. 2):

I agree. I am on that Supreme Court Juvenile Justice Reform Commission. We also have the State of Nevada Juvenile Justice Commission through the Department of Health and Human Services that could give us information.

Chair Hardesty:

I do not think we need to appoint a subcommittee yet. We have had a subcommittee on victims of crime. That has been beneficial to ACAJ. I would like to ask Attorney General Laxalt to chair that as did his predecessor, who was very effective in organizing a group of victims of crime.

Mr. Laxalt:

I am happy to.

Chair Hardesty:

I would also like to look at the nagging issue for me of how we fund the Victims of Crime Program.

Regarding the ACAJ's Subcommittee to Review Arrestee DNA, I will ask law enforcement representatives to provide a report on what is happening in this area since S.B. 243 of the 77th Session was enacted to give us an understanding of where we are with respect to testing arrestee DNA.

SENATE BILL 243: Revises provisions relating to genetic marker analysis.
(BDR 14-137)

It may not be necessary to have a subcommittee. I know the AG's office has taken steps to deal with the backlog of DNA testing. We need presentations before we rush into forming a subcommittee.

Senator Ford:

If we get a report, I would like a demographic breakdown into race and gender statistics on how arrestee DNA has been utilized. When we passed this bill in 2013, one of the concerns expressed was that it would be disproportionately applied to people of color.

Chair Hardesty:

We should get a full description of the process around the state to the Advisory Commission that include statistics dealing with this point.

Mr. Callaway:

Tracy Birch, the director of our crime lab at the Las Vegas Metropolitan Police Department was on the subcommittee last interim. Her office would be very good to provide a presentation to this body. We can make that happen.

Chair Hardesty:

Could you and she also contact the folks in the north so we could find out what is taking place statistically and demographically?

Mr. Callaway:

Absolutely.

Chair Hardesty:

If we can get these presentations, the need for a subcommittee may obviate itself. We could at least give direction if there is to be a subcommittee.

Mr. Spratley:

Steve Gresko, the administrator of the Combined DNA Index System (CODIS) for Nevada out of the Washoe County Forensic Science Division and his biology unit supervisor, Lisa Smyth-Roam, could collaborate with our partners down south on a presentation.

Chair Hardesty:

Can you tell if there were subsequent arrests from the collected DNA information?

Mr. Callaway:

I have some data about CODIS hits on arrestees. We could get demographics on that for you if we go back and obtain that information through our corrections facility.

Chair Hardesty:

It would be interesting to know if it resulted in any exonerations. Next, the ACAJ Subcommittee on Medical Marijuana is mandated by statute, requiring some specific issues to be reviewed. The statute also sets parameters on who should sit on the subcommittee. I am not in a position to appoint a subcommittee or chair, but it is clear we are required to have such a subcommittee within the scope of this Advisory Commission.

It might be useful to have a presentation by some of the attorneys who are dealing with issues that have developed within the existing statutory structure. Based on their presentations, there is a significant legal quagmire navigating the statutes dealing with

access and collateral issues. I can then reach out to the Legislators who would serve on this subcommittee as well as the non-legislative members who are to serve, which includes members of the public. I invite members of the public to express their interest to serve on this subcommittee by contacting Mr. Anthony at the LCB Legal Division so we can discuss appointments.

Mr. Anthony:

The Legislative Counsel Bureau website has a link where interested applicants can apply electronically.

Chair Hardesty:

There is also a subcommittee on Parole, but I am not sure if it is mandated.

Mr. Anthony:

That subcommittee was established last Session by S.B. 449. It is a one interim only transitory subcommittee that conducts an evaluation of the federal Sentencing Reform Act of 1984, parole systems of this and other states, states that have replaced discretionary parole system with mandatory parole and any other matter ACAJ deems relevant.

SENATE BILL 449: Revises provisions governing the Advisory Commission on the Administration of Justice. (BDR 14-1140)

Chair Hardesty:

Is there anyone interested in serving on this subcommittee? If we can, we should have a presentation made on what the Sentencing Reform Act of 1984 does? We also need to understand what the parole systems are at various states.

Ms. Bisbee:

I can help with that.

Mr. Anthony:

Responding to Ms. Welborn's question earlier about S.B. 107, the segregation of juveniles, the last interim's ACAJ did take up the issue in two meetings. Those results are on page 37 and 91 of the Final Report you were given for today's meeting. I am happy to further research any other questions.

Chair Hardesty:

I will open Item XIII, public comment.

Mike Patterson (Director of Advocacy, Lutheran Episcopal Advocacy in Nevada):

In S.B. 454, the bill Mr. Anthony talked about earlier that did not pass, it says the NDOC director would be required to provide the Department of Motor Vehicles (DMV) each month with necessary information so that upon release, an offender could be issued a

valid driver's license or identification (ID) card. During the 2009 Session, the Legislature mandated that the DMV issue a free identity card or driver's license to an individual who applied. That went well for several years.

Then, DMV asked for more information and proof of identity from the NDOC, and the unintended consequence was that the NDOC began issuing red ID cards to released prisoners. Somehow, the DMV has taken that to mean the state is meeting its mandate of providing identification. They stopped providing free ID cards to released prisoners. I was with a young man trying to get his card and the DMV told him they do not do it anymore, which was news to the halfway houses and NDOC, which is still issuing forms to people to go get a free ID. We tried to address this issue last Session and it got lost. I ask the board to revisit this and mandate that the DMV issue free ID cards to these people. The red card is great to identify them to the DMV, but imagine trying to get a job or cash a check with that ID card that says Department of Corrections on it.

We need to get back to issuing standard ID cards to people who need a new one. The young man I was with had been in prison for 12 years, so his civilian ID card had expired. Because it was expired, the DMV demanded he pay for it. He had a \$25 Visa card he was given on release and the charge for the card was going to be \$24. It made no sense. I paid for it, but this illustrates the issue prisoners are being faced with. He said to me, "See, they are just trying to set us up to fail." Please fix the unintended consequence of a good act on the part of the NDOC.

Ms. Brown:

Regarding my brother Nolan Klein's case, in a 1988 motion for discovery filed by the public defender, this was discovered in 2009 and it is the handwritten note from the prosecuting attorney Ron Rachow, who on our motion for discovery wrote, "no, no showing of materiality." Everywhere, he wrote "no." He never turned over any of this evidence. In this evidence that was discovered in 2009 prior to Mr. Klein's death, there were over 200 documents, mostly exculpatory evidence that would have exonerated him.

This case was based on eyewitness identification and placed Mr. Klein thirty-some miles away from where five witnesses testified to where he was here in Carson City at the time of the crime. All this information was withheld. The police theory was that this other man had committed a crime. Other crimes as well, in which those victims had cleared him of those crimes. None of this was turned over by the prosecution. I have provided a copy of an order written by Judge Peter Breen telling Ron Rachow to turn over all the evidence. He did not do so. I have also provided a copy of the letter from the public defender's office to Mr. Klein in 1990 showing everything the D.A.'s office had turned over that was in the file at trial.

The prosecuting attorney turned over 20 exhibits at trial, mostly photographs. No exculpatory evidence. Nothing that showed that their theory was that another man had

committed the crime. It was all hidden. We deal with prosecutorial misconduct and I do not want to bring it up, but there are times when you have prosecutors who don't like the person. This is well established and undisputed. Go back to 1976, where Mills Lane did not like Mr. Klein because he refused to testify a certain way in a trial. He was a state's witness and Mr. Lane told Mr. Klein one day, I do not know how or when, but one day I will get you. And he did, 12 years later.

It has been a roller coaster. When you are looking at discovery, look at these documents and see where it is now. To this day, how many others are there? We do not have access to these documents. The only reason we got access to these documents is because in 2009, Judge Adams ordered Washoe County District Attorney Dick Gammick to turn over the DNA test results and the entire file in this case. When it was turned over, there were more than 200 documents and 99 percent of it had never seen the light of day.

This was not an open and shut case. The jury was deadlocked. They could not reach a decision until the two defense witnesses' testimonies were read back. Judge Charles McGee refused to give what the jury requested. I have spoken with members of the jury, even afterwards, and they did believe that Mr. Richards was being truthful, he just thought he was mistaken as to the time he left the bar in Carson City to drive to Sparks to commit the crime. Things would have been different had Judge McGee given them what they requested, which was the bartender placing him in the bar during the time the crime was being committed, the jury never got to hear that.

Chair Hardesty:

Thank you Ms. Brown. At this point, I would ask that you please summarize and conclude your remarks.

Ms. Brown:

I am just trying to give others who are brand new to ACAJ an idea of what this is about, why they should look at this and why I am asking for a public integrity unit commission to be established. Now you have a public defender who is going to be possibly found ineffective. In Mr. Klein's 1990 post-conviction proceeding, he raised 33 grounds. Twenty-three grounds went unresolved, were never addressed and most of them were reversible. During her testimony, and it is true, she does not dispute it, she committed perjury to cover up that she never did an investigation into the prime suspect. She committed perjury about a voice forensic expert. None of it was true. He never even spoke to the woman.

What is even more damaging, to protect her career, she told the judge during the testimony that Mr. Klein has confessed after the trial down at the jail. The trial was from January 23 to January 27, 1989. She never visited him after the trial and she does not deny that she lied about that as well. During this time after that, Mr. Klein went through the process of trying to get justice for himself and to go after her for the perjury. Nobody

would touch it. She doesn't deny that she now lied about the confession. The confession never took place. But yet, when you look at the court orders and the decisions made by the Supreme Court and others, they make a reference to his confession, and it is a confession that never took place. All because she wanted to protect her career from being ineffective. I just want you to know that.

It is because of what has happened over the years that we need guidelines and new laws implemented so there is no more withholding of evidence and everybody is on the same page.

To confirm this, before this Commission started in 2007, Shelly O'Neill was applying for the Washoe County Public Defender's unit. What I have talked to you about is what I presented to the board and ACAJ Commissioner Kohn was present. He was one of the board members to vote yes or no. She did not get the position and when they asked if she had anything to say, she said "No" I have provided more documents ([Exhibit N](#)). The witness I spoke of, Bill Richards, is a Carson city deputy sheriff now and he stands by his testimony that they were together the night the crime was committed. No mistake.

Dee Williamson:

I represent parents in the 8th Judicial District in Las Vegas whose children's abuse evidence was destroyed prior to trials. I and my 2-year-old daughter entered the criminal justice system through no fault of our own. I was beat up by my husband of 13 years, and our 2-year-old daughter was assaulted.

When we entered the criminal justice system as survivors of domestic violence, we became litigants in the 8th Judicial District. Fast forward to 2013, after spending millions of dollars and many, many hours of time, I received a court order that the State of Nevada turn over all discovery. The State of Nevada is still in contempt of that court order. They have not turned over police reports that were filed at the Mojave substation under the jurisdiction and authority of the Las Vegas Metropolitan Police Department. The state withholds these police reports because they detail criminal activity at courthouses under the jurisdiction of the Mojave substation.

What the state did turn over after receiving the court order was a police report we parents were not aware of, where the courthouses were investigated for criminal activity. Two employees of the courthouses confessed to the detective writing this report. The two employees confessed to destroying child abuse evidence. They confessed and detailed how and why this evidence was destroyed. All the evidence that was destroyed was done prior to criminal trials.

It does not take much thinking outside the box to imagine what happens when you do not have photos of batteries to children. It does not take much thought to think what if you do not have police reports, medical records and witness statements when you go before a judge or a justice. The victims become re-victimized and the judges and

justices do not have all the evidence before them, so we could never get a favorable ruling.

Fast forward to October 2015, Attorney General Adam Laxalt signed a written agreement to start defending these two employees. He entered into this agreement with Clark County. This is unprecedented. An Attorney General's duties are to prosecute criminals. Granted, Attorney General Laxalt has the prosecutorial discretion on whether or not to prosecute these two employees. He does not have the authority to be their defense counsel, which is exactly what this written agreement allows him to do.

On behalf of the parents whose children's abuse evidence has been destroyed, we are asking that section 4 of SB 27, passed in 2013, be repealed.

SENATE BILL 27: Revises provisions relating to legal representation. (BDR 3-219)

That is the authority which states the Attorney General can defend anyone. We ask that language be repealed. It should have never gone in. It gives the Attorney General the license to use Nevada's taxpayer dollars to defend criminal activity by government employees.

Chair Hardesty:

Thank you. I have a letter submitted for public comment from John Witherow ([Exhibit O](#)). With no more public comment, I adjourn this meeting at 1:34 p.m.

RESPECTFULLY SUBMITTED:

Linda Hiller, Interim Secretary

APPROVED BY:

Chair James W. Hardesty

Date: _____

Exhibit	Witness / Agency	Description
A	3 pages	Agenda
B	6 pages	Attendance Roster
C	Tonja Brown	Amendment A.B. 401
D	Tonja Brown	Written Testimony
E	Tonja Brown	Proposed Amendment A.B. 193
F	Tonja Brown	2010 Petition for Writ of Mandamus
G	Tonja Brown	Petition Denial
H	Tonja Brown	Order Dismissing Appeal
I	Tonja Brown	Written Testimony
J	Nicolas Anthony	Statutes and 2015 Legislation Governing the ACAJ
K	Nicolas Anthony	2015 Legislative Bills Introduced on Behalf of or Impacting the ACAJ
L	Natalie A. Wood	Division of Parole and Probation PowerPoint
M	E.K. McDaniel	Nevada Department of Corrections PowerPoint
N	Tonja Brown	Submitted Documents
O	John Witherow	Submitted Letter