# ADVISORY COMMISSION
# on the
# ADMINISTRATION of JUSTICE


## FINAL REPORT

## JANUARY 2015

## TABLE OF CONTENTS

Page


# FINAL REPORT

**Advisory Commission on the Administration of Justice**
[Nevada Revised Statutes 176.0123]

**January 2015**

The following "Final Report" was prepared by staff of the Advisory Commission on the Administration of Justice (Advisory Commission) (NRS 176.0123).

The Advisory Commission is statutorily required to identify and study various aspects of the State's criminal justice system, and prior to the next regular session of the Legislature must prepare and submit to the Director of the Legislative Counsel Bureau a comprehensive report including the Advisory Commission's findings and any recommendations for proposed legislation (NRS 176.0125). Although the Advisory Commission does not have statutory authority to request bill drafts, the Senate and Assembly Committees on Judiciary have chosen to sponsor the Advisory Commission's recommendations for legislation.

This report is intended to provide a brief overview of the Advisory Commission's course of action during the 2013-2014 interim. It includes a summary of recommendations and a full report detailing each of the meetings held throughout the interim, including the background discussion on the development of each final recommendation.

For purposes of this document, the final recommendations of the Advisory Commission have been organized by type of recommendation and are not listed in preferential order. By category, each recommendation falls within a request to: (1) draft legislation to amend the Nevada Revised Statutes; (2) draft a letter; or (3) include a policy statement of support in the final report.

## ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE
## SUMMARY OF FINAL RECOMMENDATIONS

The 2013-14 Advisory Commission on the Administration of Justice held a final work session on October 21, 2014. At that work session, the Advisory Commission voted to approve nine recommendations for the drafting of legislation, four recommendations for the drafting of a letter, and three recommendations to include a policy statement in the final report. A summary of each recommendation is identified (along with the corresponding 78th Session Bill Draft Request number) below:

## BILL DRAFT REQUESTS

1. Draft legislation to require the Department of Motor Vehicles to issue a valid driver's license or identification card to an offender upon release from prison by expiration of his or her term of sentence, by pardon or by parole. **(BDR 559)**

2. Draft legislation to require: (1) the use of a uniform pretrial risk assessment tool in criminal proceedings, consistent with the Ohio Risk Assessment System Pretrial Assessment Tool; and (2) the Supreme Court to establish by rule, the policies and procedures for the implementation of the pretrial risk assessment tool. **(BDR 559)**

3. Draft legislation to require the Division of Parole and Probation: (1) to review and update any risk assessment tool currently utilized by the Division; and (2) to report the Division's progress to the Advisory Commission on the Administration of Justice during the 2015-16 interim. **(BDR 559)**

4. Draft legislation to require the centralized collection of fees, fines and restitution from convicted persons. The legislation would require the Administrative Office of the Courts to assist in providing any necessary information. **(BDR 559)**

5. Draft legislation to provide that an order of restitution contained in a criminal judgment is enforceable as a civil judgment and that such an order does not expire until it is paid in full. **(BDR 560)**

6. Draft legislation to require all interested criminal justice stakeholders (such as district attorneys, criminal defense attorneys, judges, court clerks, crime laboratories, law enforcement agencies and the Central Repository for Nevada Records of Criminal History) to adopt policies and procedures for developing a statewide criminal justice information sharing database. **(BDR 559)**

7. Draft legislation to authorize the Director of the Department of Corrections to release personal information, including, but not limited to, a current or former address which pertains to a victim, to the Office of the Attorney General. The information would be

used solely for the purpose of notifying the victim of the status of pending litigation. **(BDR 559)**

8. Draft legislation authorizing the Fund for the Compensation of Victims of Crime to be used for the reimbursement of counties for the cost of sexual assault examinations. **(BDR 559)**

9. Draft legislation to study the use of sentence credits to reduce the minimum term of imprisonment imposed for offenders convicted of certain category B offenses. The study should include a review of the use of judicial discretion at sentencing, to determine whether such credits should be allocated. **(BDR 557)**

## DRAFT A LETTER

10. Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, to request additional funding for criminal justice in Nevada. This request would include supplemental funding for staffing, information technology and technical assistance for the Division of Parole and Probation, the Department of Corrections and the Board of Parole Commissioners.

11. Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging their support of the Supreme Court's $3 million dollar general fund budget request for specialty courts.

12. Draft a letter to the State DNA Database (Forensic Science Division of the Washoe County Sheriff's Office) and the Central Repository for Nevada Records of Criminal History, encouraging the entities to: (1) research and review the seven states that currently utilize automatic expungement for arrestee DNA records; and (2) further develop best practices should Nevada choose to proceed with automatic expungement in the future.

13. Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to consider budgetary funding for a statewide computer database to track criminal records and adjudications that, among many other uses, could assist in identifying and expunging DNA records.

## INCLUDE A POLICY STATEMENT

14. Include a policy statement in the final report recognizing and supporting the Nevada State Court Language Access Plan, which seeks to promote access to the courts by persons with limited English proficiency. This policy statement also urges the Legislature to study and address the issue of language access in other civil proceedings, such as administrative hearings and proceedings.

15. Include a policy statement in the final report urging the Governor and the Chair and Vice-Chair of the Advisory Commission to continue working with the Pew Charitable Trusts and other technical assistance providers to further develop justice reinvestment type initiatives for Nevada.

16. Include a policy statement in the final report supporting: (1) the establishment of a Naloxone access law; (2) the amendment of NRS 41.500 (the "Good Samaritan" law) to allow for assistance to a victim of an overdose; (3) the amendment of NRS 484C.400 to remove the provision that failure to complete treatment is another crime; and (4) the amendment of NRS 453.336 for a second offense of possession of less than one ounce of marijuana to authorize, rather than require, a program of treatment and rehabilitation.

# REPORT TO THE 78th SESSION OF THE NEVADA LEGISLATURE BY THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE

## I. INTRODUCTION

Criminal justice has been defined as a system of governmental policies and practices aimed at upholding social control, deterring and mitigating unlawful behavior, and sanctioning those who violate the laws with significant penalties and rehabilitation efforts. The criminal justice system generally consists of three main parts: (1) legislative (enacts laws); (2) adjudication (courts); and (3) corrections (jails, prisons and parole and probation). Within that system, persons charged with crimes often come into contact with uniformed officers, attorneys, judges, corrections officials, parole and pardons administrators, and parole and probation officers. At the same time, the criminal justice system must be mindful of the impacts on the victims and the families of the victims of criminal acts.

Given the monetary constraints caused by the Great Recession, Nevada's state and local governments' public safety budgets have been greatly strained. Thus, the Advisory Commission once again took an even broader approach in ensuring the proper allocation of the government's limited resources versus the public safety of its citizens. Although crime rates have been steady or falling throughout the past decade, and the rapid prison growth of the 1990's and early part of this century has been somewhat tempered, there continues to be an ongoing need to review the State's statutory scheme and policies for cost effective and constitutional reforms relating to criminal justice.

## II. ADVISORY COMMISSION DUTIES AND MEMBERS

This Advisory Commission was born out of the former Advisory Commission on Sentencing (Sentencing Commission). The Sentencing Commission was originally established by statute in 1995 after the Legislature enacted "truth in sentencing," which required a defendant to serve 100 percent of his or her minimum sentence. However, the Sentencing Commission, whose membership was limited, laid largely dormant for many years. Then, in 2007, the Legislature enacted AB 508, which reconstituted and broadened the membership, duties and scope of the Sentencing Commission to resemble its current form as the Advisory Commission.

Members of the Advisory Commission are appointed each interim and serve for a two year term between biennial sessions of the Nevada Legislature. Throughout the interim, the Advisory Commission holds numerous public meetings to review the entire criminal justice system in Nevada.

Pursuant to NRS 176.0125, the Advisory Commission is statutorily required to:

1. Identify and study the elements of this State's system of criminal justice which affect the sentences imposed for felonies and gross misdemeanors;

2. Evaluate the effectiveness and fiscal impact of various policies and practices regarding sentencing which are employed in this State and other states;

3. Recommend changes in the structure of sentencing in this State;

4. Evaluate the effectiveness and efficiency of the Department of Corrections and the State Board of Parole Commissioners;

5. Evaluate the effectiveness of specialty court programs in this State;

6. Evaluate the policies and practices concerning presentence investigations and reports made by the Division of Parole and Probation of the Department of Public Safety;

7. Evaluate, review and comment upon issues relating to juvenile justice in this State;

8. Compile and develop statistical information concerning sentencing in this State;

9. Identify and study issues relating to the application of chapter 241 of NRS to meetings held by the:
   (a) State Board of Pardons Commissioners to consider an application for clemency; and
   (b) State Board of Parole Commissioners to consider an offender for parole;

10. Identify and study issues relating to the operation of the Department of Corrections;

11. Evaluate the policies and practices relating to the involuntary civil commitment of sexually dangerous persons;

12. Identify and study the impacts and effects of collateral consequences of convictions; and

13. For each regular session of the Legislature, prepare a comprehensive report including the Advisory Commission's recommended changes pertaining to the administration of justice in this State, the Advisory Commission's findings and any recommendations of the Advisory Commission for proposed legislation.

The following members were appointed to and served on the Advisory Commission for the 2013-2014 interim:

Senator Tick Segerblom, Chair
(Appointed by the Majority Leader of the Senate)
Justice James W. Hardesty, Nevada Supreme Court, Vice Chair
(Appointed by the Chief Justice of the Nevada Supreme Court)
Senator Greg Brower
(Appointed by the Minority Leader of the Senate)
Assemblyman Wesley Duncan
(Appointed by the Minority Leader of the Assembly)
Assemblyman Jason Frierson
(Appointed by the Speaker of the Assembly)
Judge David Barker, Eighth Judicial District Court
(Appointed by the Nevada District Judges Association)
Connie Bisbee, Chair, State Board of Parole Commissioners
(Appointed by the State Board of Parole Commissioners)
Chuck Callaway, Police Director, Intergovernmental Services, Las Vegas METRO
(Appointed by the Governor)
Catherine Cortez Masto, Attorney General
(Ex officio voting member pursuant to NRS 176.0123)
James "Greg" Cox, Director, Department of Corrections
(Statutory member pursuant to NRS 176.0123)
Larry Digesti, Representative, State Bar of Nevada
(Appointed by the State Bar of Nevada)
Lisa Morris Hibbler, Victims' Rights Advocate
(Appointed by the Governor)
Mark Jackson, Douglas County District Attorney
(Appointed by the Nevada District Attorneys Association)
Phil Kohn, Clark County Public Defender
(Appointed by the State Bar of Nevada)
Jorge Pierrott, Sergeant, Division of Parole and Probation
(Appointed by the Governor)
Richard Siegel, Legislative Chairperson, ACLU of Nevada, Inmate Advocate
(Appointed by the Governor)
D. Eric Spratley, Lieutenant, Washoe County Sheriff's Office
(Appointed by the Nevada Sheriffs' and Chiefs' Association)

The Legal Division of the Legislative Counsel Bureau staff services were provided by Nicolas Anthony, Senior Principal Deputy Legislative Counsel; Bryan Fernley, Principal Deputy Legislative Counsel; and Angela Clark, Deputy Administrator.

## III. ADVISORY COMMISSION MEETINGS

Over the course of the 2013-2014 interim, the Advisory Commission held six full committee meetings and a work session. The first meeting was held at the Legislative Building in Carson City, with the remainder of the meetings and the work session, being held at the Grant Sawyer State Office Building in Las Vegas. All meetings were simultaneously videoconferenced between the two locations. Due to the extensive nature of the subject matter, each meeting was scheduled to address specific agenda topics within the statutory duties of the Advisory Commission.

During the course of the interim, the Advisory Commission received extensive testimony from a broad array of Nevada criminal justice practitioners and related professionals. The Advisory Commission elicited testimony from representatives of the: Office of the Attorney General; Offices of the Clark and Douglas County District Attorney; Gaming Control Board; Division of Public and Behavioral Health; Nevada League of Cities and Municipalities; Nevada Association of Counties; Office of the Clark County Public Defender; Department of Corrections; Division of Parole and Probation of the Department of Public Safety; State Board of Parole Commissioners; members of the Nevada Judiciary; American Civil Liberties Union; Central Repository for Nevada Records of Criminal Justice; the Crime Laboratories of the Clark and Washoe County Sheriffs' Offices; families and representatives of victims; families and representatives of inmates; members of the medical, legal and business community; university professors and academics; and numerous members of the public.

The Advisory Commission and its subcommittees were also fortunate to have an unprecedented number of national policy experts from around the country appear and testify during the 2013-14 interim. The Advisory Commission received input from representatives of the: Council of State Governments; Vera Institute of Justice; Right on Crime; Oregon Criminal Justice Commission; Arizona Prosecuting Attorneys Advisory Council; Wright Institute; Nevada Cure; Office of the Assistant Attorney General; Diagnostic Center of the Office of Justice Programs; JFA Institute; Innocence Project; National Institute of Corrections; National Conference of State Legislatures; Sentencing Project; Uniform Law Commission; United States Postal Service; National Organization for the Reform of Marijuana Laws; and the Urban Institute.

In addition to its statutorily required duties pursuant to NRS 176.0125, the Advisory Commission agendized and studied broad criminal justice topic areas ranging from, but not limited to:

(1) Budgetary issues in criminal justice;
(2) Improvements to public safety;
(3) Sentencing reforms;
(4) Risk assessment tools;
(5) Language access in the courts;
(6) Justice reinvestment initiatives;

(7) Public safety reforms in other states;
(8) The use of statistics in fighting crime;
(9) Drug sentencing policies;
(10) Establishing a corrections ombudsman;
(11) Postal service law enforcement powers;
(12) Updates on the funding and use of specialty courts;
(13) Suspect identification;
(14) Inmate issues, such as testing for Hepatitis C;
(15) The use of reentry programs;
(16) Civil penalties for traffic offenses; and
(17) The use of solitary confinement.

## A. FIRST MEETING

*Organizational Matters*

At the first meeting of the Advisory Commission held on November 6, 2013, the Advisory Commission addressed organizational matters and selected Senator Tick Segerblom as Chair and Justice James Hardesty as Vice Chair. The Advisory Commission then proceeded with an overview of statutory duties and a review of the 2013 legislation impacting the duties and responsibilities of the Advisory Commission.

Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legislative Counsel Bureau, provided an overview of the 2011-2012 Advisory Commission's Final Report (January 2013), and updated the new Advisory Commission as to the final status of the six 2011-12 Advisory Commission recommendations for legislation.

Mr. Anthony indicated that four of the 2011-12 Advisory Commission recommendations were passed and signed into law, while two measures did not pass. In brief, AB 91 expands regimental discipline to certain felony defendants if the district attorney stipulates; AB 307 requires the county to pay costs of forensic medical exams for victims of sexual assault and clarifies that no police report is necessary to receive treatment; AB 423 requires presentence investigation reports to be delivered 7 days prior to sentencing; and, SB 71 provides for the aggregation of consecutive sentences. The two measures that failed to pass were AB 325, which would have established 90 day safe keeper program, and SB 200, which sought to expand and extend pilot diversion program for probation violators. A full list of the final action for each of the 2011-12 Advisory Commission recommended measures is attached as **Appendix A.**

*Presentation by the Nevada Department of Corrections*

Scott K. Sisco, Deputy Director, Nevada Department of Corrections (NDOC), appeared before the Advisory Commission on behalf of Director Greg Cox. Mr. Sisco said his presentation would include a discussion on inmate population, the impact of legislation enacted by the 2013

Legislature, facilities and staffing and budgetary issues of the NDOC. Mr. Sisco indicated that there were seven major NDOC institutions, nine conservation camps, one restitution center and one transitional housing center.

Mr. Sisco listed the numbers of offenders in custody and stated that a total of 12,429 inmates were currently in custody. The male population was 11,950, and the female population was 1,069. He also gave the percentages of gender, ethnicity and average age. He said inmate population was projected to increase about 0.49 percent. The Department of Administration had a contract with JFA Institute, a consulting firm, to provide the estimated inmate numbers.

Mr. Sisco continued his presentation concerning operating costs per inmate. He said the majority of the operating costs were salaries. He said $2.48 was the amount budgeted per day per inmate to feed them. He said that was an inadequate amount. He said the actual operating costs for the NDOC were $274,463,917.00 for fiscal year 2013. He mentioned noteworthy budget items in the NDOC operating budget and discussed the capital improvement projects of the NDOC.

Mr. Sisco next addressed the legislative impact from the last session. He said the NDOC submitted several bills to the legislature in 2013, including AB 17, and AB 43. He highlighted the passage of AB 422, as a bill requiring an autopsy on every inmate who died within the facilities. He said SB 32 was the last department bill. It was a clean-up bill for various things throughout the NDOC. He said overall there were about 52 bill passed by the legislature impacting costs and and/or operations for state agencies. He said SB 423 required inmates leaving the facility have an identification card. SB 519 allowed the Director of the NDOC to apply for Medicaid on behalf of an inmate who leaves the institution for longer than 24 hours.

Mr. Cox indicated that a staffing study was started two days ago at High Desert State Prison. He said they were going to tour all the facilities and look at all the shifts. He said the Association of State Correctional Administrators agreed to conduct a study. He said eight people were brought into Nevada from various states, including corrections administrators with an extensive amount of knowledge and experience. He said it was a very comprehensive study. He said the study focused only on custody staff, not the non-custody support staff. The NDOC was in the process of constructing the Northern Nevada Transitional Housing Center with the Paiute tribe in Sparks. Mr. Cox said completion was targeted for some time in 2015.

Mr. Frierson asked about re-entry programs. He said the presentation listed one transitional housing center. He asked how it compared to other states concerning the number of housing centers. He also asked about the HOPE program regarding re-entry. Mr. Cox said the transitional housing center in the Reno-Sparks area will move the NDOC in the direction that many departments had moved in the past. He said it was important to expand the transitional housing and community correctional activities. He said they had a relationship with the HOPE program in Las Vegas and inmates from Casa Grande attend the program. He said they worked closely with Parole and Probation to provide re-entry services prior to the release.

Justice Hardesty asked about the issuance of valid identification for inmates being released to the streets. He asked if they received identification, who provided it and at what cost. Mr. Cox said they provided the offenders with identification. They worked closely with the DMV to provide the identification when the offenders leave custody. Justice Hardesty was concerned about timing, and asked how quickly the DMV supplied the identification for the offender. Justice Hardesty said he hoped Mr. Cox would make recommendations to the Advisory Commission that might improve the system even further. Mr. Cox said different states had different models on how they obtained identification while still in custody. He said they were looking at those models. They also looked at the possibility of having the DMV help them on the parole and probation sites. He said the best process was issuing identification the day they left custody, but they were not there yet.

*Presentation by the State Board of Parole Commissioners*

Connie Bisbee, Chair, State Board of Parole Commissioners (Parole Board), gave a brief overview of the Parole Board. Ms. Bisbee indicated that the Parole Board was a full-time agency, with a board of seven members, that made over 8,000 parole decisions annually. She said the Board has had the same members for the past 5 years.

Ms. Bisbee said the Parole Board's budget was $2.3 million dollars. She said that was approximately one percent of the NDOC budget. She said they also worked with the Nevada Sex Offender Registry and sat on the committee that hears all the tier panel reviews. They also supported the Nevada Board of Pardons. She said the Parole Board took huge staffing cuts in 2009. She had a staff of 21 people and lost 3 people. She said AB 529, the Adam Walsh bill, was ready to be implemented in the next 6 months. She needed the program officer and administrative position staffed in order to comply with the law.

Justice Hardesty asked Ms. Bisbee to expand on the support to the Pardons Board and how many people requested relief from the Pardons Board. Ms. Bisbee said approximately 900 people, on average, went through the application process on the inmate side. She said in addition, they received requests throughout the year from the community asking for restoration of rights. Justice Hardesty said there was a Pardons Board meeting on November 18, 2013. He asked how many of the 900 to 1,000 applicants made it to the agenda. Ms. Bisbee stated the Pardons Board had approximately 20 community cases and 3 inmate cases.

Justice Hardesty asked Ms. Bisbee to define community cases and inmate cases. Ms. Bisbee said the community cases were people who had been in the community successfully for quite a long time or were never incarcerated. She said they were asking for the return of all the rights they would have prior to their crime. The inmate cases tended to be drug cases. She said they often had huge sentences, were successful in prison, and were asking for some relief to very large sentences. Ms. Bisbee said many of the 900 to 1,000 requests were from people who did not qualify or meet the criteria. Ms. Bisbee said SB 104 and SB 71 were the only bills from 2013 that impacted the Parole Board.

Justice Hardesty asked about the status of aggregated sentencing. Ms. Bisbee said it had been worked on for many years. She said aggregated sentencing started in 2009. She said they looked at consecutive sentences. As an example, she said if the sentences were three, five to ten year sentences; the person would serve 15 years before appearing at the Parole Board. She said it sometimes cut back on the time an inmate did, but it was beneficial to victims because they did not have to go to hearings every few years. She said it was promoted as more of a "truth in sentencing." She said the 2013 legislation would become effective July 1, 2014, for newly sentenced inmates. An opt-in was available to other inmates. She said she had not heard any negative victim statements. She said all change was difficult, but everyone was working together. Justice Hardesty said the aggregate sentencing was a patchwork against the greater issue of the sentencing schemes in Nevada.

Ms. Bisbee said sentences often depended on the mood of the Legislature, which was the mood of the people. She said they had to look at what was fair, true justice for crime, and the practicality of affordability.

Justice Hardesty said they had the resources and history available to make prudent decisions about sentencing links, consecutive sentences, and mandatory sentencing. He said sometimes commissions and committees were intimidated by the cost associated with the studies. Ms. Bisbee agreed with Justice Hardesty and stated that the history and intellect was available in the State.

*Presentation by the Division of Parole and Probation*

Bernard W. Curtis, Chief, Division of Parole and Probation, identified himself and said that Robin Hagar, Administrative Services Officer, and Tony DeCrona, Deputy Chief for the Northern Command, were also present for the discussion. He said the presentation had been made to most of the members in past years, and that he would provide an overview of the current functions and responsibilities of the Division of Parole and Probation (Division). Chief Curtis said his budget was $41.6 million and $42.3 million for the biennium. Previous budgets were about $110 million to $120 million. He said the Division had supervision responsibilities over approximately 19,000 offenders throughout the State.

Justice Hardesty said the last Advisory Commission made a recommendation urging the Legislature to increase funding support for the Division. He asked for a record of the Legislature's response to the recommendation. Chief Curtis said they had a salary increase, but no increase in the budget. Justice Hardesty said it would be useful specifically dealing with the Division to know the exact response of the Legislature to that recommendation and connect it with the budget going into the session, and the final amounts.

Mr. Kohn asked about the 90 civilian staff in Las Vegas, and inquired as to whether the civilian staff wrote the probation reports. Chief Curtis said they did not write all the Presentence Investigation Reports, (PSIs). He said 45 civilians wrote PSI reports. Mr. Kohn

asked what percentage of the case load was generated by Clark County. Ms. Hager said Clark County generated over 70 percent of the PSI reports.

Chief Curtis then referred to sworn staffing, the officers on the street and the administrative personnel who were sworn officers. He said they had approximately a 10 percent vacancy rate. He said they constantly hired people to fill positions throughout the Division. He said many employees were retiring or moving on to jobs with more money.

James Wright, Director, Department of Public Safety, Department of Parole and Probation, said the department took an aggressive approach to hiring officers. He said they doubled the academies to 50 persons and did two academies a year. He said it was difficult getting the candidates through the process. He said they had 3,000 applicants to get 50 in the class. Chief Curtis said the one percent was the number who got through all the mental health evaluations, the physical evaluation, the polygraph, and the background checks.

Mr. Siegel said the Division was squeezed between very substantial hiring criteria and salary factors. He asked if the situation had gotten worse for the department. Chief Curtis said they were not competitive in salaries. Washoe County and Clark County offered higher salaries. Justice Hardesty asked for a report showing the salary levels and those offered by competing agencies. Chief Curtis said it was a significant difference, and that the Division's salaries were tied-in with the Highway Patrol.

Justice Hardesty asked how frequent salary was an issue. Mr. Wright responded approximately one half listed pay or benefits as a reason for leaving. Ms. Cortez Masto said the human resource department personnel did an exit interview for every State employee who left and provided a quarterly report for the executive branch agencies of their reasons for leaving. She said the report was available to the public or the Advisory Commission.

Chief Curtis continued his presentation and opened the discussion on AB 423. He said the legislation was initiated to allow defense attorneys more time to review the PSI reports. He said no funding was provided to increase staff levels. Director Curtis said several other items occurred at the same time including Clark County remodeling the detention center and the elimination of numerous housing facilities for inmates. He said there was a drop based on JFA projections of PSI writers. He said 7 working days prior to sentencing allowed about 15 days for completing a PSI. He said it was an impossible task to complete. He said the majority of the impact was in Clark County.

Kim Madris, Deputy Chief, Parole and Probation in Las Vegas, said timelines noted in the exhibit are for the rest of the State. They have worked with Parole and Probation extremely well. Their out of custody time lines for the past four years was between 90 and 120 days. She said at one time they did not do PSI reports for gross misdemeanors for the Southern Command because at one time they had a backlog of over 500 cases.

Mr. Kohn said in September she sent a number of letters to the District Attorney where they moved cases out beyond the 60 days to the end of December. He asked how many cases were completed and she replied approximately 24 cases. Ms. Madris said in her absence it was decided to ask for 90 day continuances for in-custody cases. She said that was unacceptable and she adjusted it so no in-custody case was continued. She said if it had to be continued a very detailed letter would be forwarded with the file explaining why it required a continuance. She said the Southern Command division received more referrals for PSIs than they can complete. Each PSI writer was required to do 18 reports per month. She said PSIs were assigned up to 90 days in advance. She said they lost 10 positions which required all the cases previously assigned be reassigned to the remaining writers who already had a full complement of PSIs to write. She said since September they have put forth every resource possible to resolve the issue.

Tony DeCrona, Deputy Chief, Northern Command of Parole and Probation, said they did have specialists in court. He said it was based on a 2007-2008 time study conducted throughout the agency. He said 16 reports must be completed by each specialist in the Northern Command versus 18 in the Southern Command. He said because of a misinterpretation of how the law was interpreted in the North, there were approximately 18 reports submitted late within the first week. He said some of the specialists covered multiple counties.

Chair Segerblom asked if the PSIs were done faster in the North. Mr. DeCrona said the writers had less to do than in the Southern Command. Mr. Kohn asked why there were so few writers in the Southern Command. They had 70 percent of the cases with less than 50 percent of the personnel.

Judge Barker said he was trying to work with the Division, but it was frustrating for the bench to have letters of request for continuances. Judge Barker said he wanted an accurate and complete state-wide picture of the issue in respect to requests for continuance. He said the blanks were ones who did not report back. He said all the continuances requested were in Clark County.

Mr. Jackson said last interim the Advisory Commission unanimously agreed Parole and Probation was understaffed and underfunded. A letter was drafted and sent January 7, 2013 to Governor Sandoval discussing the need for additional funding and staffing. The issues will continue regardless of AB 423. He stated the legislation was initiated in order to enable defense attorneys to have more time to review the PSIs. He said a prosecutor highlighted the reasons why an offender should receive a jail sentence. It was the defense attorney's job to highlight the mitigating circumstances. He disagreed with Mr. Kohn concerning the violation of the law as referred to in NRS 176A.100. He said under NRS 176.015, a sentence must be imposed without unreasonable delay. He said it was a reasonable delay for a sentence to occur in more than 45 days. He did not think the statute was enacted to put a 45 day time line on all of the reports. He gave numerous examples of longer sentencing times. He said he did not find any case in Douglas County where sentencing was set out 30 days. He said it was very rare for 45 days. He said 8 to 10 weeks was typical. He added the other issue was the fiscal impact on

the county jail the longer a person was in custody. He said he agreed on protecting and serving the rights of the defendants.

Mr. Curtis said nobody disagreed with Mr. Jackson. Resources were tight in this State. He said at one time 532 people worked for the Division, and currently there were 460 employees. He added caseloads had risen.

Mr. Wright understood there was a problem. He said the Division had probably provided the JFA formula with wrong numbers. He said for years they presented completed cases versus the referral work load they were given. The numbers were skewed and the JFA calculations they received were occasionally off 100 to 200 a month. He said they were working with LCB, the budget office, and direction given to the Division that anybody capable of writing a PSI when on light duty needed to do so. He said they were looking at implementing additional staffing to deal with the problem. He was in favor of support from the Advisory Commission with letters to IFC. He said they were actively pursuing answers.

MR. JACKSON MOVED THE ADVISORY COMMISSION DRAFT A LETTER TO THE IFC SIMILAR TO THE LETTER SENT TO GOVERNOR SANDOVAL REGARDING UNDERSTAFFING AND UNDERFUNDING AND REQUESTING SUPPORT FOR PAROLE AND PROBATION. JUDGE BARKER SECONDED THE MOTION.
Mr. Siegel asked if the motion was specifically referring to PSIs or more general.
Mr. Jackson said the motion was related to the PSIs.
THE MOTION CARRIED.
(Letter to IFC attached as **Appendix B**)

Justice Hardesty asked what the exact allocation of PSI writers was in the North, South, urban and rural areas. Ms. Hager said in Clark County they had 59 percent of the PSI writers. Justice Hardesty said when the request was presented to the IFC for additional funding, it might be important to point out that charging the county 70 percent when only providing 59 percent was awkward. Mr. Curtis said the calculation was based on the cost to Clark County. He said every county in the State was provided with a cost of 70 percent for the PSI service and it was individualized for the 17 counties.

Justice Hardesty said the problem had a rippling effect throughout the rest of the criminal justice system. He said the jails were backed up causing increased costs. There were additional costs to the system in repeated delays and imposition for the victims, or lawyers or other witnesses involved in the case. He was concerned about defendants' constitutional rights to be timely sentenced. He was concerned the problem had reached a stage where a defendant was going to come forward with a lawsuit saying the system was so underfunded it created a constitutional jeopardy to the defendant's right to a timely sentence.

Ms. Hager said she had the analysis to use when they go to IFC to ask for more staff. Justice Hardesty said in an effort to try to deal with the problem, Director Curtis looked at what portions of the PSIs could be removed. He said the District Court judges informed him the less

information the judge had at sentencing, the worse sentence was imposed. Mr. Curtis said they were having great difficulty obtaining dispositions from many of the courts in this and other states. He said in an economic downturn, the people terminated were often the records people in many areas.

Justice Hardesty asked what the recommended national supervision rate of high risk individuals was, and what Parole and Probation's rate of supervision was. Mr. Curtis said the supervision ratios were 45 to 1 or 30 to 1 depending on the intensity of the supervision. He said it was 80 to 1 on a general case load. He said there were 1,048 individuals in the southern command without supervision.

Mr. Callaway commented on the jails. He agreed the constitutional rights of defendants took priority among all else and having an efficient system in place took priority. He said in Clark County tax payer cost was almost one half million dollars a year. He said they had 474 inmates in jail awaiting sentencing at an average cost of $140 a day. He said the money was paid for by tax payers in the community. He said the jails were seeing both a fiscal and over-population impact. It was very important and ranked with the rights of the defendants.

Mr. Cox said they met with the Sheriff and his staff concerning some of the things the NDOC could do. They expanded the OPEN program. They had a discussion about beds at Casa Grande if the jails had to release people. He said they also had beds at the boot camp. They were working on an interlocal agreement about how they allowed the public defenders into the facilities to make it easier for them.

Mr. Digesti said he did not mean to suggest as a Commissioner he was not concerned about the financial impact. The context about the statement was as a defense lawyer when he went to court for purposes of sentencing. He went to court to advocate his client's interests and protect him or her to the best of his ability. He said when he was a sworn officer of the court as a defense lawyer, he did not have any concern for the financial impact on any detention facility. Mr. Kohn said his first concern was for the client and being in jail too long. He said Mr. Jackson pointed out an interesting situation concerning the NDOC. He said if you add one more person to the NDOC, it did not add the same dollar amount. He said Clark County was in a perfect storm and the jail had construction issues. He said the jail had to buy spaces in other community jails to place inmates in Clark County. He said it was incredibly expensive to Clark County.

*Additional Topics for Future Meetings*

Chair Segerblom opened the discussion on potential topics, dates and locations for future meetings. Justice Hardesty wanted the Advisory Commission to focus on the primary missions and goals dealing with the examination of the sentencing structure in the State and its impact on related agencies. He said earlier Advisory Commissions had the benefit of some funding by the Pew Charitable Trusts for a report by Dr. Austin. He urged they re-approach Pew for

assistance in updating the report. He asked for a sentencing review identified in the last report but not acted upon. He asked for permission to ask for funding from Pew.

MR. SIEGEL MOVED TO ACCEPT THE SUBSTANCE OF JUSTICE HARDESTY'S REQUEST TO APPROACH THE PEW CHARITABLE TRUSTS FOR ASSISTANCE IN FUNDING ISSUES WITH THE ADDITION OF SENTENCING AND CLOSELY RELATED ISSUES.
ASSEMBLYMAN FRIERSON SECONDED THE MOTION.
THE MOTION CARRIED. (MR. JACKSON VOTED NO.)
(Letter to technical assistance providers attached as **Appendix C**)

Justice Hardesty indicated that the Advisory Commission was assigned specific statutory duties and he suggested they receive presentations at the next meeting from people in the best position to offer the information. He mentioned a review of the arrestee DNA questions posed by the last session as well as an overview of the language access question. He also mentioned the Attorney General or Mr. Jackson could assist in determining the best presenters on the DNA issue. He said he would reach out to Justice Douglas concerning the language access question.

Mr. Pierrott said the Division had two topics they wanted to discuss this year. They wrote a Bill Draft Request for GPS to better monitor offenders under house arrest. They also wrote another one for changes in lifetime supervision. The changes in lifetime supervision were presented last year to the Advisory Commission, but they wanted further discussion and support from the Advisory Commission members, or a sponsor for their BDRs. He said they could better supervise the offenders with the GPS. Chair Segerblom said his intention was also to have a sex offender subcommittee to review the Adam Walsh issues.

*Public Comment*

The November 6, 2013, meeting closed with public comment from interested members of the public. Ron Cuzze, President, Nevada State Law Enforcement Officers Association, said today's topic concerned Parole and Probation. He said in past years his association "butted heads" with the Advisory Commission and did it quite well. Today, he offered their services to the Advisory Commission or a subcommittee to bring forth what the NDOC and Division cannot do and that was the employees and their problems.

## B. SECOND MEETING

*Opening Remarks*

At the second meeting of the Advisory Commission, held on January 27, 2014, the Advisory Commission received a litany of testimony from outside technical assistance providers. Chair Segerblom indicated that the Advisory Commission was willing to reach out to any outside group willing to help Nevada. The Advisory Commission also heard from a number of presenters related to possible subcommittees that may be appointed during the interim.

*Update on Discussions with Potential Providers of Technical Assistance to the Advisory Commission*

Mr. Anthony began a discussion concerning potential assistance from potential providers to the Advisory Commission. Mr. Anthony said at the last meeting the Advisory Commission voted to have staff contact the Pew Charitable Trusts and other technical assistance providers. He talked to Jake Horowitz at the Pew Charitable Trusts, who had worked with them earlier in 2011 with Dr. Austin. He also contacted Marshall Clement from the Council of State Governments (CSG). Chair Segerblom, Justice Hardesty and Mr. Anthony had a telephone conference with Mr. Clement and he expressed interest in Nevada.

Mr. Clement explained it would require a formal application. He said CSG looks for buy-in from all three branches of government. Mr. Anthony was advised to contact the Governor's legal counsel. He said Mr. Clement was interested in attending the next meeting of the Advisory Commission. He said staff became aware of the State of Oregon and their Commission on Public Safety. Oregon was able to achieve innovative changes in their criminal justice system last session. He said the Pew Trusts helped lobby a reform package that will save over $326 million in the next 10 years. Some of the reforms included reducing or removing mandatory minimums, expanding probation functions and extending transitional housing. He spoke to the Executive Director of the Oregon Commission and learned he would like to attend the next meeting. Mr. Anthony also contacted the Vera Institute. It was a nonprofit, nonpartisan group from New York City. He said they were also a technical assistance provider helping states look at best practices.

*Presentation by the Vera Institute of Justice on Improvements to Public Safety*

Ms. Nancy Fishman and Ms. Alison Shames opened their presentation by stating that they represented the Vera Institute of Justice. Ms. Fishman said Vera was an independent, nonpartisan, non-profit organization. Vera focused on making systems more effective through research and innovation. Vera was based in New York City and had been in business for over 50 years. She said Vera combined expertise in research and technical assistance to help improve systems in government. Vera worked on issues around juvenile justice, immigration, cost benefit analysis, victimization, substance use, mental health and racial justice. She said there had been a lot of focus on comprehensive criminal justice reform. She said at least 17 states had taken major reform efforts. Changes were occurring due to major budget pressures on state and local government. She said the availability of better information allowed states to consider reforms in justice reinvestment efforts.

Ms. Shames opened her discussion on the policy trends throughout the country. She said states were spending more on corrections and sending more people to prison. She said the justice reinvestment initiative and general criminal justice reform states start with an analysis of their criminal justice system. She said each state had to look within their own system for solutions. She said Vera looked at the individual state's drivers to develop policies. She said when states shift their practices they send more people to community supervision. The traditional goals

were being refined to one that sought to change the offender's behavior. They said agencies were focusing resources on high-risk offenders. She said Nevada had a long history of problem solving courts. Ms. Shames said Nevada was a model for other states in some areas, especially the earned discharge credits.

Ms. Shames said many states were using a system called Performance Incentive Funding. She said in the past probation or parole agencies neither benefited nor suffered if they sent fewer or more people to prison. Performance Incentive Funding made community supervision agencies have an incentive to work with their offenders and have them successfully complete their term of supervision because the agency will receive additional or more funding if they send fewer offenders back to prison. She said passing legislation was an essential step in the process of criminal justice reform, but many other factors determined the success of the reform. She said everyone from the system had to participate in the reform. Patience and realistic expectations were necessary as change did not occur quickly.

Justice Hardesty asked if they could tell the Advisory Commission how they engage with states and provide support for the research and reforms to the specific state. Ms. Shames said one way was through the justice reinvestment which was a more formal application through the Justice Department. It was a federally funded initiative. She said Vera was also hired directly to work with states on the analysis and policy development and implementation. She said they also received funding from private foundations. Ms. Fishman added in the context of justice reinvestment, Vera focused on the Phase 2 part which occurred after the legislation was passed to develop an implementation plan providing technical assistance.

Mr. Jackson said he appreciated them pointing out what worked in one state may not work in Nevada and numbers should drive the State's reaction. He said there were presentations in the past about certain numbers dealing with sentencing and successes and failures. He said Nevada typically led the nation as number one in crime and in violent crime. He said Vera worked in Arizona and had three programs there. He asked if they were familiar with the 515 page study performed by Dr. Darrel Fischer. He said it was the most comprehensive study he had ever seen.

Mr. Jackson asked if she agreed with him that when you looked at the commitment rate, it was very important to understand the rate can be divided into at least four categories. He mentioned felons sentenced directly to prison by a judge, those who failed on probation, those parolees returned for committing a new crime, and those parolees returned to prison for violating the terms of their parole. Ms. Fishman said those were some of the categories. She added probationers who committed a new crime. She said that was where some of the state variations occurred. Each state had a different set of "drivers" that were responsible for the states particular commitment rate. Mr. Jackson said in a state like Nevada, a leader in crime, it was important to determine if the majority of individuals sentenced were in on violent offenses or were repeat offenders. Ms. Fishman and Ms. Shames agreed with Mr. Jackson.

Mr. Frierson said what Vera did was data driven and not easy to do in a short presentation. He said in criminal justice there was a lot of emotion and passion. He asked what efforts or experience they had in getting stakeholders to buy-in from the beginning. He also said performance funding and contracting was essentially not a mundane concept if communities were able to use the money in other ways that furthered their causes. He asked for examples from other states of increased funding for more officers on the street.

Ms. Shames said stakeholder buy-in was important for success in the state. She said outreach was important from the beginning. She said involving everyone was necessary. Ms. Fishman said the other aspect about stakeholders was bottom to top, including everybody. Ms. Shames said performance based funding was a mixture of things. She said Vera did a report on the topic several years ago. She said it was about sharing in the cost savings. She said in California probation was done on a county level. A performance based mandate required that if a county sent fewer people to prison, they received back from the state a certain amount of money per offender that they did not send back to prison. She said the incentive was dollars and the dollars could be used for different things.

Ms. Hibbler thanked them for the report. She said reentry programs had to be included in reports. She said the reentry programs needed to begin while they were incarcerated. Ms. Shames said a number of states were mandating departments of corrections begin reentry planning before release from prison.

Mr. Pierrott said one of the recommendations was to reduce the population in the prisons. He said Parole and Probation was concerned about the time line and the recommendation to hire new officers to supervise the people released to the communities. He asked about support for funding for additional officers. Ms. Shames said the results were mixed, some states made sure the funding was increased. She said in other places funding was not increased.

Justice Hardesty said if probation was already underfunded and over worked, reforms initiated would fail without appropriate ways for adequate funding and support services. He asked how many states had reformed into supervising probation through the courts or altered the structure of supervising probation. Ms. Shames said most states did not have probation within the courts. She said that created a different framework. She said the movement was away from judiciary and towards corrections. She said states had different structures. She said if a risk and needs assessment was done but not passed on to the department of corrections, there was inconsistent treatment practices.

*Presentation on Issues Related to the Subcommittee on Medical Marijuana (Senate Bill No. 374)*

Marla McDade Williams appeared on behalf of the medical marijuana program administered by the Division of Public and Behavioral Health. Ms. McDade Williams said her role was to facilitate the development and adoption of the regulations. Ms. McDade Williams said they began the formal process for comments in October. She said in December they held a public

workshop. She said they were waiting for revised regulations from LCB. She said they will follow the law and post a 30 day notice for adoption. At the meeting of the State Board of Health if they adopt the regulations, they will have met their requirement to have the regulations adopted by April 1, 2014. She said regulations were one part and they were also developing an operational program to go along with regulations. She said they had proposed hire dates of March, 2014, if things stayed on track. She said Section 25 was the key for application solicitation. They anticipated it will be a ranked system. The intent was to forward only the top ranked applicants up to the number of dispensaries allowed in a jurisdiction. She said there was no limit to other facilities types, only the dispensaries.

Chair Segerblom asked about forwarding the rank list. He asked if it would be in order from the top on down or just forward the top 10 names. Ms. McDade Williams said, for example, if Clark County had 10 they would give the top 10 to the County to go through their process. Number 11 would not go to Clark County. Other application requirements were specified in Sections 26, 26.5 and 27 of the revised draft regulations. The county authority for dispensaries was listed in NRS 453A.326. She said the board of county commissioners may increase the percentage of the number of dispensaries to ensure individuals have access to sufficient distribution of marijuana for medical use.

Chair Segerblom asked when the county can make the decision to add the number of dispensaries. He said it was better for the counties to move quickly. Ms. McDade Williams said it was better for the local jurisdictions to declare relatively soon in the process. She said it was the counties choice of when they took the action. She said the establishment needed to be operational within 18 months. She said they took a lot of negative comments about the cost.

Chair Segerblom said when they submitted the applications they would have a letter stating the location was approved by the local government. Ms. McDade Williams said they can, but the reality was some local governments said they would never do that. She said they made the decision that every applicant who came forward understood whether or not they had a realistic chance of being licensed in the location they chose. She said Nevada residency was also an issue between those who wanted. She said they were advised not to declare the other numbers of establishments, cultivation, the production facilities, and the labs. She said the law said certificates could not be transferred. She said they did not know how it related to ownership issues. The issue of separate buildings was also discussed. She said they agreed they could share a wall with another building, but had to be able to demonstrate they were a separate operation.

Mr. Callaway asked about a business sharing a wall. He asked if there were increased security measures in the regulation to address the question. He said they had a lot of break-ins where someone came through the wall of the business next door. He also asked about the county taking in more of the business if the cities do not use their allotted licenses. He asked if it could result in all the establishments being in one geographical location. He wondered how that helped the patients who needed access to the dispensary. Ms. McDade Williams said the

applicant of a shared wall was expected to demonstrate how they met security requirements. The questions concerning all of them being in the same location could happen.

Ms. McDade Williams said another issue was the agent card. She said there were a lot of requests for people working in a marijuana establishment to get one card, make one application and use it at any other establishment. She said they decided to require a separate fee and have a registration for each business where they worked. She said confidentiality was also an issue. Statutes did not call out what was or was not confidential information. The regulations had specific confidentiality provisions for security plans. She requested clarity on the issue. Appeal rights were not clear at this time. She said as a privileged license she asked what rights they had to appeal adverse decisions from her agency.

Chair Segerblom asked if the county did not like some of the candidates submitted would they receive another set of names. Ms. McDade Williams replied they would submit more names.

Dagney Stapleton, NACO, appeared with an update from all 17 counties on meeting the provisions of SB 374. Jacqueline Holloway, Director, Clark County Business License, said the Board of County Commissioners gave them the opportunity to proceed and continue to work with the State, the key stakeholders, Metro, and law enforcement developing a licensing and land use framework. She said they were now working on the land use component. She said Ms. Nancy Lipski, Director of Comprehensive Planning, would speak to the plan which would lay out the land use foundation. Ms. Holloway would conduct workshops related to the business licensing components. The operating components will consist of adopting the state regulations and definitions. The Board of County Commissioners was considering who was to have input into the selection process. Because it was a privileged license, they would handle the framework similar to liquor and gaming licenses. Chair Segerblom asked if they would use names submitted by the state. Ms. Holloway replied yes.

Ms. Lipski, Clark County Director of Comprehensive Planning, said they had an agenda item with the Board of County Commissioners to discuss the direction concerning medical marijuana dispensaries, cultivation and testing labs. The main question was additional separations the Board may want to add to the requirements. She said the discussion will focus on whether it was a special use permit or to meet certain requirements. She said she did not know what direction they would take at this time.

Chair Segerblom said with respect to the issue of the county having jurisdiction over other entities if they do not want the marijuana dispensaries, were they ready to make a recommendation to the Advisory Commission concerning how soon they wanted to consider reallocating the permits. Ms. Lipski said it was part of the discussion with the Board of County Commissioners. Ms. Holloway said one Commissioner expressed an interest in sending a formal letter to the other jurisdictions concerning the licenses.

Bob Webb, Washoe County Community Services Department, said the County Commissioners established a working group in the summer of 2013 of staff members across the County to

work on regulations and policies. The County Commission adopted a resolution on November 12, 2013. The resolution directed staff not to accept any applications or documents for medical marijuana establishments until the County Commission adopts regulations, resolutions, policies and procedures to regulate medical marijuana in the unincorporated county. The resolution also directed staff to develop regulations and policies to address the licensing no later than June. He said establishments in the unincorporated county intended to handle the licensing through their licensing ordinance. It allowed regulation of controls for multiple items. He said current zoning regulations did not fit with the current establishments as defined in state law. They would modify their zoning regulations to create four new-use types which were the four marijuana establishments. He said they looked at legal criminal codes and minor changes were proposed for marijuana possession and transportation based on state law 453A. He said the county was not proposing any new health board regulations. They were evaluating licensing fees for medical marijuana establishments based on current limits within state law for business license revenue as a whole.

Chair Segerblom asked about the 25 percent limit in any jurisdiction and indicated that Washoe only had 3 jurisdictions. He said there was going to be a surplus of licenses and asked if they thought about reallocating and the process they would undertake. Mr. Webb said there were 7 government jurisdictions in Washoe County. Legal counsel looked at NRS 453A.326. He said the Division was going to allocate the original dispensary allocations to no more than 25 percent of the total medical marijuana dispensaries. The county commissioners may increase the percentage if it determined it was necessary to ensure the most populace areas of the county had sufficient distribution of medical marijuana use.

Dagney Stapleton complimented Ms. McDade Williams on her efforts to reach out to local governments on developing the regulation and application process. She said Carson City passed a 180-day moratorium. Churchill County had a discussion at the planning commission and staff was directed to research options including a special use permit to regulate location. Douglas County planned an item on the County Commissioners agenda on February 6, 2014. Lyon County passed an ordinance that included a prohibition on medical marijuana establishments. She said Nye County had a proposed ordinance scheduled for February 18, 2014. Pershing County had a one-year moratorium on the establishments. Storey County passed an ordinance in December, 2012, as part of an amendment to their comprehensive zoning ordinance. The balance of the counties including Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Mineral, and White Pine were reviewing the issue. NACO recommended all the counties adopt an ordinance by early summer.

Cadence Matijevich, City of Reno, provided a packet of information to the Advisory Commission. She said the City of Reno passed a resolution placing a stay on the acceptance of land use and business license applications related to medical marijuana establishments. They did not place a definitive time line on the stay. She clarified the stay was not intended to be indicative of a policy position on the part of the Council as to whether they were or were not leaning toward a policy decision concerning the establishments inside the City of Reno. They wanted time to study and review the applications. The regulations were finalized approximately

two weeks ago. She said they were still receiving guidance on issues. She thought the process would be similar to Clark and Washoe Counties.

Senator Brower stated for the record his concerns that the current system is not going to work. He mentioned the federal prohibition still hanging out there. Senator Brower stated that there may be a problem created by the Legislature that puts the cities and counties and their respective district attorneys and city attorneys in a very difficult spot. He commended Ms. McDade Williams on her current efforts and encouraged those involved to come back to the Legislature with any recommended changes.

Mr. Siegel asked if the current state law allowed the county to opt-out of the kind of action being discussed. Chair Segerblom said the county could opt-out for its jurisdiction but it cannot opt-out for cities within their jurisdiction. The individual cities have to choose to opt-out. Every local government entity has a right to opt-out. Chair Segerblom thanked everyone for their participation.

*Presentation on Sentence Credits for Persons Convicted of Certain Category B Felonies and Review of the Governor's Veto on Assembly Bill No. 136 (2011)*

Wendy Naro Ware, Vice President, JFA Institute, stated that JFA has done the correctional population forecast, measured all legislative impacts, and completed various other correctional research projects for Nevada since 1994. She gave an overview of the sentence credits legislation passed in Nevada. She said AB 510 increased sentence credits for C, D, and E felonies that did not include violence, or sexual offense, or DUI that caused death. The credits were applied to the minimum sentence. The credits helped reduce the minimum sentence making parole eligibility occur faster. It also increased good time credit for education, vocation training and substance abuse programs. She referenced the graphs in her presentation. She said they under projected the results of AB 510.

Chair Segerblom asked if it represented the bed population for people covered by AB 510. Ms. Ware said their cycle of forecast was next due April 4, 2014. They had a contract through the Budget Office to produce the statistics. She said the 2013 statistics would be available in a couple of months. She said from 2002 to 2007 there was a very rapid increase in the number of offenders in Nevada.

Ms. Ware said AB 136 would have extended the credits to B felons with the exception of violent crimes, sexual assault, and history of DUI. The bill was passed, but vetoed in 2011.
Mr. Jackson asked about extending credits to certain B felon offenders with the exception of repeat offenders and offenders guilty of violent crimes or sexual assault. He said the actual bill only applied to the repeat offenders who had served three or more separate prison terms for three or more felony convictions in Nevada, or five or more separate prison terms for five or more separate felony convictions in any jurisdiction. Mr. Kohn asked how many people would have been affected by AB 136 if it had passed. Ms. Ware answered about 48 percent.

Mr. Frierson said a distinction was made about the kind of B felonies included. The original bill included all B felonies. It became a more watered down bill. Ms. Ware said AB 510 was also proposed to include B felons, but was reduced down. She said about 55 percent of all admissions were B felons. Because of the changes it is now about 65 percent.

Mr. Kohn asked what the percentage of the new admitters were both A and B felons. Ms. Ware replied A felons were about 7 percent of the numbers admitted. She said about 73 percent in total were A and B felons. She said it was admissions and the time calculation that factored into the prison population. She said the make-up of the prison population was changing with more B felons. Ms. Ware said Nevada was one of the most successful states in legislation it had already passed. She said it was important to track what had already been passed and determine the successes and failures before going forward with more legislation. Nevada was very successful with AB 510.

Mr. Callaway asked if there were plans in the future studies to get further down as far as what some of the category B felons were charged with originally and what their cases plea bargained down to in the current category B felony. Ms. Ware said no, unless they were specifically requested to do so. It was not part of their forecasting work.

Mr. Jackson had several comments. He said he was critical of the information provided to the Advisory Commission from the JFA Institute when Dr. Austin testified on April 17, 2012. He said the slides shown today were the same as shown two years ago with some additional information from 2012 and 2013. He had asked several questions in 2012. He said statistics needed to be good numbers to drive good decisions on behalf of the state. He also mentioned that Brett Kandt had sent a letter to Dr. Austin on April 19, 2012. There were nine specific categories addressed and many questions associated with the categories. He said a key figure used by the Bureau of Justice Statistics to provide macro rankings was how incarceration policies compared to other states. He said they had specific questions requiring answers. He said parole and probation recidivism rates were important as was documenting who was in prison by category. There was some antidotal stories provided by Dr. Austin about first time drug offenders going to prison and he was unaware of even one such case of a first time possession drug offender going to prison. He said determining the actual length of prison stays, broken down for violent and a nonviolent prisoner was requested. He said in order for the Advisory Commission to drill down and address the questions he raised they needed the full story. He said statistics provided by JFA to the Legislature can control how monies were budgeted and appropriated. He said the Advisory Commission supported the Division of Parole and Probation and drafted a letter to the Governor requesting additional funds for the Division. He said the unfortunately during the last legislative session, numbers provided by the JFA resulted in a reduction of personnel for the Division. He asked Ms. Ware when the Advisory Commission would receive answers from Dr. Austin and the JFA Institute to the questions from 2012. Ms. Ware replied she would check with Dr. Austin to see where the request was. They were contracted by the State Budget Office to complete a simulation model and a forecast. She said the drill down information was not part of their normal contract work.

Mr. Siegel asked Ms. Ware to address the idea of how they were interpreting the B felony issue in Nevada. He asked if there was anything unusual in the scope of B felonies, including how the state put something in statute. Ms. Ware said they took the B felony categorization as it was given to them. She said some categories were a bit broad in Nevada, there was a lot variation in it.

Justice Hardesty indicated that Ms. Ware said there was data available to provide better or improved forecasts for the Division, but it did not fit within their standard forecasting process. Ms. Ware replied she was referring to a drill-down analysis of B felons, their original charges and the list of things requested from the B felon correction statistics.

Justice Hardesty asked if JFA had the data available that was requested by Mr. Kandt. Ms. Ware said she had some of it, but not all of it. Things like underlying charges were another data source. Justice Hardesty said that was something they could provide the Advisory Commission from existing data. Ms. Ware said it would be a separate request from the Department of Corrections, but it was something they could obtain.

Justice Hardesty said there were a lot of questions surrounding the issue. He said since the population was increasing, the percentage of the prison occupancy needed to be a priority. He said areas of data needed identification, including a careful examination of each of the crimes in the category B felony area and assess whether crimes should be a category B felony. He said it was a policy decision. He said such decisions were often made as a result of staff's comparison with another state without deliberation by the legislators. He said a reassessment of the sentencing lengths and mandatory sentencing of crime was necessary. He hoped the Advisory Commission endorsed a broader study of the data. He said that was his motion:

COMMISSION TO UNDERTAKE THE EVALUATION OF CATEGORY B FELONIES, COLLECT APPROPRIATE DATA AND TENDER QUESTIONS TO JFA, THE NEVADA DEPARTMENT OF CORRECTIONS, AND TO THE COURTS SO THEY GET A GOOD UNDERSTANDING OF POLICY ISSUES OF THIS AREA OF OFFENSE.
MR. FRIERSON SECONDED THE MOTION.
THE MOTION CARRIED

*Presentation by the Division of Parole and Probation regarding the Presentence Investigation Report Process*

Bernard Curtis, Chief, Division of Parole and Probation, said he was to discuss presentence investigative reports (PSIs), from the concern about the southern command. The Division implemented various decisions concerning in-custody cases. He said they would not be continued or calendared for more than 30 days out. He said they offered overtime and comp time to staff. Chief Curtis outlined the other efforts to reduce the PSI backlog. He requested a letter from the Advisory Commission to Interim Finance to continue the 21 temporary

positions to reduce PSI backlog. Chief Curtis said as of January 7, 2014, they had a backlog of 1,246 PSIs in the Southern Command. There was no backlog in the Northern Command.

Mr. Kohn asked Chief Curtis how they could help make the positions permanent. Robin Hager said the positions were described as temporary because it was not in the Legislature. She hoped to continue at least 10 or more of the positions permanently. She said this work program got them through until July 1, 2014. They will go back to IFC in June and request continuation through the next fiscal year.

Chief Curtis said it was a transfer from 5 sworn positions and the counties were helping also. Mr. Kohn said he agreed they needed to have increased availability of community based treatment. He said without the Division getting the officers to do that, it was not going to happen. The Advisory Commission needed to work to be sure the Division had the proper resources. He said they needed more officers so the Division can do their job. Chief Curtis said he had a full complement of new officers in the academy. He said recruitment was on-going. The Department of Public Safety implemented one additional academy per year.

Mr. Jackson concurred with Mr. Kohn. He made a motion to that effect.

MOTION FOR THE CHAIR TO WRITE A LETTER TO THE INTERIM FINANCE COMMITTEE STATING THE ADVISORY COMMISSION WAS IN SUPPORT OF THE FUNDING REQUEST.
MR. SIEGEL SECONDED THE MOTION.
THE MOTION CARRIED.
(See letter attached as **Appendix B**)

*Presentation Concerning Language Access in the Courts (Assembly Bill No. 365)*

Justice Michael Douglas said he was speaking to justice as it pertained to limited English proficiency. He said it meant translation of language access to justice due process. The State had a long history of providing that in the context of the criminal application. He said the State was not doing that in the area of civil litigation, and administrative hearings for other areas of state government. He said he wrote a letter concerning the "so-called" Perez letter from US Assistant Attorney General Perez. The letter informed them that according to Title VI they had an obligation to provide interpreter services in all areas where someone has rights at issue; both civil and criminal contexts. He said they were asking for interpreter services without remuneration. He said the issue was discussed in multiple areas. He said under the mandate the State would have to provide the interpreter services without remuneration. The Court said if people could pay for the service, they could reimburse the court afterwards.

Justice Douglas indicated this issue affected areas outside the court, such as unemployment, welfare, driver's license, any place where a right was at issue. The courts were affected in small claims court, and foreclosure mediation issues. He said Washoe and Clark were doing an admirable job providing the service. It was more difficult in the rural areas. He said remote

interpreter stations were being developed. He said the issues with juveniles included the parents being present at the court and that often the parents did not speak English.

The court's major concerns were in the area of civil litigation. Justice Douglas said the courts may be responsible for training for the language interpretation. He said his aim was to make the Advisory Commission aware of the concern and the need to address it. The DOJ had interacted with about seven states in obtaining voluntary consent decrees for their failure to have a language access plan. He said we had a fledgling plan for the courts and were revising the plan as they received additional assets. He hoped they would not have an instance where the DOJ comes into the state based upon a complaint and orders compliance.

Chair Segerblom asked Justice Douglas if he was in a position to draft proposed legislation the Advisory Commission could support. Justice Douglas said yes, and there were two separate issues. He said the court was concerned with access to justice for civil litigants as well as improving the delivery service for criminal litigants. He said last session they asked interpreters how they were certified and dealt with some of the financial issues.

*Presentation on Issues Related to the Subcommittee to Review Arrestee DNA (Senate Bill No. 243)*

Stephen Gresko, Nevada State CODIS Administrator, presented information on the arrestee law and its impact on the laboratories. He said the discussion was about CODIS, which stood for the Combined DNA Index System, a computer system established by the FBI, to compare DNA profiles. He said the DNA profiles generally come from three classes of offenders, convicted persons, arrested persons, and sex offenders required to register. He said CODIS started at the local level. LDIS was the local DNA Index System, and they uploaded the profiles to one central state site, and once a week it was all uploaded to the national system. Mr. Gresko said Nevada could collect from arrestees, NRS 176.09123; persons convicted of felonies, NRS 176.0913; and sex offender registration, NRS 179D. 443. He said they collected the sample and gave it a specimen ID and there was no personal identification entered. CODIS was nameless. He said he used a system called STaCS to track the information.

Mr. Gresko continued his presentation, and said the collection process was simple and easy to use. He said the offender and crime scene DNA profiles were developed by the laboratories. He said all offender hits had to be confirmed. The production costs are expensive. He said the DNA process uploaded in CODIS cost approximately $40 to $50 per sample. The total cost was approximately $75. He said they were going to have to pay to re-work STaCs, hire additional office support, hire criminalists, redesign and bulk order it and set up training for collection sites.

Mr. Gresko said expungements had always been performed. He said they were required by federal law to expunge profiles that did not qualify for inclusion in CODIS. He said the DNA profile was deleted from CODIS; the biographical record was deleted from STaCS, and the collection kit was destroyed.

Mr. Callaway asked Mr. Gresko about the level of funding collected from the assessment fees. He said there was discussion of a disparity of revenue generated in the North compared to revenue generated in the South. Mr. Gresko said the collection started on July 1, 2013, and they had collected $70,000. Justice Hardesty asked if they were collecting DNA samples since July 1, 2013. Mr. Gresko said they were not collecting DNA until July 1, 2014.

Mr. Callaway said it was important to note revenue collected several months ago was less revenue than Washoe County. He said they did 70 percent of the DNA work in the State. He said the Adam Walsh Act was scheduled to go into effect and they may have to hire six to eight lab people to keep up with the volume. He said the revenue issue was important as they moved forward.

*Presentation on the Supreme Court's Juvenile Justice Reform Commission*

Stephanie Heying, Administrative Office of the Courts, said she staffed the Commission on Statewide Juvenile Justice Reform. She said the Commission was formed in 2011 and co-chaired by Justice Hardesty and Justice Saitta. She said the Commission was made up of various stakeholders. She said they began to develop juvenile justice reforms. During the 2013 Legislature several bills were introduced, including SB 31, SB 106 and SB 108. Several Subcommittees were formed. She reviewed what the Commission hoped to do in the near future. She said the Subcommittee will bring their findings to the full Advisory Commission.

## C. THIRD MEETING

During the third meeting of the Advisory Commission, held on March 5, 2014, the Advisory Commission considered five major topics and appointed the Subcommittee on Victims of Crime.

*Presentation on the Justice Reinvestment Initiative Process*

Justice Hardesty said there was approval in the previous meeting to include the Governor as part of each branch of government's request to seek participation from the Justice Reinvestment on a variety of topics. He said he and the Chair met with the Governor on February 19, 2014, and the Governor was receptive to the request. He had reviewed all the material provided in advance of the meeting, and the Governor was interested in what occurred in other states. He said they were in the process of developing a letter making the request.

Chair Segerblom said it was impressive that everyone was committed to making the process work. He asked Mr. Anthony if he had further comment. Mr. Anthony said staff had followed up with the Governor's staff and provided information from several states. He said there was a possible time line of mid-March for a letter from the three branches of government to the Council of State Governments.

Chair Segerblom called on Mr. Clement for his presentation on the Justice Reinvestment Initiative Process. Mr. Marshall Clement, Director, Council of State Government Justice Center, gave testimony via video communication from Seattle. He provided two handouts for the Advisory Commission. The first was an overview of their efforts in other states as well as the justice reinvestment approach. The second exhibit was a report from 2007 when Nevada went through justice reinvestment and used the approach in 2006 and 2007 to look at the drivers of a fast growing prison population. He said 18 states used a justice reinvestment approach. He said in April, 2007, a report was published concerning justice reinvestment in Nevada to increase savings. He referred to AB 510. Mr. Clement referred to Texas and North Carolina's post-justice reinvestment programs. He said supervision had a huge impact or none at all, depending on use of key principles.

*Presentation on Public Safety Reforms in Oregon*

Mr. Craig Prins, Oregon Criminal Justice Commission, appeared and presented before the Advisory Commission. He said he had worked for the Oregon legislature for the Judiciary Committee and as a prosecutor in Portland. He said Oregon recently passed a bill, House Bill 3194 (HB 3194), as a justice reinvestment bill. Chair Segerblom asked if the bill said savings obtained from one end were reinvested in another end.

Mr. Prins said you could not bind a future legislature, but in the bill they tried to make it clear that the purpose of the savings would be put into local public safety systems. He outlined how the process worked in Oregon. He said they changed their marijuana offenses and that transition leave was very important. He said Oregon had a big divide between the rural areas and the four populated areas around Portland and Salem. He referred to the justice reinvestment account which started with 15 million dollars. He said it was an outcome based grant process. One of the best parts of the bill was the Oregon Center for Policing Excellence. He said it was assumed that it would work and they could reduce the operational prison budget for 2013-2015. He outlined the areas where the funding was placed. The last slide of the presentation showed the projected savings in prison costs. He said the project was a lot of work and he was glad they did it.

Justice Hardesty asked about the initial funding allocations to help support the program. The slide showed $9 million for drug courts. He asked if there was a special allocation of money for mental health courts or mental health support. Mr. Prins replied that it could be called specialty court inclusive of mental health courts and they will get the funding. The stimulus package from the federal government in 2009 was used to build up their drug courts. He said most of the $9 million in funding would go to an addiction treatment, sanction, and supervision. He said dual diagnosis goes together with addiction and mental health.

Justice Hardesty asked about victim services. He asked if calculations were made by the stakeholders as to additional resource needs in order to make the program work. Mr. Prins said there was a needs assessment done by Portland State. He said Oregon's Attorney General and the Director of Corrections were women who dedicated their lives to public safety. They

did a listening tour in the counties to learn what was needed. He said the recession hurt the community based victim services. The legislature wanted to buy back some of the lost services. He said part of the bill said future savings at 10 percent needed to go into community based victims services.

Justice Hardesty said a critical component was the early release on a transitional housing basis from prison. He said Nevada had long discussions about problems dealing with transition from prison. He asked if programs were in place for transition programs. Mr. Prins said in the bill the transition housing was the largest part of the bed savings. Oregon had a statute that said the NDOC could approve an individual offender to do the last 30 days in the community. He said the NDOC did not use the statute and the inmate would have to ask about it. The bill made the NDOC responsible for the transition programs.

Mr. Callaway asked about sentencing changes. He asked about the rationale behind the identity theft portion of the bill. He said it was a crime often associated with other crimes that go across state borders and it has a long lasting impact on the victims. Mr. Prins said part of the decision was what drove the prison use. He said among property crimes, identity theft was not a violent crime. They looked at identity theft and the time was 24 months per count. He said during the recession the legislature suspended the time and returned it to 18 months per count. He said they did away with the sunset that would have returned it to 24 months and left it at 18 months. They did not see a prison savings at this time.

Chair Segerblom asked Mr. Clement when the Advisory Commission needed to talk to him and what the time frame was for the work. He asked how long and if a draft could be ready for the next session of the Legislature in February. Mr. Clement said they were working with Pew to determine the best place to put their resources in terms of technical assistance. He said several other states were requesting assistance. A letter needed to be submitted before the April meeting for possible assistance in February. He said the process took at least 9 months to gather the data and a letter was needed to trigger the process.

Justice Hardesty asked if the Advisory Commission should undertake a lot the of groundwork to get things started and involve stakeholders while the process was pending. He said they did not need to wait for several months to start the process. Mr. Clement said a lot can be done in advance. He said a clear sense of where the data was in the system was important.

Mr. Jackson asked Mr. Clement about a report from his agency titled "Increasing Public Safety and Generating Savings: Options for Nevada Policy Makers." Mr. Clement said it was a report he worked with on the Advisory Commission in 2007. Mr. Jackson said on pages 8 and 9 there were recommendations based upon the report and if implemented had the potential to avert some of the growth in the prison population. He asked if the recommendations from the Justice Center were based on the information at the time as well as the last 5 to 6 years. Mr. Clement said it represented consensus and discussion reached in 2007. He said whether they still made sense or had been implemented in Nevada he did not know as he had not reviewed the data in the last 7 years.

Mr. Frierson asked Mr. Clement about the studies done in multiple states concerning some areas being consistent that could be used in Nevada. Mr. Clement said a common theme in many states was the continued need to bring research into practice and administrative policy. He said the work was complex, difficult and important.

Justice Hardesty asked about their evaluations of other states. He asked if they were involved in the risk assessment instruments the states were using. Mr. Clement said yes they had been involved and it was a critical component. He said they did not choose one assessment tool over the other, there were a lot of goods tools. Chair Segerblom thanked Mr. Clement and said they would issue a letter as fast as possible.

Mr. Siegel asked about the resources Director Cox had to respond to the Advisory Commission's request for data. He said Mr. Cox had said he had inadequate resources to respond to the Advisory Commission's needs for data. He said they also had to deal with the agencies trying to provide the information. He suggested putting an item on the Agenda for additional resources to provide the data. Mr. Cox said they had contacted the Department of Justice's Office of Justice Program (OJP). He said it was a diagnostic center. He met with Steve Rickman concerning gathering data about felons in the system. They were going to meet with another group to discuss how to gather the data. He said they had a limited amount of resources and in some cases were unable to gather the information. Mr. Siegel said his conversation with Mr. Cox was very cordial and constructive. He said they cannot be as successful as they want to be if they do not get resources to NDOC and the Division so they can fulfill their side of the data collection and analysis.

Chair Segerblom said the NDOC had limited resources, but they also had people willing to do whatever they could to get the money. He said they were usually underfunded and overworked. Mr. Cox said he hoped to drill down and answer a number of questions from members. The Department of Justice and OJP could help them drill down at no cost to the State or taxpayers.

Mr. Jackson commented on sentencing changes. He understood there were issues in Oregon about persons sent to prison for marijuana offenses or felony driving while suspended. He asked Mr. Prins if that was correct. Mr. Jackson was unaware of a single person in Nevada in prison for a marijuana offense or driving while suspended. He asked about a critical component being an early release from prison and transitional housing. He said there was a two to three year supervision in Oregon for inmates released on parole. Mr. Prins said they had a sentencing guideline where the duration of post-prison is set by the severity of the crime.

Mr. Jackson said Nevada had five levels of felonies. In 2007, AB 510 was enacted which provided for good time credits applied to the front end as well as the back end of C and D type felonies. AB 510 provided a reduction in the number of inmates in prison. He said if the purpose of AB 510 was to provide for safer communities and reform and reduce recidivism then in his opinion AB 510 failed. He said the issue was that the people who earned the good

times credits were on parole for about three months. He asked Mr. Prins if he thought it was a good practice to have early releases and people on parole for approximately 90 days.

Mr. Prins said he did not know Nevada's system, but he saw a problem. If the state did not have a supervision system for those coming out of prison it would not make sense. He said this was why each state had to assess its own system. Oregon released about 4,000 inmates a year. The state paid for their supervision for two to three years. They had a sanctioning grid and they mainly went to jail, not back to prison. He encouraged Nevada look at all the areas and what drives the system. He said they had polled citizens and asked them what they would or would not support.

Ms. Cortez Masto asked about the $15 million set aside by the Governor in the Oregon Legislature for the Justice Reinvestment Account. She asked how they arrived at the number and if there was a needs assessment done of the counties to help determine the number. Mr. Prins said the number was arrived at through hard lobbying. The needs assessment was for the victim services which were another $7 million. The justice reinvestment was part of the mix of the legislature.

Ms. Cortez Masto asked which was more difficult; selling the policy behind justice reinvestment or getting the dollar amount needed to support the funding for the reinvestment account and victims services, the jails and others. Mr. Prins replied it was a difficult conversation. He said the hard part was quantifying what they could expect in dollar amounts if it worked and what it would mean. He said trust in the budget people at the ODOC and the Legislature was important. Oregon did not have union problems because they were talking about "not growing" rather than talking about laying-off correctional officers.

Justice Hardesty asked Mr. Prins about the new definition for recidivism. He said he assumed the definition was part of HB 3194. He asked what sources were consulted for the definition and stated they needed to agree on the measuring stick for success. He said Nevada had not come to an agreement about what recidivism was. Mr. Prins said it was important, but that section was the one causing the most discussion. He said the argument was a place for people to disagree and not do anything. He said everyone looked at the definition for different things. The ODOC said it was one of their performance measures for the percentage of people on probation that were convicted of a felony within three years. That was a traditional measure. He said there was lot of discussion. Their source was the Bureau of Justice Statistics from 1994. He said the language on the bill had created a lot of argument about whether they went too far. They counted recidivism as any arrest whatsoever.

Mr. Frierson asked about the Academy for Law Enforcement. He asked if Oregon created an academy specifically related to the issues of reinvestment. Mr. Prins replied that it was the existing academy. He said during the recession they lost a lot of their leadership training. They wanted to buy-back their leadership and core courses and make sure they were training the leaders to look at evidence and data on how they do policing. He said all Oregon candidates go to one academy.

Mr. Frierson asked if the leadership development was created legislatively and then cut legislatively. Did the bill legislatively mandate it? Mr. Prins said the Legislature did not want to cut it, but it was administratively cut. He said in buying it back the Legislature wanted to make sure they were training on these principles. Mr. Pierrott said Parole and Probation were concerned about the finances and how the Division would be funded for the changes. Were the changes implemented through phases where the Division did the hiring and the training? Mr. Prins said the budget got set and they worked with the Division to put the budget together. The counties had handled training people, but they had to lay-off some people especially in the rural counties. He said they built a budget that brought them back to where they were before the recession. He said it was an ongoing process with a two year budget in place.

Mr. Pierrott asked about who supervised the people in transitional housing when they were in the community. Mr. Prins said the county supervised them. He said if they failed they went back to prison. Mr. Pierrott asked if it was a zero tolerance program. He said Nevada had a zero tolerance program that was very effective. Mr. Prins said they did not call it a zero tolerance program, but it was a very stringent program.

Finally, Justice Hardesty asked about risk assessment instruments. He asked if it was part of the bill. Mr. Prins replied there was a lot of discussion of risk assessment. Risk assessment was the biggest item for the court rooms. He said they had a risk assessment tool they designed and used in supervision. The $15 million grant included assessing offenders. He said it required looking at the entire picture including victim impact, and that it was difficult discussion.

*Presentation on Why Smart Statistics are the Key to Fighting Crime by Anne Milgram, Former Attorney General of New Jersey*

Ms. Cortez Masto introduced the topic and explained Ted Talks. She said it was a nonprofit organization spreading information through short powerful speeches. She said this particular Ted Talk was from the former Attorney General of New Jersey, Anne Milgram. Ms. Milgram had determined a way to use data and analytics to fight crime. She also spoke of new risk assessment tools for judges for law enforcement.

Ms. Milgram was presented on a video with her Ted Talk. She wanted to understand who was arrested and charged and who was put in the jails and prisons. She said she was unable to get the information. She said they did not track the things that mattered and they were not using data system policing. Decisions were generally made based on instincts and experience. She wanted to introduce data, analytics, and rigorous statistical analysis into their work. She said she wanted to "money ball" criminal justice. She said it worked in Camden, New Jersey. Public safety was the most important function of government. She said less than 5 percent of all arrests were for violent crime. She said we spend $75 billion a year on state and local corrections costs and the recidivism rate was among the highest in the world.

She said she focused on how to use data and analytical information to help make the most critical decision in public safety. The decision was when someone had been arrested whether they posed a risk to public safety and should be detained or did not pose a risk and should be released. She said up to 50 percent of the jail population consisted of low risk offenders. She said judges made subjective decisions and were often wrong. Thus, she looked for an assessment tool for decisions. She said she had built a tool for assessment. There were 900 plus risk factors that mattered. She said there were nine specific things that mattered across the country. They built a tool useful everywhere. The tool helped predict three things: first, if someone will commit a new crime if they are released; second, ability to predict whether someone will commit an act of violence; and third, predict whether someone will come back to court. She said she did not think the judge's instincts and experience should be eliminated from the process. She said their goal was that all judges would use a data driven risk assessment system within five years.

*Presentation on Sentence Credits for Persons Convicted of Certain Category B Felonies and Responses to Key Information Regarding Nevada's Prison Population (see Advisory Council for Prosecuting Attorneys Memorandum Dated April 19, 2012)*

Dr. James Austin, President, JFA Institute, introduced himself to the new members of the Advisory Commission. He said he did research for a variety of states, including Nevada. The Institute is responsible for the population projections for the State. He said he worked with the Nevada Parole Board on its risk guidelines.

Dr. Austin said the risk instrument Ms. Milgram discussed was designed for pretrial release decisions. He said it would be used by the counties at the point of first appearance. He said it would add something Nevada did not have at that level. It was not designed for sentencing or parole or probation supervision.

Dr. Austin referred to the crime rate in Nevada which had a remarkable steady decline in the serious crime rate. He said every state's crime rate had dropped. Crime rates were not related to incarceration rates. He said older people stopped committing crimes. Things needed to happen at the local level. He said the violent crime rate in Nevada was about half of one percent, which was really low. He said the crime rate was below what it was in 1960. Aggregated assault was on the rise in Nevada. He said whatever could be done in Las Vegas would have a dramatic impact on the entire state. He talked about New York state and the way they policed. They focused on quality of life arrests. The felony arrests started going down in New York City. The prison population had the largest drop in the country. He recommended Nevada look at New York and what they did at a local level. He discussed the standard three measures of recidivism. He said Nevada's rate was low, about half the national rate.

Mr. Kohn asked about the transient population in Nevada. He asked about the 24 percent of the prison population returning to prison and if it was any state's prison or Nevada's prison. Dr. Austin said there were two reasons why Nevada had a low rate. One was California and people from there made up about 24 or 25 percent of the prison population. When they left prison

they returned to California. Immigration was the other issue for Nevada. He said Nevada had about 1,400 inmates in the system under an ICE hold and would be deported.

Mr. Jackson commented on the New York crime rates. He said he understood they redirected the limited law enforcement resources to only investigating certain types of crimes. The crimes still occurred but they did not keep track of them. He said it did not mean it was a safer community or that the crimes were not being committed.

Dr. Austin said crimes were reported by citizens to the police whether there were arrests or not. He said the victimization survey interviewed people and households and showed that crimes are going down nationally. Dr. Austin said the population numbers came from the US Census Bureau; the crime rates came from the FBI; the incarceration rates came from the Bureau of Justice Statistics; the three year return to prison rate came from the Nevada Department of Corrections; the US rate came from the Pew Charitable Trusts on recidivism; and the Arizona rate came from Daryl Fischer.

Dr. Austin said a lot of good things happened here, but the class B category was large. Chair Segerblom commented that Nevada put a lot of people in prison who do not need to be there. Dr. Austin agreed Nevada had low risk people in prison. He said how long people stayed in prison did not affect the recidivism rate.

Senator Brower said parole was an issue for a separate agenda item. He said the federal system had not had parole for the past 30 years and several states had abolished parole. He referenced Arizona and the 85 percent rule. He said they did 85 percent of their time without parole for certain offenses. Dr. Austin replied that the states with the 85 percent had surges in their prison populations. He said it did not affect the recidivism rate.

Mr. Callaway said maybe it would be easier to get an answer by doing the opposite and finding out how many of them had a first offense and if it was a burglary, not some greater offense, plea bargained down to a burglary. He also wondered about the recidivism rate as opposed to their risk factor when they first entered the system. Dr. Austin replied that the amount of time spent in prison did not predict the recidivism rate. He said he was discussing a period of months. Mr. Callaway said it was safe to assume most people who commit a crime of passion will not go out and recommit when they are released.

*Presentation on Sentencing and Prisoners in Arizona*

Elizabeth Ortiz, Arizona Prosecuting Attorneys Advisory Council, said she was a career prosecutor. She said it was important to make data driven decisions. Her Council did not receive any General Fund money, but were funded by a small percentage of the surcharges the defendants paid. Their primary purpose was to train prosecutors across Arizona. She said Arizona and Nevada had many similarities and were both searching for data driven decisions. She opened discussion on the Fischer Report.

Ms. Ortiz said in 2009 Arizona was in a recession and looking for money. She said one of the areas explored was cutting the prison budget and reducing the prison population. They did not have first or second time drug offenders to prison. She said Dr. Daryl Fischer was asked to do a study concerning who was in the prisons. She said he picked a date and time and extracted data from the Arizona Department of Corrections. She said the snapshot showed 94.2 percent of the prison population were either repeat felony offenders or felony offenders with a history of felony violence; 5.8 percent of the prisoners were categorized as nonviolent felony offenders. She said they learned some things and decided to expand the report with Dr. Fischer. The 2012 report showed the prison population continued to trend down. The majority of prisoners were consistently violent and repeat offenders. She said they now had two Fischer reports that did not contradict each other. She said a third report was being done to help identify the risk factors and look at the "who" and the "why." She said the goal was data driven decisions.

Chair Segerblom asked for an example of legislation proposed or enacted based upon the Fischer Report. Ms. Ortiz said some of the legislation was proposed but not enacted; such as sentencing reforms to reduce certain sentences for some offenses that were disproportionately represented in the prison. Chair Segerblom asked what the sense was concerning disproportion. Ms. Ortiz said it was not based on anything personal about the offenders. She said she was referring to misinformation that was bantered about but not proven by the report. Chair Segerblom asked what percentage were nonviolent.

Ms. Ortiz said the first report showed 5.8 percent were nonviolent first offenders. Mr. Jackson asked about defining violent offenses as written in the footnote from Dr. Fischer. He asked how much discussion was involved in how violent offenses were defined for Dr. Fischer. Ms. Ortiz said the definition resulted from a conversation between her Council and Dr. Fischer. He recommended using the definition.

Justice Hardesty asked about the recidivism rate established by Dr. Fischer under the report. He said the definition of recidivism can have a huge impact on all the reports. Ms. Ortiz said she did not know how the definition was originally agreed upon, but it was the consistent definition. She said it was important to have a key to use the term to make sure everyone agreed. Justice Hardesty said it seemed if the definition of recidivism was 5 years as opposed to 3 years that the rate of recidivism was higher in the former than the latter. He said it was a critical decision. He asked if she had recommendations for Nevada in arriving at a statewide definition. Ms. Ortiz said the definition was established with the first report. She did not know how they arrived at the definition.

*Presentation on Detention and Incarceration of Inmates, Including: Protective Segregation, Administrative Segregation, Disciplinary Segregation, Disciplinary Detention, Corrective Room Restriction and Solitary Confinement (Senate Bill No. 107)*

Vanessa Spinazola, ACLU of Nevada, said she was present to talk about solitary confinement under SB 107. She said SB 107 was a bill concerning juveniles. It put some caps on how long

children could be in corrective room restriction. She said they had a study for adult facilities, and the experts were here to provide guidance. There may be a disconnect between what was actually happening in the prisons and the administrative regulations. She said the other thing was that the operating procedures in the prisons were different. She introduced the experts on the panel.

Dr. Terry Kupers, forensic psychiatrist, said he was discussing isolated confinement. He said 2.3 million people were in jail and prison. He said a higher proportion were in isolated confinement than in any other country in the world. He said the proportion of people with mental illness had risen substantially. He mentioned three closely related issues: crowding, rehabilitation programming, and isolated confinement. He said crowding grew because the population was 10 times what it was in the 1970s. He said in the same 30 or 40 years, rehabilitation programs were dismantled. There was an outbreak of violence and mental illness in the 1980s that was uncontrollable. The solution was providing meaningful activities for the prisoners and cutting down on the crowding. He said the correction system turned to identifying certain prisoners who were the source of the violence and putting them in isolated confinement, and it was the advent of the supermax prison. They should have decreased the population and increased the rehabilitation. He said isolation was an accelerating factor in mental breakdown and future criminality, it damaged people to be in isolated confinement. He said isolated confinement did not seem to do any good and instead there was a huge amount of damage. He said there was a large population in the prisons and jails of people with serious mental illness. The stress in the isolated setting caused psychiatric decompensation and they never obtained remission. He said 50 percent of all successful suicides in prison occurred among the 3 to 7 percent of the population in isolated confinement. He mentioned Nevada's suicide rates showed 5 suicides in the general population and 6 in isolated confinement.

Chair Segerblom asked about prisoners who were a danger to the rest of the population. Dr. Kupers said separation was different than isolation. He said it was rare an individual needed to be in isolation for quarantine purpose. There were 80,000 people in solitary in the country. He said the situation needed to be managed on a case by case basis. He said the main problem with solitary confinement was that people were not prepared to succeed at going straight when they were released. He mentioned protective isolation. He said there was no reason to put someone in a single cell and leave them there 24 hours a day for their protection. He said protection in prison should be a matter of separating people who are a risk when they are put together. People should be separated from the group that was a risk to them and given all of the activities and amenities that they were entitled to because of their level of classification.

Chair Segerblom asked if people were actually segregated based upon their sexual orientation. Dr. Kupers said in the Prison Rape Elimination Act there were hearings concerning the issue. He said if a woman accused a staff member of sexual assault, she was immediately put in isolation. He said it prevented women reporting the assault because they did not want to go to isolation. He said it was an example of protection meaning segregation. The women could have been moved to another facility. He said the population in solitary confinement could be reduced dramatically. He recommended no dead time for anyone. He said there needed to be

short times in isolation. He said they should have the opportunity to improve their situation. Dr. Kupers listed some of the organizations to which he belonged.

Mr. Siegel asked whether we were inflicting torture and were we inflicting cruel and unusual punishment. Dr. Kupers said there were multiple class action lawsuits in multiple states. He said there was a robust discussion of that now. He said courts have ruled that people with serious mental illness needed to be excluded from long term isolated confinement. Mr. Siegel said it had been addressed for juveniles and moved on to adults. Dr. Kupers said it was a special problem for juveniles. The teen years were essential for learning social and job skills. He said the best chance of affecting someone occurred during the earlier years. The youth authorities and facilities were overcrowded and they tended to be out of control. He said it made problems much worse when kids were put in isolation because they were deprived of the rehabilitation that should be occurring during this age.

Chair Segerblom asked if there were countries doing it right. Dr. Kupers said there were countries that did not use isolated confinement. Unfortunately, they used other things we would not approve of on Eighth Amendment or torture grounds. He said there were model systems and prisons. The Scandinavian prisons sent very few people, only the most serious violent offenders, to prison. He said they require prison staff to have a master's degree.

Mr. Siegel asked Dr. Kupers to address the politics of the last 5 years. Dr. Kupers said there was a lot of political attention at this time. He said lawsuits had shone a light on what occurred in isolated confinement. He said what occurred was mostly secret and that supermax facilities were being closed.

Mr. Callaway asked Dr. Kupers if an inmate threatened to kill another inmate and they put the inmate in solitary confinement, after a period of time should they put the inmate back into the general population. Dr. Kupers said 95 to 97 percent of prisoners will go free. He said the question was how to make the prisoner safe at the end of their term. Attention needed to be put into a management plan for that population. He said the more trouble someone caused in prison, the more time was needed to think about collaborative meetings between custody and mental health staff. He said they had to attend to safety first of all. Mr. Callaway asked how they balanced the safety and liability of other inmates with not wanting to put someone in solitary confinement. Dr. Kupers said they needed to balance the two elements. He said there needed to be a program that maintained safety in the prison.

Justice Hardesty said he was trying to connect the presentation with Nevada's system. He asked what the connection was and if Nevada's system was suffering from some or all of the parts presented. He said he was unaware of wide-spread isolation of Nevada's inmate population. Dr. Kupers said he had seen complaints that were gathered by the ACLU. from individuals. He said they were antidotal complaints, but they touched on all the points he discussed. He believed Nevada had all the problems the other states had. He said Nevada had less of a problem because of the low recidivism rates and lower prison population rate. He said SB 107 was to do a study to determine the problem.

Martin Horn said his adult life was spent working in prisons, jails, probation and parole. He said prisons were an unnatural and flawed institution. People were not meant to be confined and forced to live with strangers. He said prisoners brought their problems with them to the prisons. He believed as a society we relied too heavily on imprisonment. The challenge was how to manage prisons in a just and humane fashion. Solitary confinement was prohibited by the national standards of the American Correctional Association's Commission on Accreditation for Corrections. He said he understood those standards were adhered to by the NDOC. He said if physical segregation was used, it should be used consistent with the precepts adopted by the ACA.

Mr. Horn said in New York State they had adopted a statute prohibiting the confinement of prisoners with serious mental illness. They created residential mental health units for the prisoners with mental health issues. They were offered four hours of structured, out of cell, therapeutic programming daily, and mental health treatment on a daily basis. He said the criteria for the separation of prisoners must be behavioral and not based on status. Juveniles should not be housed in adult prisons. He said the use of restrictive housing should be based upon behavior and not upon associations or status. He added that last week New York and the New York ACLU. agreed to a stipulation that was an example of how corrections officials and advocates can begin to achieve the reforms. He said the most important part of the stipulation recognized the NDOC cannot do it alone and needed sufficient budgetary support from the executive and the legislative divisions to implement the reforms. He said prisons were closed worlds designed to keep prisoners out of sight and out of the public mind. He said we should adopt a standard of care for prisoners that called for them to be treated as we want our own child treated. He said in 2008 the American Bar Association adopted a resolution.

Chair Segerblom asked if New York was a model Nevada should look at for guidance. Mr. Horn said the stipulation New York entered into was a good starting place. Chair Segerblom asked if Mr. Horn and others like him act as expert witnesses or expert consultants that come in and analyze the prison system. Mr. Horn replied on occasion.

Mr. Callaway asked what the fiscal note was that was attached to the New York legislation. Mr. Horn replied he did not know, but the information could be obtained. He said the residential housing units were built at an enormous cost. They were designed specifically for the purpose of activity areas where the mentally ill inmates with behavioral disorders who engaged in violent activity could interact safely, attend classes, and receive education and counseling.

Mr. Siegel said the Advisory Commission may find a minimal number of people have been treated arbitrarily and put into isolation. He asked if, in a state or county system, it mattered if 5 or 10 people were affected rather than 50 or 100 people. Mr. Horn replied if even one person was treated that way, it was wrong. He said extreme isolation was never justified.

Mike See, Captain, LVMPD, opened his discussion with brief answers to 19 questions in Section 7 of SB 107. He said he agreed with many of Mr. Horn's assertions. He said the

LVMPD including the Clark County Detention Center was accredited by both the ACA and the NCCHC, which was the National Commission on Correctional Health Care. They had been accredited for many years and strived to improve their score every three years.

Chair Segerblom asked if they looked at solitary confinement or segregation. Captain See said they had specific standards concerning how that should be accomplished. He said his was a pretrial detention facility. He said almost 80 percent of his population had not been sentenced of anything. They looked at the 14th Amendment, as far as due process, rather than the 8th amendment which was cruel and unusual.

Captain See went through the nineteen questions included in SB 107. The questions referenced the study the Advisory Commission conducted concerning detention and incarceration in the State. 1. The three ways an inmate can be place in segregation: through a risk assessment; earn their way into isolation; or administrative transfer. 2. Security threat group identification involves validation by at least three different points. 3. Notification and release procedures were unclear, but they had 19 different release types and the procedure was 106 pages long. 4. Question was in many different parts, it required a due process component.

Justice Hardesty asked Captain See if he had adequate mental health providers or resources available or were they difficult to access. He said he learned there were only 7 pediatric psychiatrists in Clark County. Captain See said there were very few clinical social workers in Nevada. He said it was very difficult to meet the needs and they planned to add full-time or additional mental health professionals to work within the facility.

Captain See said they were adding additional TV units for more stimulation for those in isolation. Staff had to check on everyone every 30 minutes. The minimum time for people on suicide watch was every 15 minutes for review and those actively suicidal had to be reviewed every 4 minutes. He said substance abuse classes were limited. They were doing a lot of things concerning reentry resources. There were 3 specific classes for veterans and GED programs. He said they had a separate unit for juveniles adjudicated as adults.

Chair Segerblom asked if they were seeing an increase in their population because of the presentence reports. Captain See said the number of intakes was down over recent years, but the length of stay has gone up. He said they thought it was in the adjudication process. Mr. Kohn asked if one of the problems was the length of time it takes to get from adjudication to drug court. Captain See replied perhaps it was a cause.

Captain See said question 5 dealt with training. He said the best way to interact with the inmates was inside to communicate with the inmates. Question 6 dealt with the number of inmates referred to mental health professionals. He said in January of 2014 there were over 1,700 mental health visits conducted by the staff, plus 1,112 mental health visits by a nurse or counselor and only 68 were new patients. Question 7 asked about children and he said the numbers applied to everyone, not just children or adults. Question 8 asked for the number of people in isolation with mental health diagnosis. Of the 977 people involved with mental health

in some way, 183 were in isolation, and 1 of the 13 juveniles had a mental health diagnosis. Question 9 was already answered. Questions 10 and 11 had to do with suicide and suicide attempts. He said in 2010, 10 of the 14 suicide attempts were in an isolation type unit. None of the attempts were successful: in 2011, 9 of 11 attempts were in special housing units. He said in 2011 there was a problem and they implemented the policies explained earlier. As a result, in 2012 of the 17 suicide attempts recorded, only 5 happened in special housing units. He said they learned in 2012 the most aggressive suicide attempts were a gesture with the intent of getting back to a special housing unit.

Chair Segerblom asked about the cells and if there were bars. Captain See said everything was walls, concrete walls, painted, with doors on them. There were no bars. Mr. Callaway said the isolation cell was identical to a regular cell. Captain See said it depended on which facility was being discussed. He said they operated three facilities and they were all somewhat different. He recommended the Advisory Commission tour the facilities to see the differences.

Captain See referred to number 15 and the summary of reasons offenders would be placed into special housing. He said they looked at the formal and informal rule violations that could precipitate a housing change. He said he agreed the LGBT were not housed separately due to their status but on their behavior. He did not have a lot of statistics based on their membership in the LGBT community. Captain See said he did not have any information on questions 17 and 18. Question 19 was difficult to answer because individual housing units were not broken down. He said for budgeting purposes, the per inmate cost per day was $141.

Chair Segerblom said every 30 days they must evaluate whether someone stays in segregation. Captain See said that was the maximum time. Their policy generally reviewed every 7 days for the first 2 months and then every 30 days thereafter. Mr. Siegel said that meant they could be in this kind of isolation for their entire time there. Captain See replied yes, there were people in a 23 hour lockdown for their entire incarceration. He said the average length of stay as of February of this year was half of the people he took in were less than 24 hours, others were there for many years.

Mr. Kohn said Captain See indicated there were 970 plus people with mental health issues. He asked what the total jail population was on that date. Captain See said the population was 3,563 inmates. He said approximately 25 percent of the population had some type of mental health connection.

Mr. Cox said Deputy Director McDaniel was at the table with him. He said their presentation was to educate the Advisory Commission. The Department had been proactive and they had not waited to be told to do things. He spoke to the entire Legislature concerning SB 107. He said they had many discussions about segregation and the operations of those units and it was important for everyone to realize they had staff who worked those units. He said their obligations were to the safety of the inmate population, staff, and the public. He said it was critical that they had good data in order to make informed decisions. He was an ACA member and so was Deputy Director McDaniel, who was also an ACA auditor. He wanted the

Advisory Commission to know they did not approve of solitary or isolation. He said the Department had never placed someone specifically due to their validation as a security threat group member. A number of states did it, but Nevada did not. He said actions and behavior of an individual could place them in segregation. He said Mr. McDaniel will review the presentation. Mr. McDaniel said the definitions people made concerning solitary confinement versus protective segregation or disciplinary segregation did not apply to Nevada. He said they did not have solitary confinement in the NDOC.

Chair Segerblom asked Mr. McDaniel to explain the difference for the Advisory Commission. Mr. McDaniel said his vision of solitary confinement was a place where an individual was out of sight and sound from any other person. He would not have the ability to see outside, nor talk to someone outside of the cell; he would not have a vision of outside the prison area to the outside world. He would not have access to contact someone, call someone, visit someone, or be exercised outside of his cell. He said the segregation units were distinctly different but all allow the inmates telephone calls, have outside of the cell exercise periods every day, outside people come into the unit including medical sick calls.

Mr. Cox said they had a validated classification instrument that allowed them to place inmates in appropriate housing and institutions. He said the presenters today agreed that the NDOC had a good classification instrument. They worked with others on the classification instrument to make it better. Mr. McDaniel continued the presentation, discussing protective segregation and administrative segregation.

Chair Segerblom asked if there were double celled protective segregation units. Mr. McDaniel replied yes, they did have double cells as well as single cells. Most of the medium security protective segregation inmates would have a double cell.

Justice Hardesty said he understood there were 13 to 15 inmates in Lovelock under the age of 18. Mr. Cox said the young inmates had the use of all the things described earlier. He said the criminal justice system has shown consistently over the years that the under 18 population has continually reduced since 2010. The current number was 12 under the age of 18 and they were based at Lovelock. He said based on the Prison Rape Elimination Act effective this year, it has been successful and the numbers have decreased. They have access to education, psychologists, and a psychiatric nurse. They could do more and they were looking at what else they could do. He said they had 20 beds available and he had 8 vacant beds. He said they did not have any female offenders under the age of 18 in the system. He said if they did, he would request the person be placed out of state because the Department was not able to house the person without a tremendous cost.

Justice Hardesty complimented Mr. Cox on all the information he provided to the Advisory Commission and the Juvenile Justice Commission. He added through the Director's innovation and cooperation they were working on a collaborative effort to try to co-locate the inmates under the age of 18 with the juveniles in the north.

Mr. Siegel wanted to know the worst situation a prisoner could be placed into. He used the example of a death row inmate in a fight. He asked if they were placed in the hole. Mr. Cox said he never tolerated the use of the hole and did not like that verbiage. He said he had been here over 10 years and operated condemned unit death row operations. He and Mr. McDaniel were interested in how the condemned unit in Ely was different than in Illinois. He said they allowed them to congregate, and be outside their cells. Mr. Siegel said if anybody was mistreated it was going to be those men when they had made a major infraction. He asked if that was a plausible assumption. He asked if the death row inmates were treated more punitively than the other inmates. Mr. McDaniel said no, they would not be treated any differently than any other inmate who violated a regulation within the system of their department. He said if an inmate assaulted another inmate they would go through the process. They would be placed in administrative segregation with all the same amenities of the regular cells.

Mr. Cox testified that Nevada did not have a supermax prison. He had toured supermax prisons in other states and said we do not have that kind of operation. The New York case represented a supermax operation. He said a lot of the things heard today did not apply to Nevada. He said it was a welcome discussion and should be had in the State. Restrictive housing was the intention of his Department. He did not want anyone to think the prison was perfect, but they wanted to do the best possible.

Ms. Cortez Masto asked what the Adviosry Commission was tasked to do on SB 107, what the Advisory Commission was responsible for doing. Mr. Anthony replied that SB 107 called for the Advisory Commission to study without limitation the use of solitary confinement, administrative segregation, and the like. There were 19 different items for the Advisory Commission to study. He said Captain See presented those topics. There was no formal requirement for any specific action, but rather the legislation called for a study by the Advisory Commission which would be referenced in the final report. He said by having the discussion on today's agenda, the Advisory Commission had complied with the requirements of SB 107.

Chair Segerblom said the item was on the Agenda because of SB 107. He said it was overwhelming to develop the information during the limited 120 day legislative session.

*Appointment of Subcommittee on Victims of Crime*

Chair Segerblom opened the discussion on appointment of members to the Subcommittee on Victims of Crime. He indicated that Ms. Cortez Masto would again chair the Subcommittee. Chair Segerblom asked if they could approve the 11 people named with the caveat they could add people at a later date.

A MOTION WAS MADE AND SECONDED BY THE ADVISORY COMMISSION TO NAME THE PEOPLE PRESENTED BY MS. CORTEZ MASTO TO THE SUBCOMMITTEE ON VICTIMS OF CRIME WITH THE CAVEAT OTHERS COULD BE ADDED AT A LATER DATE. THE MOTION CARRIED UNANIMOUSLY.

*Discussion of Potential Topics, Dates and Locations for Future Meetings*

Mr. Siegel asked if there was anything the Advisory Commission should do concerning marijuana possession and trafficking going beyond medical marijuana. He said they should be looking at the issue giving the way it was being handled by different states. There had been a lot of attention nationally to life with and without parole. He was interested in what the trend was and what was happening within the State both with habitual criminals and murderers.

## D. FOURTH MEETING

*Introduction*

Chair Segerblom called the fourth meeting of the Advisory Commission to order on May 1, 2014.

*Ombudsman Process*

Mr. John Witherow, President of NV-Cure, provided the Advisory Commission with an overview of the ombudsman process in Michigan. He said the program in Michigan was independent of the prison system and was a legislative commission established in 1975 to review prisoner's grievances and problems related to health care. He said there was an independent overview of the actions of prison officials. The ombudsman conducted hearings under oath and attempted to resolve them. He said he had submitted letters from prisoners in Nevada concerning the grievance system. Grievances in Nevada were inspected by the Inspector General's office which was a part of the Nevada Department of Corrections. He said the first time grievance processes were established after the Attica rebellion in 1971.

Chair Segerblom asked Mr. Witherow about the Michigan ombudsman and if he worked for the legislature. He also inquired about the cost for an ombudsman. Mr. Witherow replied, yes, it was a legislative commission. He said he did not know what the funding for the program cost.

Chair Segerblom asked for the types of complaints Mr. Witherow received with NV-Cure. Mr. Witherow said they received complaints about the conditions inside the prison, about gang members, about medical care, misconduct by staff employees. They received numerous complaints about retaliation against prisoners for choosing the grievance process.

Chair Segerblom asked where NV-Cure took a complaint when they received one from a prisoner. Mr. Witherow said they brought some of the issues to the immediate attention of Director Cox and various Legislators. They educate the public on what is going on via media attorneys. They bring the problems to the public's attention and try to get resolution.

Chair Segerblom asked if his organization was an all-volunteer group. Mr. Witherow said they were an all-volunteer organization that received no funding. He said they occasionally received a small grant and no one was paid for their activities.

Mr. Frierson asked if the ombudsman in Michigan was a volunteer or a paid position. Mr. Witherow said the ombudsman and his office were state funded. Mr. Frierson asked how many other states had similar structures. Mr. Witherow said he did not know of any others.

Senator Brower asked Mr. Witherow about the NDOC Inspector General. He said he assumed the Inspector General would assume a role in dealing with complaints. Mr. Witherow said it was his experience that the Inspector General did conduct investigations of prisoner complaints regarding staff misconduct and other matters. He said the Inspector General's office was staffed by the NDOC. He said it did not seem fair for the prisoners to have complaints against staff members investigated by other staff members. His experience with the NDOC came from 26 years of incarceration from 1984 to 2010. Senator Brower said as a Legislator he expected the NDOC Inspector General to independently investigate anything and anyone within the Department and report directly to the Governor or the Legislature without concern that a NDOC employee was the subject of the complaint.

Mr. Siegel said the area mentioned by Mr. Witherow was one of the three or four main areas of work of the ACLU of Nevada for more than 40 years. He said there was a system-wide NDOC lawsuit in the 1970's and 1980's. They had a major suit in the Ely prison concerning health care services. He said the lawsuits cost the state many hundreds of thousands of dollars in attorney's fees. The concerns about money needed to be balanced against the substantial costs of the lawsuits. He said the ACLU received complaints from prisoners on an almost daily basis. He said there should be concern of potential lawsuits costing the State millions of dollars.

Director Cox said his Department currently had a grievance process recognized repeatedly by the federal courts. He said the grievances had been recently audited by the Department of Administration. They had a federal mediation program and a litigation process. Inmates had the right to go to the ACLU with their issues and the process seemed to be working. He said Mr. Witherow provided him with information and a number of the issues were investigated after receiving the information. The Inspector General's office was not liked by the inmates or the staff.

*Update on Discussions Regarding the Justice Reinvestment Initiative Process*

Justice Hardesty said the Advisory Commission had authorized an application be made to Justice Reinvestment for their support in evaluating Nevada's potential criminal justice reform measures. He said they had productive discussions but there was a delay as three states were selected that did not include Nevada. He said Nevada would not be in line for support until late 2015 or 2016. He said it meant most of the issues would be deferred until the 2017 Legislature.

Chair Segerblom and he met with the Governor who endorsed the application. A letter was prepared on behalf of all three branches of the government to make the request for justice reinvestment support. He said Mr. Clement anticipated Nevada being accepted in the next round and they would provide some data research this summer to begin the process. He said there were a lot of demands on their support from other states. He was pleased Nevada was in line for their assistance in the future. Chair Segerblom said he thought they were still on for a discussion of B felonies for the next session of the Legislature.

*Update on Bureau of Justice Assistance Justice Reinvestment Initiative Competitive Grant Application*

Director Cox said his discussion was an update on the grant application for JRI. He said a 1.75 million dollar grant was discussed and he also suggested they look at the opportunity for probation enforcement for the OPEN program conducted in Clark County at Casa Grande. He said the issue about the grant was the matching in-kind of 1.75 million. He had assembled a team from the department and contacted the grant office. The submission date for the grant was May 22, 2014. Chair Segerblom asked if it was possible to get the money before the next session. Director Cox said after submitting the grant application there was a possibility of the money this session. He said that was the goal, but the match was a challenge.

Mr. Siegel asked Justice Hardesty if there were other avenues independent of the Justice Reinvestment Initiative. He asked if there was comparable assistance by going directly to VERA or Pew. Justice Hardesty said they discussed it with Pew and they provided funding to Justice Reinvest. He said those organizations were not available to us. He said he was concerned that it was delayed. He referenced a comment by Connie Bisbee referring to the many great professionals in the State who knew what needed to be done to help further the efforts. He suggested gathering the talented people in the state and having a meeting with everybody. He also said the presentation heard from Oregon at the last meeting offered a tremendous outline with which to work on what can be accomplished economically. He was particularly struck with their investment of $15 million in general fund dollars to their specialty courts as a strong statement of how to improve the criminal justice system. He recommended using the resources and talent and intellect in the State to form a plan. Justice Hardesty said the meetings should have the press and the public present.

Chair Segerblom said the goal was a work session in October and to form a bill for the Legislature. Justice Hardesty suggested the Chair call for a summit or meeting within the next six to eight weeks with a collection of professionals in the state to discuss some of the alternatives they had heard. Chair Segerblom requested that Justice Hardesty work with Mr. Anthony to put together a meeting. Mr. Siegel said he would look at the two universities for help also.

*Update on Office of Justice Programs Diagnostic Center Engagement Regarding Category B Felonies*

Mr. Steve Rickman, Program Manager, OJP Diagnostic Center, said Jessica Herbert was also present and Catherine Drake Schmitt, a policy advisor with the Office of the Assistant Attorney General. Ms. Schmitt provided an overview of the Diagnostic Center. She said it was a technical assistance effort operated by the Department of Justice. The purpose was to help states, cities, counties and tribes build the capacity to use data to solve criminal justice problems. She said their funding stream allowed them to address criminal justice and safety issues across the spectrum. They assisted with supplying resources to various communities. She said they were interested in using data to change critical public safety outcomes.

Jessica Herbert said Director Cox asked the Diagnostic Center to discuss the issue regarding category B felonies. She said they needed to look at the sentencing guidelines for all the felony offenses. She said they used evidence-based solutions. She proposed a trip to Nevada to meet with the stakeholders. Chair Segerblom asked what the time table was for them. She said the time table was over the course of the next six months. They might have preliminary proposals within the six month period.

Mr. Rickman said they would work directly with Director Cox and his staff. They would also provide some broader views from other states. Chair Segerblom asked if it was possible to focus on sentencing for drug abuses. Ms. Herbert replied yes, there were over 200 felony offenses in category B. She said part of the process was to correctly identify key areas and concerns.

Mr. Rickman said they would ask what areas needed the most focus from his group. They wanted to narrow it down based on Nevada's input to move them to category A or C. Mr. Siegel asked if the Office of the Diagnostic Center had an overriding approach or philosophy in terms of sentence guidelines or was it responsive to the leadership in a given state.

Ms. Schmitt said that was a reasonable question. The value of the Diagnostic Center relied on the expertise they had in the process of identifying, using, and collecting data. She said they did not come with preconceived notions about the end result, but were guided by the preferences and data in order to allow the state to say what would be more or less cost effective.

Director Cox offered his thanks for the support they gave his staff. He liked the data driven approach which was not a political decision. It was based on the needs of the State, law enforcement, D.A's, and the public defender's office.

*Presentation on Proposed Legislation Related to Certain Drug Offenses*

Judge Dorothy Nash Holmes said she was one of 47 drug court judges in the state. The number was important because the state had less than three million in population. She said a judge in Florida said they were doing well because they had 78 drug courts for 15 million people. Nevada was way ahead of the curve. Judge Holmes said Kate High was present and was the Development Director of Transforming Youth Recovery.

Judge Holmes said she was proposing two legislative areas that needed work this session. She said one proposal was an overdose prevention program and one added simple language to the Family Code Section dealing with best interests of the child. She said heroin was back as a popular, cheap drug of choice, and that opioid drug overdoses were rampant in the country. She quoted some facts concerning overdose deaths, and outlined how overdoses occur. She said in Nevada there were over 7,500 deaths from 2000 to 2012.

Judge Holmes said the overdose she most often encountered was loss of tolerance to illicit opioids. Overdose killed more people each year than homicide or car crashes. Judge Holmes discussed the Nevada Naloxone Program. She said 18 states allow a Naloxone program. She Naloxone was a prescription which reversed the effects of opioid overdose within two minutes. She compared the drug to Epipens for allergies. She said information was contained in a publication from the National Public Health which listed all the states and the legislation they passed. Nevada needed to create a policy favoring emergency aid to save lives from overdose. She said we needed a Naloxone access law which required amendments to change the sections of statute dealing with pharmacy. She proposed amending the Good Samaritan Law to encourage rendering aid. Naloxone can be applied with a nasal spray and was effective in two minutes. She said the drug worked for opioid products and the cost was only $15 per kit. She proposed immunity for anybody bringing someone in with a drug overdose. She said in NRS 453.3335 there was a statute putting an affirmative duty on the drug provider to render assistance and get the person to the hospital if he provided the drugs killing the person. The law could exclude drug dealers. She said we needed a law for third party administration. She said we also needed a law making it legal to possess Naloxone if trained. She said volunteers could supply the drug without criminal or civil liability.

Judge Holmes said the other part of the program was a family law issue. Substance abuse affects families. A judge needed to know what was available to the kids. She said it needed to be considered in family law. She quoted the California law from March, 2012. She said 10 percent of the adults in this country abuse alcohol. She said 60 to 70 percent of the people in county jails had drug or alcohol abuse and addiction problems and nearly 80 percent in prison. She said it was time for Nevada to look at Naloxone and to save lives in Nevada from opioid overdoses.

Ms. Cortez Masto agreed with Judge Holmes. She said she chaired a Substance Abuse Working Group looking at the issue of Naloxone and the Good Samaritan laws. She intended to prepare bill drafts as part of her bill packages. She asked Judge Holmes to be involved with her group. She said substance abuse was growing hugely in Nevada. She also mentioned a drug endangered children's alliance, DEC Nevada.org. She said they looked at the problems every day. She said her office would contact Judge Holmes to discuss the topics addressed today. Judge Holmes replied that she would be glad to help adding that Mrs. Mathewson would also help.

Mr. Frierson asked Judge Holmes for assistance. He said he chaired the interim Committee on Child Welfare and Juvenile Justice. He said the best interest of the child was the purpose of Chapter 432B and the statutes. He said in Clark County the domestic case was put on hold and the 432B case was resolved. He said he may ask her to make the same presentation to his committee.

Ms. Hibbler thanked Judge Holmes for the presentation. She mentioned a group called No Hero in Heroin where every member had lost a child to heroin. She said they would be a good group to give testimony.

Ms. Bisbee said she had 28 years in criminal justice and since 2000 she was a licensed addiction counselor in Nevada. She said this was "ground zero" for everything. She said it was a point where they could effect change. Eighty-seven percent of the national prison population was drug or alcohol related. She said if they can support Judge Holmes and broaden it they can truly make a difference.

Mr. Jackson said her proposed bill was discussed by the D.A.'s association, but they had not taken a position yet. He said they understood the law enforcement concerns. He wanted the record to be clear he was not speaking on behalf of the association, but as the District Attorney in Douglas County and his views of the possible amendment to the Good Samaritan Law. He said the last two heroin overdose cases in Douglas County where the provider was present resulted in a death and a permanent brain injury. He said in both cases there were other individuals there who were also ingesting the drug. He did not want to see any changes in NRS 453.3335 which provided the additional penalty for a person convicted of either selling or providing the drug to the person who overdosed, or providing that which caused a death. He said the Good Samaritan law under NRS 41.500 should be amended for other individuals to provide immunity for those also ingesting the drug so lives may be saved.

Judge Holmes said she was immediately aware of the issue because she had been a prosecutor. She knew about the law and it was why she put in language that excluded the drug provider from the Good Samaritan protection. She said it was critical that other people from the party were able to take someone for help without fear of prosecution.

Justice Hardesty said there were at least two components, a criminal component and the other was civil or semi-criminal in NRS 432B issues. He said language in NRS 125.480 was

important because it addressed custody questions. He was sure the State Bar would have opinions in the context of custody decisions. He said the marijuana issue was a complex problem in custody issues. He said it affected a lot of different issues in the civil area. He said Judge Barker could forward material to the family court members of the association. He said he co-chaired the Juvenile Justice Reform Committee and they could look at whether the Advisory Commission should evaluate some of the chapter's questions.

Judge Holmes said the Advisory Commission was the first place she presented because if the Advisory Commission said "no," then she would put it away for a while. She said the state of Washington did a hand-out on how to mobilize the community. She said it involved mobilizing all of the stake holders. The pharmacy board led the discussion in Washington. She was open to any suggestions they had about the topic. She tried to make the language of the proposed family law section broad enough to cover illegal, legal, controlled substances, marijuana and whatever.

Judge Holmes said two other areas in the statutes surprised her. One was NRS 484C.400, which said a failure to complete treatment on a second DUI offense was guilty of another misdemeanor. She said treatment was a treatment issue rather than a crime issue. The other statute was NRS 212.160 which talked about penalties. She said a person convicted on possession of one ounce of marijuana or less had to be examined by a mental health treatment professional or be fined $600. She said it was a "may" on the first offense, but on the second it was a "shall."

*Presentation on the Conservative Case for Reform*

Jerry Madden appeared before the Advisory Commission and said he was a senior fellow with an organization called Right On Crime. The group was formed in 2010 as an organization out of the Texas Public Policy Foundation. They were the national conservative spokesmen for criminal justice change in the United States. He said they would support the Advisory Commission if they brought other conservatives along with the ideas of the criminal justice changes.

Chair Segerblom asked Mr. Madden if his organization could help within the next few days. Mr. Madden replied it would be longer than that, but they were quicker than a lot of other organizations. He said they could provide a lot of detailed research. He said he was not a lawyer, but he was named chairman of the Texas House Corrections Committee. The Speaker told him not to build prisons because they cost too much. Mr. Madden gave a brief overview of all the groups and committees in which he participated. He said this year three states had passed major justice reinvestment legislation, Mississippi, Idaho and Alaska. He recommended Nevada look at other states and see what they had done in the area. He said there were two kinds of prisoners; the ones we are afraid of and the ones we are mad at. The dangerous ones should not be roaming the streets. He said they needed to figure out how to change the ones we are mad at in such a manner that we are no longer mad at them. He said in Texas they talked to many different groups and gathered ideas from everybody. They gathered a lot of data to

review and study. He said it was important to know how much it cost in dollars. He said they saved billions of dollars with their plans. He recommended the Advisory Commission look at what Georgia did to save money and improve the system. He said Georgia made sweeping changes to criminal and juvenile justice. He also recommended looking at Kentucky and their actions. Mr. Madden summed up by saying data was important and risk analysis was extremely important. He said programs had to be broad enough to apply statewide.

Chair Segerblom said the problem he saw was the need to spend money in one budget to start new programs based on the idea that they were going to save money over the years. Mr. Madden recommended looking at model legislation in criminal justice. He said Texas put together several ideas of what to do. He recommended looking at justice reinvestment for programs.

*Presentation on Risk Assessments and Statistics in Criminal Justice*

Mr. Segerblom introduced Matt Alsdorf, with the Laura and John Arnold Foundation, as the next speaker. Mr. Alsdorf discussed measuring and managing risk at the earliest stages of the criminal justice process. He also wanted to ensure that the system operated as fairly and cost efficiently as possible. He provided an overview of the Arnold Foundation which was started five years ago. He said originally they focused on education reform and government accountability. In 2011 they decided to invest in criminal justice reform. He said they hired Ann Milgram from New Jersey and Mr. Alsdorf joined shortly thereafter. He said the Arnold's ask them to identify the areas of criminal justice with the greatest need for transformative change and where they could make a meaningful difference. He said they focused on the front-end of the criminal justice system. Key decisions at the front-end of the system were often made with limited access to critical information and objective data. He said most jurisdictions did not have objective research based tools to evaluate and measure the risk among different groups of defendants. He said the low risk group of defendants represented 40 to 50 percent of all the people in jails. The high risk was generally 5 to 10 percent. He said often 50 percent of the high risk people were released before trial. He said risk assessment tools have been shown to be effective but only 10 percent of jurisdictions use them due to cost. They looked for common factors to be used for risk assessments that would minimize financial and human resources.

Mr. Alsdorf said the Arnold Foundation wanted to measure new criminal arrests, and failure to appear, but also the risk that a defendant would commit a violent crime during the pretrial period. He said they tested hundreds of correlations. They found with nine data points on each defendant they could create a risk assessment that was equally or more predictive than existing tools. The assessment predicted violence with a high degree of accuracy. He said all nine factors can be gathered without interviewing a defendant from an administrative record. The tools were made up of three six point scales: new criminal activity; new violent criminal activity; and, failure to appear. He said the tools were meant to provide data to the decision makers, and they were not meant to replace the decision maker's discretion. He said judges and others were always aware of facts and other circumstances of the alleged criminal activity.

The ultimate goal of the foundation was to make the tools available to everyone at no cost. He said the Arnold Foundation was willing to help.

Mr. Frierson asked Mr. Alsdorf about the reception among stakeholders. He said the implementation of whatever the Legislature required needed buy-in from everybody, including judges, law enforcement and district attorneys. Mr. Alsdorf said they focused on those areas wherever they present risk assessment. They made an effort to have open and honest dialog with the stakeholders to make sure everyone was on board with the notion of using risk assessment to inform decisions. He said the reception was generally positive, as it had reduced the jail population and the cost.

Mr. Frierson asked if adopting this kind of policy resulted in a bigger sentence for someone. He asked if he had seen cases that resolved in a greater penalty in anticipation of release.
Mr. Alsdorf said they did some research on how pretrial release or detention affected sentencing. He said the ones released were significantly less likely to be sentenced to jail and prison and served longer sentences if they were sentenced. He said people who were released, failed, and put back in jail still received lower sentences than people who were detained during the entire pretrial period.

Ms. Cortez Masto asked what pretrial risk assessment tool was utilized by the judges. Judge Barker replied that they had a pretrial service through Las Vegas Metropolitan Police Department. He said there was a form with the most basic information. He asked Mr. Alsdorf if his organization could come in and use the tools being used at the pretrial level now. He asked if the tools used were tailored to a specific responsibility or entity, such as a law enforcement tool versus a tool a judge might use at various sentencing levels. Mr. Alsdorf replied that it was one of the things they were working on at this time. Ultimately, the core of the tool was going to be the same because it was informing an essential decision.

Judge Barker asked if the nine point analysis was independent of input from an individual. Mr. Alsdorf replied yes, but it may change. He said they were trying to think through if there were going to be necessary modifications. He said there might be something in addition to the nine factors that would be necessary to inform other decisions. The core was what risk did somebody pose during the pretrial period and it would be the same across the board. He said this tool was not designed to inform a decision of what to do at sentencing, but just the pretrial. Judge Barker asked if they had pilot programs and if he wanted another source.

Chair Segerblom asked if they had dealt with a state with a mandatory risk assessment, or did they deal with a city or county. Mr. Alsdorf said Kentucky had a state-wide integrated court system and a state-wide integrated pretrial system. He said all the groups reported up to the same body so they were able to integrate the system. He said in a lot of states it was individual counties.

Justice Hardesty said there may be differences in the pretrial risk assessment approach in the different counties. He said Washoe County had a pretrial service which generated a lot of

information for the justices of the peace. He felt it would be productive for Mr. Anthony to request each of the judicial district's pretrial risk assessment tools.

Mr. Alsdorf said he would make a similar presentation to different counties if they wished. Mr. Kohn said Clark County was putting a large sum of money into the detention center. He said bails were set by the justices of the peace and he had no idea what assessment tool they use.

Chair Segerblom then called the next presenters on the topic of risk assessments. Kim Madris, Deputy Chief of Parole and Probation, said Captain Dwight Gover and Captain David Sonner would make the presentations. She said Captain Gover was presenting on the supervision side and the assessment tool they used for supervision, and Captain Sonner was presenting from the court services or presentence investigation side.

Captain Sonner opened his presentation with the Presentence Investigation Report, PSI. He said the information gathered by a Division specialist was compiled in the PSI. The Division was mandated by statute and NAC to provide an evaluation of every defendant who came before them for sentencing.

Chair Segerblom asked if the information taken in was entered into a computer. Captain Sonner said the information was also utilized to determine appropriate sentence recommendations utilizing calculations derived from the PSP form and utilized in the SRSS form. He said the Nevada Administrative Code mandated an evaluation of every person convicted of a felony by the Division. He said the Probation Success Probability (PSP) form was also codified in the NAC. He said factors A through P involved information relating to the defendants criminal history and the incident offense. The Sentence Recommendation Selection Scale, (SRSS) was a numeric score from the PSP and applied to the SRSS to determine the type of appropriate sentence recommendation. He summarized his presentation by saying the PSP, criminal history, and offense score determined the recommended sentence range. The combined reports plus the SRSS determined the recommendation for incarceration or probation. He said all the information was within the Offender Tracking Information System, (OTIS) and was calculated electronically. The Advisory Commission received copies of the two forms, PSP and SRSS.

Mr. Kohn said the form was almost 25 years old. He asked if it had been validated in the recent past. He asked if there was a better form. Captain Sonner said he was not aware of any efforts to validate the two forms. Mr. Kohn said arrests without conviction were also listed. He said it was not part of the authority under this statute. The information did not specifically say arrest, but they did form a complete picture of the history of the criminal defendant. Mr. Kohn said arrests were based on probable cause and convictions were based on a plea or proof beyond a reasonable doubt.

Justice Hardesty said in 2010 representations were made to the Advisory Commission that these instruments were or had been updated. He said he was surprised they were using

instruments from 1990. Captain Sonner said the instrument validated on several occasions was the Risk and Needs Assessment which related to supervision of the offenders.

Justice Hardesty said there was concern in 2010 and 2012 that the importance of providing the sores was an addition error could create a different result and the defendant and the State had a right to know the assessments on the individual items. He asked who decided the information should be discontinued. Captain Sonner said it was the decision of a prior administration of Parole and Probation.

Mr. Frierson said that the notion was that somebody was going to be exposed to judgment based on arrest and the possibility that it was reflective of where they lived. He said in certain neighborhoods individuals were subject to more frequent arrests by virtue, almost, clearly of where the live. He said it was concerning as was the subjective nature of some of the items such as honesty, attitude and cooperation. He said the questionnaire included the factual basis for the offense. He was curious if there was a mechanism to take into account different actions of the parties. Captain Sonner said the offense report in the PSI was taken from the arrest reports. Mr. Frierson said the defendant was contacted to be interviewed. He asked what happened when the defendant was not available to be interviewed. Captain Sonner said they contacted the defense attorney if they were unable to contact the defendant. He said they made every effort to try to locate the defendant for the interview.

Mr. Digesti asked about the two forms, SRSS and PSP. He said the information was made available to defense counsel if requested. He asked if there was a particular contact person within the Divison to whom the request was directed. Captain Sonner said any number of people who work in the court services unit can be contacted. Mr. Digesti asked if the information was available on the request of the defense counsel, or did it require an order of the court. Captain Sonner did not think an order of the court was required in the past. Mr. Digesti asked if the defense counsel requested the information at the time of entering a plea, and before sentence was imposed, the information was entered into the order at that point, and the department would abide with the order. Captain Sonner agreed.

Captain Dwight Gover gave a presentation on the offender assessment and how they utilized their tools. He said the NRS established a level of supervision for the probationer or parolee under their charge. They were to reevaluate the offender every six months and notify them of any changes. The history of risk assessment tools dated back to the 1920s. He said it began with parole boards wanting to be able to estimate the probability of success or failure of prospective parolees. He said the Divison used an assessment tool based on the Wisconsin Client Management System. They utilized the assessment tool to aid in offender supervision levels. Within the first 30 days of supervision, officers were required to complete an initial risk and needs assessment. He outlined the data for the risk and needs assessment. He said he included offender population by supervision. He said there were approximately 13,000 offenders under active supervision. The risk assessment tool was validated in October, 2007, by the National Council on Crime and Delinquency (NCCD). He said there were recommendations in the report to enhance the needs assessment by utilizing drug and mental

health screening tools. Once a person was granted probation, they were required to have a mental health or a substance abuse evaluation by a provider in the community.

Captain Gover said he had additional information regarding the validation of the study. He said they found for new convictions within their categories of minimum, medium, or max the rates mirrored where the Division had people in categories. He said the revocation rates showed an equal similarity. He said that told the people doing the evaluation their assessment tools were within the ballpark of revocation rates and new criminal activity.

Mr. Kohn asked what percentage of the people put on probation were honorably discharged. Captain Gover said anybody who gets off probation, honorable or dishonorable discharge, they had completed the requirements of probation. He said people may receive a dishonorable discharge for a variety of reasons including court ordered, or a financial reason. Ms. Madris said they were at about 68 percent success for probation, but it was not broken down as far as honorable or dishonorable discharge. She said a discharge from probation was considered a success. Chair Segerblom asked how the 68 percent related to other states. Ms. Madris replied Nevada's success rates were very high compared to other states.

Justice Hardesty said when he was a judge they requested a monthly or quarterly report of the status by defendant of restitution payments. He asked if the report was provided to district judges currently. Ms. Madris said they did not distribute that type of report to the district judges. Chair Hardesty asked when they stopped providing the information or why they stopped. Ms. Madris said she did not have that information. She said in the Las Vegas area the number of individuals sentenced to probation and required to pay restitution was very large. She said they notified the courts with incidence reports as far as status restitution if someone fell behind in payments. They used other methods to report to the court on an individual's status concerning restitution payments.

Justice Hardesty said he was interested in having the information provided to the Advisory Commission. He was also interested in the status of collections by the Division on restitution, fines, and fees. He said in 2009 the Attorney General and he tried to improve collections on restitutions, fines and fees. He said they went to civil confessions of judgment to try to give the victims something to use to continue their collection efforts. Judge Barker concurred with Justice Hardesty. He said restitution had been problematic.

Ms. Bisbee said she was discussing the Nevada Parole Board Risk Assessment. She said age at first arrest, whether or not there was a conviction, was one of the static factors on the Parole Board Risk Assessment. She said it was a validated factor. The age at the first arrest was an indicator of recidivism. She said the Risk Assessment was done at intake with the NDOC. The second Parole Board Risk Assessment occurred when the NDOC case worker did a board report reviewed by the inmate. The third time was for a file for the parole hearing. She said it was done a fourth time at the actual hearing with the Commissioner and inmate present. Chair Segerblom asked if it was the same risk assessment all four times.

Ms. Bisbee replied it was the same and they rarely ever had an appeal based on errors in a risk assessment. She said the instrument was revalidated, by statute, every two years. She said the risk assessment was used, combined with the offense severity, and resulted in a recommendation that the Board considered. She said the primary recommendation for deviation for parole when the recommendation was to deny, was when someone had multiple sentences. She said once the parole order was produced the risk assessment was attached to the order. She added it was also considered public record. She said people working with Senator Segerblom requested the public record of 750 of the orders. The Parole Board staff collected the information and sent it to them. She said in considering risk when somebody is set for a violation hearing, they provide the most current needs risk assessment to the Board. They put it on the violation report when they request a retake order. She said they use that decision for making a matrix for parole revocation. She said they just started as a result of an NIC grant which brought the NDOC and the Division and the Parole Board together to look at the items. She said all the information was on their website.

Chair Segerblom asked if the risk assessment was assigned to a company or name. Ms. Bisbee said it was developed by Jim Austin and JFA. She said they had used versions of it since legislative action in 2007 and they started using it in 2008. It had been revalidated three times. Chair Segerblom asked if this was also used in regard to sex offenders. Ms. Bisbee said they used a sex offender assessment, one of many tools the NDOC found to be validated. She said in terms of a general risk for recidivism, the assessment tool generally shows the sex offender as a low risk.

Justice Hardesty noted that the parole board's parole rate was among the highest in the country. He thanked Ms. Bisbee and her colleagues for their work.

Chair Segerblom then called forward representatives of the Department of Corrections. Director Cox said Nancy Flores was presenting a power point presentation of her classification instrument for the Advisory Commission's information. He said the classification instrument was validated by the University of Cincinnati through the National Institute of Corrections in 2011. He said Dr. Austin testified that he thought the classification instrument was a good instrument.

Nancy Flores said she was a classification and planning specialist for the NDOC. Her presentation was in regard to the classification on assessment they used for the NDOC. She said the classification told them what custody level they sent an inmate to and which institution they sent an inmate to. The inmate was assessed at the intake; the second time was within the first thirty days in the prison system. They were then assessed every six months with periodic classifications using the reclassification schedule. She said there were interim classification schedules used to determine if an inmate may be considered for a different program or institution.

Ms. Flores said objective classification was used by the NDOC to decide where an inmate belonged within the prison system. She said risk factor scores provided a foundation for an

inmate's likeliness to escape. The purpose of objective classification was to protect staff, inmates, and the community. She said institutional files were developed when an inmate came into the system. They used the PSI in making determinations in calculating scores along with a judgment of conviction. She said Administration Regulation 521 had custody categories and criteria. She said it was the foundation for the classification of inmates to different custody levels.

Ms. Flores said two different assessment tools were used for inmate placement consideration. She said a caseworker asked various questions of the inmate including information concerning substance abuse history and any other factors that might have a different score than the reclassification instrument. She said risk assessment may score higher including other information. Intake assessments provided a guideline for new and returning inmates to the NDOC. She said there were different sections in the instrument, A, B, and C. Section A and section B gave the recommended custody level. She said section C included exclusions such as an inmate with a low score, but was on death row, and will never make minimum custody. She said felony convictions for sex offenses did not go to minimum custody per NRS. One year from a felony violent episode precluded them from minimum custody. She said they also had other discretionary exclusions to use. She said they always used judgment. They had programs for juvenile inmates less than seventeen years old. Staff judgment and selective criteria was a critical tool when using the objective instrument. She said the instrument had been used for over 20 years.

Deputy Director Cheryl Foster said this type of institutional assessment instrument was used widely across the United States. She said the instrument had been updated and revalidated through the years. She said in 2011 the National Institute of Corrections revalidated the instrument.

Mr. Digesti asked if corrections were made to the PSI report at the time of sentencing and how did the corrections get to the file of the PSI if the file was not corrected by some type of expansion or comment by the court. Ms. Flores said most of the casework staff had access to OTIS. They were able to pull any updates or changes from the OTIS system. Mr. Digesti further asked if the only information was on the transcript of the sentencing and there was no written follow up correcting the PSI report. He said it might just be oral comments by the judge at the time of sentencing. Ms. Flores said if they requested them, they might be able to get the court minutes if ordered to substantiate the inmate's claim. Mr. Digesti asked how they knew to make such a request. Ms. Flores said the inmates told them their record was incorrect and the case worker requested the information.

Dr. Darcy Edwards, Nevada Department of Corrections, said she was the quality assurance manager for behavioral services. She said one of the things they did was look at practices already validated from the public domain with some upfront costs. A system called the Ohio Risk Assessment was a dynamic risk needs assessment used with offenders. She said they needed a program that most mediated the criminogenic risk factors for the person. The offender was involved from the beginning. The Ohio Risk Assessment System was developed

in 2006. She said the NDOC adopted the system in 2003 and was granted permission to name it the Nevada Risk Assessment System. She said 10 other states use the system. She said the major goal was to effectively allocate resources in a manner that reduced the likelihood an offender would commit future crimes.

Dr. Edwards indicated that there were four primary tools in the system. A pretrial tool informed the court of the defendant's risk of failing to appear at a future court date. A tool for community supervision was used with offenders on parole or probation and designated community supervision levels and guides. The prison used the prison intake tool designated to provide case managers with information used to prioritize prison based interventions. She said they also used the reentry tool designed to be used with inmates within six months of release from prison. The system covered antisocial attitudes, behavioral problems, antisocial associations and lifestyle, education, employment and finances and substance abuse. The Nevada Risk Assessment System predicated the likelihood of rearrests and recidivism at different points across the system. It allowed for professional discretion and overrides. She said it was cost effective and sustainable. She said there was no cost once the facilitators were trained to use the instrument.

Laurie Hoover said she was a licensed psychologist assigned to High Desert State Prison. She was present to discuss Static-99 and other assessments used for sex offender recidivism. She said the Static-99 was the most widely used instrument for sex offender risk assessments. Chair Segerblom said there were multiple instruments used. He asked if they looked at the person to determine how they picked the risk assessment tool. Ms. Hoover said the Static-99 was not appropriate for certain types of populations of offenses. She said it was not appropriate for use with female offenders. They used the Sexual Violence Risk 20, SVR 20.

Chair Segerblom asked if the Static-99 was the instrument used for male offenders. Ms. Hoover said the Static-99 was the current instrument used since SB 104. Chair Segerblom asked if she wanted to use a different instrument. Ms. Hoover replied historically they used several different instruments. She said the Static-99 was a robust instrument and it was used throughout the United States and Europe and translated in six languages. She said there was a lot of research done on it. She said it was not appropriate for use with juveniles.

Chair Segerblom said up to 20 percent of the prison population had a sex offender component to their past or their sentence. Ms. Hoover said she was not familiar with that percentage, but she was not surprised if that were the case. She said the Static-99 was an actuarial risk assessment and had statistical weighted variables to estimate the risk of committing a new sexual offense. It was proven to be more accurate than clinical judgment or unstructured interviews. She said female offenders and offenders under the age of 18 were excluded. Offenders who had been on parole for over 10 years without a new sexual offense were also excluded from the Static-99. Chair Segerblom said he liked the idea of having a uniform evaluation throughout the state at every level.

*Appointment of Subcommittees*

Chair Segerblom said there were several subcommittees needing appointments. The first subcommittee was the Subcommittee to Review Arrestee DNA. Chair Segerblom said for the record that the Subcommittee would be comprised of: Steve Gresko, Renee Romero, Bertral Washington, Rachel Anderson, Steven Yeager, and Tracy Birch. He asked if there were any objections to the nominees. He asked Mr. Yeager to chair the subcommittee.

ASSEMBLYMAN FRIERSON MOVED TO APPROVE THE MEMBERS.
JUDGE BARKER SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

Chair Segerblom then moved on to the appointment of the Subcommittee on the Medical Use of Marijuana. He read the names of the people recommended for the Subcommittee. Chair Segerblom said he would chair the Subcommittee. He said they did not have a holder of a card yet or someone from the Department of Health, or manufacturer or dispensary. They could appoint people to the marijuana subcommittee later to fill those slots as necessary.

ASSEMBLYMAN FRIERSON MOVED TO APPROVE THE MEMBERS.
JUDGE BARKER SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

*Public Comment*

Wes Goetz commented on the Static-99. He said when he was in prison he had low risk on the Static-99 three times when he had the psych panel but they told him he was a high risk. He said the psych panel was no longer there and the Parole Board was making their decision about the Static-99. He said it usually gave a lot of low risk for recidivism rates but he believed the Static-99 was not being used properly.

Mr. Goetz said they needed more licensed psychologists in the prisons. He wanted to know if Ms. Hoover was actually licensed in the State of Nevada or just in another state. He said he wanted to be on the sex offender committee as he was a registered sex offender and might have more information. He also knew a lot of psychologists who were working for sex offenders, getting them treatment and assessing sex offenders in Reno. He wanted a licensed psychologist who was working with sex offenders on the subcommittee.

## E. FIFTH MEETING

Chair Segerblom called the fifth meeting of the Advisory Commission to order on July 8, 2014.

*Eyewitness Misidentification and Wrongful Convictions*

Rebecca Brown, Director, Innocence Project, said they were excited to make a presentation in Nevada. She offered a brief presentation on the Innocence Project. She said it was a national litigation and public policy organization based in New York, but working nationally. They were dedicated to exonerating innocent people through post-conviction DNA testing. She said there were 65 network projects litigating claims of innocence. She said the Rocky Mountain Innocence Center worked locally. There were 317 DNA exonerations across America.

Ms. Brown said most clients did not spend time on death row. She said real perpetrators who were not identified continued to commit crimes including rape, murder and other additional violent crimes. Ms. Brown said Nevada had a good post-conviction DNA testing law. She said most wrongful conviction causes in DNA cases were eyewitness misidentification. She said it was not anything law enforcement was doing wrong. Eyewitness identification was fallible. She said they were seeking a series of reforms to the system, system variables and estimator variables. They focused on noncontroversial reforms. The first was blind administration of lineups. She said the folder shuffle was another option. She said law enforcement leadership had occurred around the country. Their goal was adoption of evidence based practices in Clark and Washoe Counties. She said they met in Clark County for productive exchanges of ideas and training. She said she did not think a new law was necessary.

Chair Segerblom asked if there was a model bill she recommended. Ms. Brown said they had model legislation. She said Maryland and Vermont passed laws that keyed written policies to a model policy.

Mr. Callaway said the point of voluntary acceptance of policies versus mandates through legislation was the discussion of the evolving science of witness identification. He said best practices today may not be best tomorrow. When things were codified in state law, it did not allow for changes. He preferred to use voluntary cooperation with law enforcement.
Ms. Brown agreed that voluntary cooperation was an acceptable way to go.

Mr. Kohn asked Ms. Brown to explain what sequential identification meant and why she believed it was superior to the way it was currently done with the six packs. Ms. Brown said the traditional six packs presented all the lineup members at the same time. The sequential presentation shows the lineup members one at a time. She said scientists based that presentation on lab studies, confirmed in the field, that people exercise relative judgment when looking at six photos at the same time. She said they chose the person who looked most like the perpetrator in the lineup. She said the folder shuffle method was an alternative to blind administration and was a de facto sequential presentation because the lineup members were in individual folders.

Mr. Frierson said he thought the national model legislation was proposed in 2011. He asked if positioning in the six packs was consistent or if dress was part of the identification process, whether those issues were addressed. Ms. Brown said she understood LVMPD already made

sure there was consistency in background and dress. She said the show-up procedure could use some suggestions to make it a less suggestive procedure.

Mr. Siegel said he was concerned about the two county focuses. He said the ACLU would be looking for a broader application of the voluntary approach. The material on eyewitness made a person feel a lack of confidence in that testimony in general. The problem was in eyewitness identification itself. He said it seemed people were terrible at eyewitness identification. Ms. Brown said about one third of the time eye witnesses get it wrong. She said implementing the reforms will drive down the misidentification rate dramatically. We cannot do away with eyewitness identification. She said they should always look for further evidence. She recommended putting reforms in place to enhance the accuracy of the evidence.

Mr. Callaway stated that the Sheriffs and Chiefs Association was actively involved in this since the passage of AB 107. He said about 99 percent of the law enforcement agencies in the State were in compliance with the bill. He said the bill required law enforcement agencies to have a policy and that it may include Fish and Game or animal control officers who never do witness identification.

Chair Segerblom asked if some entity reviewed the written policy. Mr. Callaway said the Nevada Sheriffs and Chiefs Association was tasked with reaching out to all the law enforcement agencies in the State. He said the bill required the agency to have a policy and it was up to them to adopt the policy. Ms. Brown said they had an eyewitness tool kit which had different policies for different sized agencies. She said the current law only required a written policy.

Mr. Spratley thanked Ms. Brown for her support in bringing law enforcement into a partnership in this regard. He said things change and they had a proactive and voluntary opportunity with the law enforcement agencies of the State. He said Washoe County agreed with everything Ms. Brown suggested in her handout. Ms. Brown said she did not see the profound need for legislation.

Mr. Jackson said the District Attorneys in the State fully believed in the ABA standard to seek justice and not merely to convict. He said they were topics discussed on a monthly or even a weekly basis. A case solely based upon a single eye witness identification with no other evidence was subject to close scrutiny. He said of the 317 misidentifications identified through DNA exonerations there were obviously other cases of exoneration without DNA. Ms. Brown said there was a national registry of exonerations. The numbers she could speak to were the DNA exonerations.

Mr. Jackson appreciated the Las Vegas policy. He concurred with Mr. Callaway about how well the voluntary approach had worked. He said Douglas County adopted Las Vegas Metro's policy. There was a major problem trying to legislate this. He said lessening identification evidence failed to recognize that there were victims of crimes where the only evidence was

eyewitness identification. Ms. Brown said no one was totally educated in eyewitness identification. She said they could collaborate on what made the most sense for public good.

Justice Hardesty asked Ms. Brown if she would supplement her presentation by identifying any of the 317 innocents from Nevada. She said it had little to do with the stakeholders in the criminal justice system and more to do with how people remember information. She said the simple reform helped reduce eyewitness misidentification.

Mr. Callaway said it would be interesting to discover how many of the exonerations had eyewitness testimony as the sole reason for prosecution. Ms. Brown said it was a key point. Most cases had a number of contributing factors. The goal with eyewitness identification was to mitigate the evidence to make it the most powerful form. Mr. Kohn said he thought there were zero cases from Nevada. One reason was because there was not an innocence project based in Nevada. He said Nevada lacked the resources to study all cases. He said an interesting point was how many of the cases were from false confessions. The FBI announced they would record all confessions. He said the Advisory Commission should look at that, everything should be taped.

*Presentation on Civil Penalties for Violations of Certain Traffic Laws and Ordinances*

Assemblywoman Fiore appeared before the Advisory Commission to present on the issue of civil penalties for traffic offenses. Ms. Fiore read a quote from the research department. She said more than one in four people in the United States had a rap sheet. She said the nation's incarceration rates were the highest in the world. She wanted to talk about AB 248 from last session. She said the bill took minor traffic violations from a criminal violation and treated them as a civil fine.

Senator Brower said he did not understand her connection between her first statement and the bill. He asked if she was suggesting there were people incarcerated in Nevada for minor traffic violations. Ms. Fiore replied yes. She said, for example, last week one of her constituents was hit by a drunk driver. Police arrived and arrested the drunk driver. Her constituent had an unpaid speeding ticket and a bench warrant for his arrest. She said he paid the speeding ticket, went to jail, and it took 15 hours to get out of jail. She said they were 800,000 records behind in implementing.

Senator Brower said he knew about arrests about probable cause. He said the example she cited, the person was not incarcerated currently. He thought her bill tried to address the issue of whether minor traffic violations should be criminal offenses or not. Ms. Fiore replied that was correct. In the states around Nevada they were civil violations not criminal infractions. Senator Brower asked her if people were in prison today for minor traffic violations, and he asked for examples.

Ms. Fiore said there were people today in Nevada incarcerated for minor traffic violations. Mr. Jackson said in Douglas County when a person was pulled over for a traffic violation, in

lieu of an arrest they signed a citation which was a promise to appear. If they failed to appear, typically an order to show cause or a notice of intent for a bench warrant was issued. The issue about a failure to appear was separate and apart from the underlying offense. He asked Ms. Fiore if the legislation addressed if a person was cited, even if it was a civil penalty, and they failed to appear or pay, can they then be arrested on that failure. Ms. Fiore said yes there were progressive steps they can take. She said this bill offered processes and steps. She was open to suggestions for the bill. Mr. Jackson asked what happened to the bill last session. Ms. Fiore replied that the judges thought they were going to take their money from them and they contested the bill.

Mr. Siegel wanted to hear about criminal sanctions for the most minor traffic violations. Chair Segerblom said the reality was that the judicial system was concerned that if it was changed to a civil penalty it would cause people to not pay their fines. He asked Ms. Fiore if she talked to any of the courts. Ms. Fiore said the other concern was a software program and its implementation. The money had to be collected either way, it might take an extra month or six months. She said arresting citizens was a big fiscal burden.

Mr. Callaway asked if she saw any change for the law enforcement officer in the field. He assumed the courts would determine whether it was civil or criminal. He said a minor traffic offense was often the probable cause for a more serious offense. He asked if the bill would impact an officer's ability to use that civil infraction for probable cause. Ms. Fiore said when an officer pulled someone over and someone displayed disorderly conduct, it was not a traffic violation it was an arrest offense. Mr. Callaway said with the adoption of this law the officer's actions would be exactly the same. They would mark a civil box rather than a criminal box. Mr. Kohn said the problem was that all traffic violations are misdemeanors. He said resisting arrest, fleeing the scene, failure to sign the citation was still a misdemeanor. He said anytime an officer can articulate probable cause, it did not change the outcome of any of the horrible cases.

Mr. Frierson said the reason the bill was held up was a concern about the creation of an offense called an infraction. He said everything would have to be reprinted to meet the definition of an infraction. He spoke with some members of law enforcement and traffic offenses were often the failure to appear issue. He said some people spent a few days in jail. Their children were sent to child protection because there was nobody to care for them and some people lost their jobs or their apartments. They also lost the ability to pay. He said there was a BDR attempting to address the issue. He said it defined the punishment for a misdemeanor as what it currently was except for actual violations. He said in the Assembly the spirit was to help local government and not waste resources on non-violent offenses and recoup their costs. He said there was an opportunity to save local government a significant amount of money and not affect law enforcements duties.

Justice Hardesty said using the criminal justice system to effectuate collections of minor fees and fines was bad policy. There were many ramifications associated with this proposal. He urged the Advisory Commission to acquire additional information from other states referenced

by Ms. Fiore. He said there was an assumption the court system was equipped to handle the collections of fines and fees. He said the court was not equipped to do so. The State's collection system was problematic. The concerns expressed by judges were not to protect their budgets or money. The judges were trying to convey the fiscal consequences that flow from a collection system that does not work. He said the question needed to be addressed whether or not the failure to collect should be addressed and the failure to appear which carried separate criminal consequences. The other point was raising administrative assessments as a way to fund the judicial system. He said about 40 percent of the Supreme Court's budget came from administrative assessments. He said there was a serious drop-off in administrative assessments in Nevada. The four largest court systems were seeing declines in revenue. The funding for the Supreme Court, specialty courts, victims of crime funding were all below projected levels because of administrative assessments not being collected or assessed. He said there was a serious drop-off in traffic citations. He said once the fines or fees were assessed a collection method needed to be in place.

Justice Hardesty wanted to clarify the number of court or outstanding reports. Last summer when the Supreme Court learned some courts had not reported convictions, the Chief Justice undertook a survey of all the courts to determine the status of the reporting compliance. As a result of the process they brought everybody current. He said of the 800,000 Ms. Fiore referenced, 600,000 came out of the Las Vegas Municipal Court. He said most of the other courts had reported and it was a breakdown in communication between some of the district attorney's offices and some of the courts as to who reported the convictions based on past practices. He said technology provided a solution to the problem. He said it was a bubble issue and all the courts were now in compliance. The general idea made some sense but it needed a lot more study and information. He requested a copy of the BDR and that the Adviosry Commission evaluate it in greater depth.

*Presentation on Inmate Rights and Prison Reform*

Chair Segerblom opened the discussion on inmate rights and prison reform. Assemblyman Harvey Munford said Assembly District 6 was not the most affluent district. He said many of the people living in his district had members who were now or were formerly incarcerated. He said he was not here to defend the actions of those who broke the law. There needed to be consequences for those unlawful actions. He said in many cases people were granted probation. However, some offenders do become inmates at the state correctional facilities. He had two main topics today. He said it was important to respect inmates. The time served by an inmate was supposed to be the punishment. The punishment should not shut off the ability of an inmate to have reasonable questions answered or investigated by the agency overseeing him. He said he heard from many family members about their problems. He said there was a concern that the case workers were unable to give timely or sufficient answers to legitimate questions. He said case workers had a very difficult position. He respected the work they performed. He said he was also told some case workers and correctional guards displayed a dismissive attitude towards inmates. He said he had 10 letters from inmates who had written him. Inmates did not always get an opportunity to review their folder before they appear before

the Parole Board. Mr. Munford said he was concerned about access to the correctional facilities for elected officials. He said in 2004 there was no need to prearrange, in advance, a visit the facilities. He said out of respect they would call the warden and tell him when they would arrive but after 2007 they had to make contact in advance to visit the facility. He completed his discussion by saying Director Cox had compassion and humanity for inmates.

Chair Segerblom thanked Mr. Munford for the presentation. He said he hoped to come up with a solution for better communication helping the families, and provide hope for everybody. Mr. Munford said he was involved in a case with an inmate who came before the Pardons Board. He said she had an illness that cost the State $400,000 a year to treat. She was denied a pardon. He was going to look into situations like hers.

*Presentation on Parole and Probation Functions*

Chair Segerblom said the next item for discussion concerned the placement of parole and probation functions. Ron Cuzze said he worked with Mr. Faulkner and he would answer any questions the Advisory Commission might have for him. Rick Faulkner, National Institute of Corrections, said he had been in corrections since 1958. He retired from the National Institute of Corrections in 2003. He said they formed a network of directors of probation and parole which included Nevada. Nevada had a different and unique system in the way it was set up. He said 27 other states had probation and parole under the NDOC. He was unaware of a state that had parole separate and a part of the prison system with the exception of West Virginia. He said he met with the head of probation of Korea. He said he sent the man to Reno to learn how to manage parole and probation. Nevada ran an excellent system of handling the case load. He said probation and parole was the center of the wheel. They interact with every entity from the beginning to the end. He said Nevada had a great thing in parole and probation. He said he would answer any questions.

Chair Segerblom said there had been suggestions over the years to put parole and probation under the NDOC. He asked what the advantage or disadvantage was to that type of system. Mr. Faulkner said putting probation and parole under the NDOC existed in 29 states. He was concerned about separating parole and probation.

Chair Segerblom asked what Director Cox proposed concerning parole and probation. Mr. Cox said many states have parole and probation associated with the NDOC. He said over 42 states had parole with the NDOC. Last session when the discussion was held many people said both parole and probation needed to be with the NDOC. He thought it was the right thing to do. Nevada was the only state that had parole and probation as a department of public safety. He said they were doing a good job, however, today's limited resources suggested it was a more seamless way to do business. He said it was up to the Legislature to decide the answers. He said the problem with separating parole and probation was that consistency can be lacking.

Chair Segerblom asked Mr. Cox why he did not ask for probation during the last session. Mr. Cox said he did not believe they had the support to do both. He said now, he would ask for

both. He said they did not plan or structure for it at the time, but that it was important to continue the discussions.

Mr. Kohn asked about the federal system's writing of probation reports which was overseen by the Administrative Office of the Courts. He asked if there was anything wrong with that system. Mr. Faulkner said there was nothing wrong with the system. He said having it under judicial also worked well. He said Nevada had a system that was also working well. Mr. Kohn asked how Mr. Faulkner defined working well. He asked if he was aware the Department of Parole and Probation requested six month continuances. Mr. Faulkner said he never saw any "blow ups" in Nevada. He said administrative meetings and the interaction between administrative staff and probation and parole were excellent. He compared it with other states and believed Nevada was doing a good job.

Judge Barker asked what efficiencies the model he described offered where the writer reported directly to the judiciary as opposed to the model they followed now. He asked if there was a greater efficiency. Mr. Faulkner said it was called the rocket docket in Eastern courts. He said when the Speedy Trial Act came into play, the federal judges said they had to slow it down to sixty days because they were doing it in a lot less time. He said the relationship the department always had with the judiciary was excellent. Judge Barker asked if that meant the communication between the bench and the authors of the PSI reports was a value and more efficient. Mr. Faulkner replied that Judge Barker was correct.

Mr. Jackson asked about the pro and cons before the Advisory Commission. He asked for potential conflicts, consistencies, or fiscal impacts outlined in a table with the multiple options possible. He said factual data driven information would be helpful. He also stated on the record out of an abundance of fairness to the Division, the Advisory Commission had already identified the major issue was the lack of personnel for the Division of Parole and Probation; specifically in doing the presentence investigations and drafting of those reports. He stated he believed if the same numbers of people were under the NDOC or the AOC there would be the same type of delays. He had no bad experiences with the persons who represented the division with the reports. He said they did a fantastic job.

Justice Hardesty joined in Mr. Jackson's observation. He said who the Division of Parole and Probation reported to may be a significant issue, but it did not have the priority that providing adequate resources had. He said the problem the Division labors under was directly related to the lack of resources. He said it was time the Legislature did something about that issue. He said moving an underfunded agency to a different agency did not mean there was an improvement. He said the problem with updating risk assessment tools, changing formatting, increasing the content of the PSI report, scoring mechanisms, adequate supervision to those on probation or parole all needed addressing. Four years ago he suggested that the Advisory Commission follow the Arizona law about reporting to the court system. He said until they addressed the underlying inadequacies of funding and support for the Division they will not accomplish as much as needed in this area.

Mr. Faulkner recommended that the Advisory Commission contact the National Institute of Corrections and have them send someone in to review what Nevada was doing. He said they were great at getting information when you needed it at no expense to the State.

Mr. Pierrott supported the fact that Parole and Probation was under DPS. He said the officers received a great deal of training to prepare them for the job. The system was working and they were working on the improvements that were identified. The assessment tool was being looked at for other options. He said the issue with the PSI was addressed and they were working on making needed improvements.

Jim Wright, Director, Department of Public Safety, said they recognized the backlog of the PSI was causing a tremendous problem. The put together an action plan and took the plan to IFC and received support allowing them to hire additional staff. He said the PSI backlog had been reduced with the additional staff.

Natalie Wood, Chief, Parole and Probation, said when she came on there was a significant issue with the backlog of PSIs. She said there was a legitimate reason for the backlog. AB 423 was not funded. They realized they needed to restructure some of the staff. They added additional staff to remove the PSI backlog. She said today, this morning, all of the backlogs had criminal histories on them. They were now waiting assignment to the PSI writers.

Judge Barker reported that he complained about the number of continuance letters the bench received. He said in the last 30 days he had not received a request for continuance on any PSI and none of his colleagues had expressed concern. Mr. Callaway said he had seen an improvement with the PSI process.

Chair Segerblom said his goal was to make the system less punitive and get people out of incarceration. The revenue saved could go into parole and probation. He said they needed to be better funded and paid and the savings needed to not go into the General Fund.

*Presentation on the Fiscal Impacts of the OJ Simpson Conviction in Nevada*

Chair Segerblom opened discussion on the use of resources in the OJ Simpson case. He said he asked for the presentation with an eye towards trying to make the criminal justice system less expensive. He said in reviewing the OJ Simpson matter it appeared they had a 66 year old man who was one of the least likely people to reoffend. He was stuck at the State's expense of $200,000 a year in prison without factoring his health issues. He said there had to be a better way to deal with a crime like Mr. Simpson had committed.

Tom Pitaro, an attorney who has worked with Mr. Simpson appeared before the Advisory Commission. He said they asked Mr. Simpson for permission to appear and use his name. He said the OJ Simpson cases were not normal cases. High profile cases were handled differently. He said there were problems with the court when TV cameras were allowed. Costs in the criminal justice system were broader than the cost of incarceration. He said $25,000 a year

was the number used. He said jail costs are over $100 a day in the Clark County Jail. He said if a person was sent to jail for a year it cost the taxpayers $36,500, if sent to prison it costs $25,000. He said other costs were the police agencies, prosecution's function, and the defendant's costs. A major area in cost was the social cost. A victim of the crime had a social cost as well as the defendant. He said all the costs trickled down to the tax payer. He suggested in the sentencing PSI report it should include the cost involved in probation, as well as the cost for incarceration. He said Mr. Simpson's cost for nine years at $25,000 cost the taxpayers $225,000 to keep him incarcerated. He said more people were put in prisons and they were aging. In addition to the regular cost, medical costs were associated with the inmates. He said studies showed violence seemed to decrease with age. The sentencing structure did not reflect that major and fundamental issue. He said a mechanism or review process to see if the person should be kept in custody was needed. Nevada had too many mandatory minimums. Mandatory sentencing tended to over punish or under punish. The punishment should be individual. He said the problem of aging and cost was directly related to the mandatory minimums. He said Mr. Simpson had to do 9 years before he can be released.

Chair Segerblom asked if there were statutes for early parole for medical reasons. Mr. Pitaro replied that there were provisions for that sort of situation. He said the person should be released for humanitarian reasons besides the State bearing the cost of keeping the person incarcerated. He said there was no review process from the time of incarceration to the date of the parole hearing. The studies he read showed there were too many non-violent, non-dangerous people in prison. He said if a judge, prosecutor and the public knew the sentence was going to cost $100,000 to $200,000 it was time to ask if incarceration versus the benefit to the community was worth it. He said that analysis was never made in the system. He said the minimum amount Mr. Simpson's cost was $225,000. He said most of the nonviolent people could be paroled and monitored.

Mr. Spratley asked where the conversation was going. He was looking at a document from the District Court of Clark County. He said the person was convicted of numerous counts to include first degree kidnapping with the use of a deadly weapon, first degree kidnapping robbery, assault with a deadly weapon, and numerous charges. He said he was hearing non-violent people, elderly people who were not as violent. He said the inmate was 60 years old when convicted of these crimes. He wondered about the age cutoff. He said the arguments were not making sense. He said OJ Simpson was convicted in 2008 by a jury trial. He said it appeared they were talking about a violent person. He asked if this was in the scope of what was supposed to occur in the Advisory Commission.

Mr. Pitaro said the comments lead us to the problems currently. He said the facts did not support the idea of a terribly violent person. The person had not committed a crime until he was 60 and he came to Nevada.

Mr. Jackson said he objected to the circular, repetitive, non-factual discussion. He said if OJ Simpson was not in that prison, it would not save $225,000. He said this was his second session and he was proud of the work the Advisory Commission had done. He said there were

disagreements with various members. Victim's rights were not being considered in this discussion. The laws were designed to protect vulnerable individuals. He said the right people were incarcerated. He said this matter should not be before the Advisory Commission. The Legislature needed to understand there was a separation of powers and discretion was given to the judges.

Mr. Frierson said he was passionate about the legislative process and protecting that process. He said legislative committees and interim committees had Chairs who set the agendas. The Chair should be allowed to do his job and receive respect for the chair, the commission and the members who made presentations. He said the discussion involved making sure the judicial process had a mechanism to be aware of the costs as they proceeded.

Chair Segerblom said part of the Commission's charge was to study the costs to the system and the taxpayers of the criminal justice system. Mr. Pitaro said the legislature was involved, and involved in a negative way, when they enacted mandatory minimums. He said they were taking the discretion away from courts. The mandatory minimums lead to some serious abuses. The federal government was making an effort to deal with the issues. He said sentencing guidelines and equality in sentencing resulted in the United States incarcerating more people than any other civilized country in the world. He recommended putting the cost before the public. He said he did not care if he offended anybody because he thought the system was broken.

Senator Brower thanked Mr. Pitaro for attending the meeting. He said it was an elected district attorney who made the charges for the cases; the jury determined guilt; and an elected judge made the sentencing decision based upon sentencing statutes enacted by the elected Legislature. He said they should not lose sight of those facts. He said they all agreed there were too many people in prison and it cost too much to keep them there. He said looking at each inmate made it more difficult to make decisions. The details in our systems do not put people in prison for long times who do not deserve to be there. He said they hear about minor, petty offenses that result in long sentences, but it was not true. He said the Advisory Commission obtained more than antidotal evidence and they had not seen any actual evidence. He asked Mr. Pitaro if he thought the federal system, which did not include parole, worked better than the state system where they did not know at the time of sentencing how long someone will be in prison. Mr. Pitaro said the problem with the federal system was the manner in which they set up the grid under the guidelines. He said it meant everyone convicted of a crime went to prison. The concept of the guideline was right, but the implementation of it was not right. Senator Brower said parole was eliminated, but probation was still an option for many federal crimes.

Senator Brower reminded the Advisory Commission that the issue was more about mandatory minimums than determinate sentencing. He said low level mules getting long sentences was because they refused to cooperate and did not take advantage of the so-called safety valve that allowed a much reduced sentence by cooperating with the government.

*Presentation on Pretrial Diversion and Reentry Programs after Prison*

Chair Segerblom opened the discussion regarding the pretrial and reentry programs after prison.

Mr. Pierrott discussed the reentry program. He said Parole and Probation was working with the NDOC and the Parole Board to try to increase their ability to release people based on programs they had set up. He said they created a training program to better assist parolees and provide better programs.

Chair Segerblom asked if they had any programs where people could come out of prison before they were on parole, or do they have to be paroled. Mr. Pierrott said they had to be paroled. He said they had inmate programs where they could come out under house arrest. Parole and Probation received 350 approved parole grants each month, and 300 of them were released. He outlined the parole grant approval. He offered statistical data concerning the offenders. He discussed the re-entry coordinators and their program. He continued his presentation about available funding, help for veterans in prison and coordination with the NDOC. He said they found the program had been very effective. They had people going into the prisons and meeting with them and providing them with the information.

Mr. Siegel said he had a positive feeling about the intentions of Parole and Probation. He asked about people who did not prepare an adequate plan. He thought there was a significant portion who were functionally illiterate, spoke a language other than English or Spanish and had other mental issues. He asked if they were working to make sure those types of problems did not impede the progression of the plan. Mr. Pierrott said that was the exact purpose of a plan. The plan was to try to assist those people that were unable to do their own applications. He said the re-entry coordinators worked with them and drew up an application for them. He said they tried to place people with mental health issues into a facility that can assist them.

Mr. Siegel said he was concerned about people who did not speak English or Spanish. He was concerned about the preparation of the plan. He asked if there was anything Parole and Probation needed in terms of resources to make it more successful. Mr. Pierrott said everyone agreed they needed more resources. Ms. Wood said it would be a huge asset to the Division if they had individuals that were bilingual. Ms. Wood said if they had the available resources and were able to hire more bilingual officers it would help overall. Ms. Wood said just over 26 percent of the inmates elected not to pursue the plan.

Chair Segerblom asked if people got out of prison early with this program. Ms. Wood said many elected to flatten out their time for personal reasons. She said some elected to not be supervised or chose to move to another state. Chair Segerblom asked if there was a cost savings by getting people out early. Ms. Wood said yes there was a cost savings if they could defer the cost to supervising in the community.

Mr. Cox said they had looked at specific areas where they could improve the ability for people to do better under supervision and get them out of the system. There were benefits for the NDOC. He said a portion of the population in the system did not submit viable parole plans or decided to remain in prison rather than go on parole.

Kim Madris, Division of Parole and Probation, said if more funding could come to the Division, it would help fund re-entry programs. All of their efforts were pulling people from other positions and working with the NDOC to do the re-entry function. They needed to be able to fund their division with re-entry people to assist the parolees.

Mr. Cox said John Collins, statewide re-entry program coordinator, would discuss re-entry services in the Department. Mr. John Collins said presently there were 5,460 individuals being released into society every year. He said he provided services for jobs, housing and other resources as re-entry services.

Chair Segerblom asked if it was possible to be released from the Lovelock prison and given $50 and sent down the road. Mr. Cox said it was possible, but they hoped it would not happen. There was transportation involved, but it was somewhat of a myth. He said the improved plan included looking at housing and helping them fund it.

Mr. Collins said the NDOC was trying to continue the re-entry programs including vocational training. The NDOC received funding from DETR to provide re-entry services. He said PRIDE stood for purpose, respect, integrity, determination, and excellence. The program provided pre-release assistance to inmates. He said the NDOC received a $550,000 grant from DETR to continue the program. The program provided pre-release training to all inmates and reduced the recidivism rate. He also mentioned the boot camp program.

Mr. Kohn asked about driver's licenses and IDs for people leaving prison. Mr. Cox said last session a statute was passed. He said it was important to get a social security number and a birth certificate in order to get the proper ID. They helped them with the DMV and having DMV accept NDOC's identification. He said they had explored a number of the issues to get through a number of obstacles with Homeland Security. He said they were doing a better job now.

Mr. Callaway said based on the statistics it appeared that 22 percent of the people leaving the prison were from other states. He asked if they were tracked to see if they stayed in Nevada or if they returned to their own states. Mr. Cox said they had analyzed the numbers. The recidivism rate was low due to the number of people returning to California. He said 10 to 11 percent of the population were released to ICE. The NDOC was working closely with data from California concerning recidivism.

Mr. Cox said they were completing the design and were going to construct a transitional housing center in Sparks. He said it would have 112 beds near the Grand Sierra Resort. The tentative opening date was August or September of 2015.

Mr. Jackson asked Mr. Cox about the step-down program. He asked about the average length of stay in the program and if the success or potential recidivism was being tracked. Mr. Cox replied that the outcomes were important and they were tracking the 190 boot campers. He said housing was a problem for some people as they did not want to go back to the neighborhood where they used to live. He said it was important to see the success of this program. Many states and communities had stopped boot camp programs. He said Nevada's successes were good and he was proud of the program. He said they would provide the information on the outcomes whether good or bad.

*Presentation on the Performance and Funding of Specialty Courts*

Chair Segerblom opened discussion on the funding of Specialty Courts. Judge Linda Bell appeared and stated that she was in charge of the specialty court programs in the civil criminal division. She said the first program was called OPEN and was a partnership with the Department of Parole and Probation and the NDOC. She said the program was an intensive probationary program. They needed to ensure that the program continued, but without additional legislation the statute expired. They also had a veteran's treatment court that was currently unfunded. She said they had a DUI court program with about 400 people. They partnered with Parole and Probation and now put people in the program on probation. She said there were 400 people in the Drug Court Program. She said it provided intensive counseling. They had approximately 100 people in Mental Health Court. The Mental Health Court graduates reduced felony arrests in that population by 93 percent.

Chair Segerblom asked what was entailed in a Mental Health Court. Judge Bell replied that the court was limited to people who were very sick. She said they could go through the court as a diversion program. She said it gave the participants the opportunity to not go to prison and provided housing for them.

Chair Segerblom asked if people who were that mentally ill could still go to prison. Judge Bell said the standard for competency was not a very high standard. She said people who were mentally ill, as long as they could comprehend, their action can be prosecuted. She said approximately 20 percent or higher of the people in prison suffered from a serious mental illness. They had a prison reentry program in the past, but no longer had funding for the program. She said they struggled with funding and had a complex patchwork of funding. They were understaffed and had a critical shortage of inpatient beds. She said it was more than a four month waiting period to get into an inpatient bed.

Mr. Siegel asked about the low standard of competency in the mental health area. He asked if it was determined by the judiciary or by the Legislature. He asked if the Advisory Commission could influence a change so the prison was somewhat less than the principal mental health institution. Judge Bell said it was both. There was a federal constitutional standard and then Nevada can choose to provide additional constitutional or other statutory safe guards to any of its citizens. She said everyone wanted to see solutions where sick people were not put in prison because they were sick.

Mr. Kohn said competency meant who could be held liable for a crime. The US Supreme Court standard was that someone had to understand the nature of the crime and be able to assist counsel in their defense. He said it was a very low standard. He said they needed to find better ways to deal with people who are mentally ill. They should not be changing the competency standards, but looking for better treatment facilities. He said it was less expensive to keep people in housing and with medical care than putting them in a prison.

Judge Barker asked Judge Bell about the patchwork of funding. He asked if there was a state model elsewhere they could study to help her with her important work. He said he was looking for tools the Advisory Commission could go to the Legislature with for assistance in the funding needs. Judge Bell said in Orange County their programs were so well funded they had their own building. The court provided courts and treatments.

Judge Deborah Schumacher, District Court Judge in Washoe County, said as of June they had 1,084 specialty court participants. She said the largest courts in the North were the adult drug courts, the mental health court and a significant diversion in the felony DUI court. They also had a veteran's court, a family drug court, and a family mental health court, a juvenile drug court, and a prison reentry court. She said all the courts shared the goal of engaging the drug addict or the person with mental health problems in a therapeutic and judicially supervised endeavor. The felony DUI court was a strict four year program for people with at least three DUIs. The veteran's court was fairly new. She said they had experienced a decrease in funding over the last year. They had to reduce the amount of funds for the contract providers for services and client incentives and support. She said without further funding judges will not be able to send everyone who needed it to specialty courts. She referred to the number of jail days saved for the adult mental health court participants. She said they knew drug courts worked. They looked forward to collecting data from all their courts. She concluded by saying it was a privilege to work in this area. She said the programs were demonstrated to work. They improved the use of tax payer dollars, increased public safety and opened up opportunities for people willing to embrace them to change their life trajectory. She invited anyone interested to visit the specialty courts.

Mr. Callaway asked about a program in Washoe County known as the Mobile Outreach Service Team, MOST, which dealt with people in crisis with mental health issues. He said funding was set aside by the Governor and IFC approved to start a similar program in southern Nevada. He asked if it worked with the mental health court. Judge Schumacher replied yes, the mental health court team was involved in some of the training setting up the program. She said yes, it was involved with and also a resource for people coming through the program. She said the person had to have a pending charge. Mr. Callaway asked if there were certain criteria for the mental health team to refer someone to the mental health court.

Judge Michael Montero said drug courts across Nevada were in Washoe County, Clark County and a small mix of other district drug courts. He said in his district they had three counties trying to sustain three drug courts. The court he had funded by the State was the adult drug court in Humboldt Country and in 2015 in Pershing County. He said they did not have

specialty court staff. The adult drug court in Humboldt County had about 75 participants. He said the County only had 17,000 people. He said they had juvenile drug courts in all three counties and a family diversion court. The distances they had to travel to attend specialty court were too great so they were working on developing a program in Humboldt County. The programs helped supervise the clients in the rural communities. He said funding for the programs was limited. He said they relied on the AOC funds and clients who had to pay to participate in the programs and grants when they can secure them. He requested help in funding the programs in the future.

Mr. Kohn said Judge Schumacher stated that in drug court it can be both pre-adjudication and post-adjudication. He said in Clark County it was post-adjudication, and there was a significant amount of jail time between sentencing and people entering the program. He asked Judge Bell about a new plan to cut the time down.

Judge Bell said there was a lot of research on drug courts concerning what did and did not work. She said they made it post-adjudication because they needed the community supervision. She said the national trend for drug courts was to get away from first time offenders or have that as a separate court. The best use of the funds was for the high risk, high need participant. She said if they were mixed with the first time offenders it can make the first time offender worse. She said she had 2 staff people for 400 people in drug court. She said they were working on a global application for the specialty courts that allowed them to make decisions sooner in the process. She said the wait time was a function of the limitations of our staff.

Mr. Kohn said the waits were 72 to 75 days and there were about 100 people waiting. He asked what the Advisory Commission could do to help solve the time problem. He said he thought the drug court laws were changed to say it could only be administered by an elected judge. He would like to see the County get her more help. Judge Bell said the issue was the staff and the time. There was not enough of either. She said the ratio of 200 to 1 was out of line with best practices. She said it should be 100 or less per case manager. She hoped to develop a system where people could get into the system within two weeks.

Justice Hardesty said he wanted to comment on funding at the completion of the presentations. He referenced the reforms made in Oregon in which the Oregon Legislature was persuaded to infuse $15 million into programs that worked. Justice Hardesty said Oregon started the program with seed money. He said the lack of stabilization of funding sources was a challenge. Nevada's drug courts lead the country in best practices and success. He said the Advisory Commission needed to understand that all of the successful programs were under jeopardy due to lack of funding.

Justice Michael Douglas said he had been involved with specialty courts for the past 10 years at the Supreme Court level. He said Nevada had been involved for approximately 20 years, it was one of the founders in the country. Sadly the state had not progressed as far as it should have over the past years. The limitation was funding. He said they appreciated what the Legislature did over the years by allowing various ways of combining money to fund the

courts. He said during the past three years they went from bringing in close to $6 million for statewide drug court programs to about $5 million. He said instead of expanding they have 43 different courts they give some kind of assistance to. They were unable to add a court since 2011. The Legislature authorized them, three sessions ago, to assemble a collective system of data. He said it was now up and running. The average last year was 49 percent successful in the drug and alcohol programs throughout the State. He said with adequate staffing the numbers would be even better. The judicial council made a decision to take the money they got and spend it on the people in the program. The money was spent on staff or building costs. He said national literature indicated the courts were only successful if there was a magistrate, a judge making the decisions. He said other states tried and their program success went down. He said funding was difficult when grant funding was no longer available, direct funding was important. They had made decisions to keep the program going. He said they needed a better standard of money they could count on being available for the specialty courts.

Judge Barker asked if there was any appetite for a statutory structure that might consolidate the efforts of the specialty courts and address the economy as a scale to help alleviate the numbers. Judge Bell said with respect to mental health court and veteran's treatment court, there was already a statutory scheme in place allowing the district court to accept misdemeanants. She could take anyone from Clark County. She said each program had its own type of population. She said it would be difficult to mix the various populations. The research on specialty courts showed the better "fit" in a program and the less you mix different kinds of populations, the more successful the programs. She said it was good there were a variety of programs.

Judge Barker asked Judge Montero about the many hats they wear. He asked if there were any legislative changes or frustrations where the Advisory Commission might assist that were unique to a rural court judge. Judge Montero said he appreciated the recognition of the diverse work load of the rural courts. He said they presided over all of the family cases, juvenile cases and the criminal case load as well as the specialty courts. He said it was probably not a legislative change. One of the key components of drug court was having a judge preside over those courts. He said if it was delegated to masters, some of the impact would be lost. The difficult part for him was not only the general jurisdiction, but the travel between court houses.

Chair Segerblom asked the judges if they wanted to present a way to fund specialty courts, he would put forward a bill to the legislature.

## F. SIXTH MEETING

The sixth meeting of the Advisory Commission on the Administration of Justice was called to order by Chair Segerblom on September 12, 2014.

*Public Comment*

Tonya Brown said she was an advocate for inmates and the innocent. She was testifying today to support Nevada Cure and their recommendations for testing for Hepatitis C, independent ombudsman, and other things. She said her brother entered the prison system with Hepatitis C

in 1989. There were problems in the men's prison. She asked for mandatory testing for Hepatitis C before prisoners were released. She also supported the idea of an independent ombudsman. She said if there was an independent ombudsman civil litigation would not be what it was. She also mentioned DNA and an amendment she wanted to introduce for DNA testing for prisoners at their own expense.

Natalie Smith, Nevada Cure, said she received mail from prisoners regarding Hepatitis C. She said many of them had not been informed they had Hepatitis C. Sometimes they were denied treatment and sometimes it took a year to see a doctor. She concluded by saying that she received 10 to 30 letters a week from prisoners.

*Presentation on Deterrence and Sentencing in Criminal Justice*

Marc Mauer, Director, The Sentencing Project, said his organization was a nonprofit founded in 1986. Mr. Mauer addressed three issues in his oral testimony. The first was an overview of trends in incarceration, secondly was the impact of incarceration on public safety, and thirdly the implications for sentencing policy. He said his focus today was primarily public safety. There was a large rise in prison population over the past 40 years which lead to more incarcerations. He said since 1980 the entire increase in prison population was a function for changes in policy, not changes in crime rates. He said declines in crime occurred with no adverse effects on public safety. Incarceration had an effect on crime; however, he said the impact on reducing crime may be less than it was commonly believed. The first issue was the "replacement effect" where a certain party was removed from the street but replaced by other people committing crime. He said sending a juvenile to prison may leave a group to recruit someone else to join their ring. There were different effects depending on who was incarcerated. The second factor that limited public safety was that we were past the point of diminishing returns in the effect of prisons on public safety. He said another issue on diminishing returns in incarceration had to do with long term incarceration. Only one in nine prisoners across the country was serving a life sentence. He said people generally age-out of crime. The final issue with public safety had to do with the deterrent effect of the justice system. He said now was a good time to assess the appropriate mix of prison and non-punitive approaches for the best public safety outcomes.

Chair Segerblom asked if any states went back and looked at people already in prison and identified those who should be released sooner. Mr. Mauer said New York had policies going back to the 1970s and in 2009 where they scaled it back substantially and allowed people to be considered for release under those policies. He said in Michigan a mandatory law for drugs was life without parole. He said that was scaled back to between 15 and 20 year sentences. Also, in California the three strikes and you are out law had been revised and several thousand people were now eligible to apply for reconsideration of sentencing.

Mr. Siegel asked about the B felonies that could potentially be moved down to C or D felonies. He asked about things other than drug offenses and if there were any offenses that were systematically overcharge or over-sentenced. Mr. Mauer recommended looking at crimes that

could be charged as felonies or misdemeanors. He said most of the offenses were property offenses.

Mr. Spratley said in the written testimony regarding the deterrent effect being primarily a function of the certainty of punishment, not the severity of punishment, was because of long standing findings. He asked if there was a report or study that was done and could Mr. Mauer supply the findings to the Advisory Commission. Mr. Mauer said he could supply a report from the National Research Council which he recommended they examine. He said it was a 400 page report and had a good summary of the deterrent effects.

Mr. Spratley said it seemed they needed more cops on the street for the deterrent to take effect. Mr. Mauer said having more cops on the street might increase certainty of the deterrent. He said in many jurisdictions it meant law enforcement should not be judged on how many arrests they made, but based on how many problems they solved.

Justice Hardesty asked Mr. Mauer if he looked at any of the reports or studies regarding Nevada's prison system, specifically to determine whether or not the demographics of the population in this state fit within the observations he had made. Justice Hardesty said some of the general points made today were different than what was known about Nevada's prison population. Mr. Mauer said he was not an expert on Nevada's prison population; however, he said he took a cursory look at several things in the population. The rate of increase in Nevada was more than other areas. Justice Hardesty said the Department of Corrections personnel had the impression that the Nevada Department of Corrections received more hardened individuals committing more serious crimes. Nevada may be housing the worst of the worst, so to speak. Mr. Mauer said it might be a legacy of the drug wars. He said it may reflect that there was lack of constructive interventions early in their criminal career. People do not stay hardened forever.

Mr. Pierrott asked about states that converted certain crimes and reduced them to lesser sentences. He asked about the impact on the departments of parole and probation and had it mandated changes on how they supervised the individuals. Mr. Mauer said any kind of change along these lines required projecting ahead what kind of shift of resources may be necessary. Mr. Pierrott asked if he worked with those states to determine how many officers would be needed. Mr. Mauer said they had not done that and the experience of probation and parole was varied around the country.

Chair Segerblom said the prison population seemed to be composed of people there due to a sex offense or have some kind of sex offense tied to their history. He asked if there was a national movement in that area. Mr. Mauer said nationally there was a growing population of sex offenders in prison. He said much of it was good news that society was taking the offenses more seriously. He said the challenge with sex offenses was that it was not a "one size fits all" type of problem. They needed a sophisticated understanding for treatment and appropriate supervision.

Mr. Siegel had a question about race. He said Nevada confirmed national trends of three to four to one particularly on black to white searches, arrests, and stopping cars. He said it showed up in terms of over incarceration more than anywhere else. He asked if it included other felonies. Mr. Mauer said the figures were not unique. Racial disparities in the system were cumulative. He said if they were unwarranted early in the system it had an impact as it went further along. He said they understood law enforcement needed to deal with real behaviors and real people, but also in a way that was fair and appropriate.

Justice Hardesty noted the admissions criteria for court diversion and alternative sentencing programs. He said he assumed it was an endorsement of specialty court programs around the country. Mr. Mauer said yes, in general. Drug court was by far the most common and popular specialty court. He said at the same time there was compelling research suggesting in many drug courts the criteria for admission was relatively narrow so that good services and treatment were not reaching enough people. Justice Hardesty said implicit in this recommendation was the importance of a stable funding system for specialty courts in the state.

*Presentation on Postal Service Law Enforcement Powers Under Nevada Law*

Chair Segerblom opened discussion related to law enforcement powers for the postal service. Joan Yarbrough, Special Agent in Charge, US Postal Service, said the Inspector General of the Postal Service was requesting an amendment to NRS 171.1257 concerning peace officer status for postal service law enforcement officers. She said the postal service had two law enforcement agencies. The OIG agents had authority to make arrests relating to postal matters, but they did not have the authority for state crimes related to postal matters. She said there were times it was more appropriately prosecuted in state courts. She offered three examples where there were issues due to not having peace officer status.

Chair Segerblom asked which states had similar laws. Ms. Yarbrough said the postal inspectors and the OIG agents had peace officer status within Alaska, California, Colorado, D.C., Florida, Illinois, Indiana, Michigan, South Dakota, Tennessee, Texas, and Wyoming. She said there was peace officer status inspectors but not OIG agents in Arkansas, New Jersey, New York, North Carolina, South Carolina, Utah, and Virginia.

Mr. Callaway asked how many OIG agents were in the Las Vegas-Clark County area. He asked how often during an annual basis those agents were investigating postal crimes or potentially making arrests or could not make arrests due to lack of state powers in the county. Ms. Yarbrough replied that there were two agents in Nevada. She said in 2013, 4 or 5 cases went state, and in 2014 about 8 to 12 went state. She said the threshold was increased on postal related cases and was currently $30,000 loss and 250 victims.

Mr. Callaway asked if she envisioned the agency having state arrest powers, the two agents in the Las Vegas area would serve search or arrest warrants on their own. He asked if they would still reach out to local law enforcement for assistance. Ms. Yarbrough said yes, they would

probably access some local law enforcement. She said local law enforcement would not have to worry about the evidence or arresting the individual.

Mr. Frierson said in 2007, when the statute was amended, he did not see discussion. He asked if there were some benefits that came with being a peace officer that might expand expenses to the State within law enforcement and health issues.

Mr. Digesti asked about the total financial impact to the State if the request was approved. He said there would be a jurisdictional issue and he saw many more cases going the state route as opposed to federal court. He anticipated an increase in state prosecution which could translate into a financial impact for the state. Ms. Yarbrough said they did not have a financial study of the impact, but she could get the information for him. She was not aware of a financial burden to the State.

*Update on Discussions Regarding the Justice Reinvestment Initiative Process*

Chair Segerblom opened discussion on justice reinvestment. Justice Hardesty referenced the memorandum from Mr. Anthony which provided a summary of the Oregon reform measures. He said he hoped some of the initiatives were included in the discussions in October concerning recommendations to the legislature. Chair Segerblom said if Nevada could model themselves after Oregon it would be great for the state.

Justice Hardesty said one of the key components involved the expansion of specialty courts and the stabilization of their funding and a significant investment by their legislature into the court system. He said he asked the specialty court funding committee in Nevada, under the jurisdiction of the supreme court, to compile the various financial problems in the court's system. They needed to visit the funding mechanism and some of the crimes that might be appropriate for expansion of admission into the successful programs.

Chair Segerblom said he concurred and the problem in Nevada was the up-front expense. He said they would save a lot of money in the long run by doing this. Justice Hardesty said the beauty of the Oregon program was that they had created a statute that had accountability mechanisms in it. He said it was not just a giveaway, they tracked the data to help the funding committees understand how to track the application of the funds.

*Update on Office of Justice Programs Diagnostic Center Engagement Regarding Category B Felonies*

Mr. Cox, Director, Department of Corrections, gave an update on the Diagnostic Center. He said they were also studying offense location trends, offender characteristics, and sentencing variations. The analysis would facilitate future legislative discussions within the category B offenses and what changes, if any, can be made. He said impact projections would be provided as applicable. They would continue to inquire with stakeholders on category B offenses based

on levels of victimization. He said the team planned to attend the October work session to provide more information. He said they would look at the burglary statutes in particular.

Mr. Jackson said it appeared this item, regarding category B felonies, presented major concern. He said he was a stakeholder involved in some of the meetings. He received an email identifying seven specific category B offenses and moving them from the one-to-six year sentencing range to category C with a one-to five sentencing range. He said the first offense listed as the deadly weapon enhancement was not a crime in and of itself and was a separate enhancement and should not have been included. He said of the six remaining offenses the Diagnostic Center had errors on four of the six. He said of the seven offenses, there were mistakes on five of them. He also received all the category B offenses the Diagnostic Center put into three categories: immediate bodily harm; no immediate bodily harm; and possible immediate bodily harm.

Chair Segerblom pointed out they did the best they could with the resources available. He said he was presenting a bill on this issue in February. He thanked Director Cox for reaching out and trying to do the best they can. Mr. Frierson said Director Cox was doing an excellent job. Justice Hardesty said they had not had resources to evaluate a lot of drill down data until Director Cox was able to secure the assistance of the Diagnostic Center. He said it was a work in progress and they may need additional education regarding some of the criminal statutes. Chair Segerblom said the issue would come back in October

*Presentation on Additional Budget Resources for the Department of Corrections*

Chair Segerblom opened the agenda item on additional budget resources for the NDOC. Director Cox said the Department was submitting a budget to the Governor in the next week. He said the board members asked that the study be completed. The Department was presenting a study for additional custody staff, security staff, correctional officers, sergeants and lieutenants, and other program activities such as mental health and substance abuse. He said he would provide the Advisory Commission the study and the staffing recommendations.

Chair Segerblom asked if they were looking at substantial additional resources. Director Cox replied that they were asking for additional custody staff and the program staff. He said it was a significant cost to the State. The projections of the population remained relatively flat. He said the furloughs were something the staff wanted to go away; they were doing six furloughs a year. He supported the furloughs being removed and looking at the staffing study and recommendations.

Mr. Siegel said the ACLU received some letters suggesting continuing problems with non-retention of medical and mental health staff. He asked if it was getting better, worse, or the same in the last several years. Director Cox said he discussed the difficulty in hiring professional staff. He said the funding for them was an issue, but they continue to fill positions and provide services they were required to provide for the inmate population. Mr. Siegel said the constitutional issues were heightened in the prison and jail settings. He said they had a

responsibility to assure there was adequate staff and retention of staff for physical and mental health.

Chair Segerblom said it would be good to increase the salaries. He said he saw they were using Medicaid for some of the prisoners, but the hospitals were complaining about the lack of money. Director Cox said they were utilizing Medicare and appreciated that the legislature gave them several tools to do a good job. He said they were looking at other ways concerning reimbursement for the hospitals. They were required to provide the medical services needed and approved by physicians and doctors.

Chair Segerblom asked about a policy or law which allowed the release of an inmate based on the end of their life or some kind of medical condition where they can be released. Director Cox said there was a compassionate release program. He said it was specific in regards to medical. The Department placed an inmate in a hospice center in Las Vegas in regards to their illness and treatment. He said the Department was asking for additional staff to establish a hospice in their operations. He said it was a continuing issue associated with the aging population. They had an obligation to provide for the medical needs and services of the inmate population.

*Presentation on Collateral Consequences Pursuant to Senate Bill No. 395 (2013)*

Chair Segerblom opened the agenda item related to collateral consequences. This agenda item was included pursuant to the requirement under SB 395. He said the presentation was from the Uniform Law Commission and Margaret Love.

Margaret Love served as the pardons attorney in the Justice Department in the 1990s. She said she was helping people deal with collateral consequences and law reform projects. The Uniform Act provided the most comprehensive and sensible treatment. She said Richard Cassidy would speak further on the topic. She said mass conviction was a problem and many people did not go to prison but ended up with a criminal record that could be extremely burdensome. Collateral consequences were in the statute books, the rule books and the formal and informal policies of employers. She said there were more people with convictions, and more restrictions in the law books. Nevada had 751 laws and rules in the statutes and rule books that disqualify or limit opportunities for people with a criminal record. She said there were also over 1,000 federal law consequences. She said Nevada had an existing relieve structure with broad authority. She reference a handout of a list of laws passed in the states in the past 18 months dealing with collateral consequences of a criminal conviction.

Richard Cassidy, Chair of an acting committee on the Uniform Collateral Consequences of Conviction Act, said he chaired the drafting committee. He made general comments on the Act. He said the subject of the legislation was the civil law effect of the conviction of a crime. He said the effect was a barrier to successful reintegration into a law abiding life for people who had a conviction. The study referenced by Ms. Love showed there were 45,000 American statutes and regulations based upon having a record of conviction. He said they affected every

facet of daily life. The estimated number of people who had a record was between 60 million and 90 million with a record of conviction. He said most of the sanctions were for life. He said Nevada had an active Governor's Pardons Program. He outlined the sections of the UCCCA. He said private employers or landlords were not directly affected by the Act.

Chair Segerblom said they went through the bill in the last session of the Legislature. He was interested what states had adopted the bill. Mr. Cassidy said Vermont adopted the bill this year. He said they removed approximately 30 serious crimes from the bill. He said they were the only state that had adopted a comprehensive version of the act. He referenced several states that had picked up some of the important provisions of the Act.

Ms. Love said the two provisions most appealing to jurisdictions were the inventory notion that Nevada already had and the certificate of restoration of rights. She said it lifted the mandatory bars and allowed people to go into a job interview and be considered on an individualized basis. She said a number of states were giving consideration to the relief measures and the role of courts in granting relief.

Mr. Cassidy said New Mexico adopted the Act twice, but the Governor vetoed it. Mr. Kohn was concerned about collateral consequences and considered them a contributor to recidivism. He was concerned how indigent defenders or any lawyers learn all the 1,700 collateral consequences and advise clients and not be on the hook for ineffective assistance of counsel when one of the serious consequences lead to an unforeseen result. He was also concerned that the law changed. He referenced the Adam Walsh Act. He asked how to make the law have effect without leading to liability for indigent defenders.

Mr. Cassidy said the statute, by its expressed terms, did not create or limit the liability that lawyers may have. In Vermont the law of legal malpractice was comparable to the law of medical malpractice. He said not every mistake or error lead to legal malpractice. He said given that there were 45,000 different statutes and regulations, it was obvious no lawyer could give totally comprehensive advise on collateral consequences.

Ms. Love said criminal defense lawyers and public defender offices compiled their own organized version of the collateral consequences that apply in a certain jurisdiction. She said it was important to discuss with the client what their particular needs were. Mr. Kohn did not disagree, but there should be a limit to liability written into the statute. He said no matter what crib sheet they devised with several thousand collateral consequences, they were opening themselves up to serious problems.

Mr. Cassidy said there was language in the statute that said the statute did not affect the duty of defendant's lawyer or give any new cause of action to a defendant. He said it did not say there cannot be liability. Ms. Love added she had not heard the idea of civil liability, even in a deportation context, raised as a concern.

Mr. Jackson asked about the laws enacted in 2013-1014. He said it appeared the relief from the collateral consequences excluded the serious violent and sexual offenses. Ms. Love said most of the states did exclude them. She said they would not include sex offender registration among the collateral consequences that offered relief. Mr. Jackson asked if any state offered relief from the sex offender registration. Ms. Love replied, yes and she could get a list for him. She said there was a whole spectrum of sex offender registration issues. She said the Romeo and Juliet kinds of cases were sometimes pardoned by the governor of the State.

Mr. Pierrott asked about their experience with certifications and qualifications for employment with regard to law enforcement. Ms. Love said the Act excluded law enforcement employment. She said most states excluded law enforcement employment. She said the janitorial or secretarial staff was not necessarily excluded. She said New York excluded in their police department but not the fire department. Mr. Cassidy said the Uniform Act did not remove the ineligibility for employment in law enforcement. He said not every agency had collateral consequences so there were some places where one might be able to seek employment in law enforcement.

Judge Barker said a trial judge wanted a fair, accurate, informed decision based upon merit and law and integrity in the process. He thought he heard them say they had not heard of criminal defense attorneys were sued for malpractice in a civil action. He asked if that was true. Ms. Love replied it was true, she had never heard of such a case. Mr. Cassidy said the Uniform Act had not been in place and effective in any place as of yet. He said the statute was very clear that it did not give anyone a cause of action for money damages. Ms. Love said once past deportation, the cases did not seem a departure from the earlier laws.

Judge Barker said in the context of a post adjudication situation, an individual was seeking relief by way of petition. He said there was judicial impact in that a court would have to review a petition seeking relief. Ms. Love replied that was correct. She said there were other states with long standing certificate programs. She said the court acted upon petition. Mr. Cassidy said New York had a two-step process handled through the judiciary. He said the volume of cases had never been large. Judge Barker asked if the petition actions were taken by original public counsel in seeking relief or was it independent action not funded by public dollars. Ms. Love replied the only state she knew that provided any provision for involvement and payment through public money was California. She said some legal aid offices help people and the public defender's offices were not involved in this work.

Judge Barker asked about pre-adjudication situations. He mentioned a situation where a lawyer might say to his client he did not know if he could explain all the potential outcomes or ramifications and by that statement drive the action to trial with additional public expense. He asked if that was a realistic situation. Mr. Cassidy replied that would be very poor lawyering. The evaluation was what would happen if they did not negotiate a plea. He said the Uniform Act and the Certificate of Limited Relief provision allowed a court to issue a certificate and also provided another useful tool for plea negotiations. Ms. Love said it was important to

provide some measure of relief after the sentence was imposed and even been served. She said there were new collateral consequences being added all the time.

Judge Barker asked about complaints received from judges where the actions had moved forward. He asked if they had heard of any complaints regarding their proposal. Mr. Cassidy said in Vermont some of the judges were worried about the possibility there would be persons with convictions who would utilize the relieve clause repeatedly.

Chair Segerblom asked if judges complained about having to cite the 700 potential disqualifications. Ms. Love said the only thing the Uniform Act required at sentencing was the more general advisement. She said the court should make sure the person was alerted to the problem of collateral consequences and the various areas they may affect. Mr. Cassidy said the act stated there was a written notice and at the time of the plea the judge confirmed the individual received the notice and discussed it with counsel.

Justice Hardesty asked about anything in the Uniform Law or certificates intended to preclude consideration of an individual's prior criminal history in connection with professional licensing. Mr. Cassidy said the idea was to remove the stigma of conviction, but not change history. The fact that the person had a conviction was not enough, but could look at the behavior.

Justice Hardesty asked if the Uniform Law adopted a standard of review by which trial court decisions were reviewed for grant or denial of certificate on preponderance of the evidence. Mr. Cassidy said the Uniform Act incorporated by reference whatever standard was in the state for review of governmental action and limited relief to a remand back to the governmental organization making the decision.

Justice Hardesty said 95 percent of criminal cases in Nevada were resolved by guilty pleas. He was concerned about the impact on the status of Nevada's jurisprudence which to now said collateral consequences were not to be considered in connection with post-conviction writ petitions in determining ineffective assistance in counsel. He said this could have an impact on jurisprudence if enacted by the Legislature. He was concerned about the adoption of a statute that disrupted jurisprudence on that point Mr. Cassidy said section 3 of the Act began by saying: "this Act does not provide a basis for invalidating a plea, conviction, or sentence."

Ms. Cortez Masto said the Attorney General for the State of Nevada was the legal counsel for all the professional licensing boards. She had similar concerns to what Justice Hardesty brought up. She said providing the boards with more discretion instead of a bright line rule opened it up to more litigation on whether they were providing individuals with a professional license. She said she foresaw more problems with litigation.

Mr. Cassidy said he was on the board of standards in Vermont. He said in a few cases the boards would have to pay more careful attention in order to do individualized assessments.

Ms. Love said she was not sure how the bright lines worked in Nevada. She said a number of states had a substantial relationship standard built into the licensing laws. She said most states did not have bright line rules in licensing.

Ms. Masto asked that they allow the attorneys in her office, who represented the boards and commissions on a regular basis, to weigh in on this process. She wanted to be sure it was good law that was passed. Ms. Love said she would work with the attorneys and show them case law that might be useful.

Chair Segerblom concluded by asking if the ABA had made a list of the collateral consequences and posted them on their website. Mr. Cassidy said there was a very good study in existence now.

*Presentation on Additional Budget Resources for the Division of Parole and Probation*

Chair Segerblom opened the discussion on additional budget resources for Parole and Probation.

Natalie Wood, Chief, Parole and Probation, referenced her letter in response to her presentation. Mr. Kohn said he had met with Ms. Wood last month and she made it clear she could not provide the personnel necessary under AB 423. He asked how many more writers it would take to comply with AB 423. Ms. Wood said with the current resources they could not reach the 21 day mark set in statute. She said they were restructuring internally and using overtime to meet the current statutory requirements.

Mr. Kohn said the 21 day requirement had not yet gone into effect. He said there had to be some amount that would make this possible. Ms. Robin Hagger, Fiscal Analysis, said there was no number of PSI writers they could ask for with relation to AB 423 because their budget was built upon JFA estimates. She said she could not directly tie anything to AB 423.

Mr. Kohn said they had an idea of how many people went through the various district courts every year. He wanted to support the agency getting the resources they needed so he could do his job properly and have the reports ahead of time. Ms. Hagger said when JFA did their estimates they looked at more than a year or two of data. It was a significant amount of data over multiple years. She said changing the time lines did not necessarily mean they produced any more PSIs than they had in the past. It just meant they changed when they were due. She said she did not have a full year of data for AB 423.

Ms. Wood said they tried to meet the current statutory guidelines. She said they were being truthful and forthright with their staffing level ability to meet the 21 days. She said they were receiving the PSIs 14 days in advance at this time. She asked if the PSIs were being reviewed. Mr. Kohn said yes they were being reviewed. He said they were receiving them 14 working days in advance. He said they could live with 14 court days but they had asked for 14 calendar days. Ms. Wood replied that was correct.

Kim Madris, Deputy Chief, Southern Command of Parole and Probation Division, tried to explain where the issue was. She said it was not a staffing issue at this time. She said what occurred was the PSIs were assigned out up to 90 days in advance. She said for every day they were trying to meet they had to pull 7 days of PSIs back and ask for continuations. She said in the past every Monday for 7 Mondays they pulled back the assigned PSIs and asked for continuances. She said to achieve that they needed more bodies and continuances.

Mr. Frierson said he was baffled that they could not predict case loads. He said they were never 100 percent accurate but they made predictions every year. He said it sounded like they changed the law, and the Division did not want to do it. He said if there was overtime needed in order for the process to continue, there had to be a way to predict how many bodies and hours it took to do a PSI and make a request to do that.

Ms. Hagger said she did not create the numbers for the budget, but received them from JFA. She took the data and put it into a formula driven by a staffing study done in 2008. They asked for a new staffing study in order to accurately reflect their needs. She said she was bound by rules and regulations on how she can create the budget.

Mr. Frierson said his issue was they said there was no way to know what was needed. Ms. Wood said there was two ways of looking at the situation. She said AB 423 was to provide the attorneys with an opportunity to review the PSI in advance with their client to determine if there were factual corrections needed prior to going to court. She asked if there were any statistics about the attorneys sitting down with their clients ahead of time and taking advantage of the bill.

Mr. Frierson said usually they had the same case load problems as Parole and Probation. He said there were ways to calculate how many bodies were needed to get the job completed. Judge Barker said he heard every week that the criminal judge was not touching the PSI in preparation of sentence 21 days, or 14 days before the actual hearing date. He asked if there was a new way they could assist the Division, perhaps new computers, or new methods.

Mr. Kohn said in Clark County at the entry of plea, the court provided the defendant in court the questionnaire the Division used. He was surprised they were not using some type of computer method to get the information from the client and quickly transport the information to the office of the Division. He said maybe they should look at technological techniques to get information more quickly.

Jim Wright, Director, Department of Public Safety, said they were talking about a level of service. He remembered the earlier discussions about the issue. He said they decided they had to change things in the product to meet the dates. They asked offenders when the PSIs were addressed and they learned within one or two days or even the day of the hearing. He asked if they had set a service level demand that others were not meeting. He asked if 21 days was realistic. He said there a lot of demands on the state budget. He asked if this was something they wanted to press forward. He said they were asking for positions in the budget.

Mr. Jackson said the District Attorneys Association supported what was drafted during the previous interim. He said the original intent of the subcommittee was the 21 days. He said the biggest complaint was the defendants and defense attorneys were looking at the reports the day of or prior to a sentencing hearing. The idea of the 21 days was to try preventing delays based on a block of 7 day periods.

Mr. Digesti said he understood everyone's concerns. He said the courts relied, to a certain extent, on the recommendation made in the PSI report. He said he did not review the PSI report for the first time the morning of sentencing. The 21 day rule may not be as practical as they thought. He said if the defense lawyers were not reviewing the PSI until the morning of sentencing then the problem needs to be fixed. He said he preferred the same system as used in the federal system. The defense attorney had until a "drop dead date" after they got the report to file and lodge any objections. He said if a lot of defense attorneys were not meeting with their client until the morning of the hearing to address the issues, then the 21 day rule accomplished nothing. He said some burden and responsibility had to be put back on defense counsel. He recommended giving them a time to lodge their objections, but not the morning of sentencing hearing.

Chair Segerblom said the Division was requesting going from the current law of 21 days to 14 days. He asked if that was the upcoming proposal. Ms. Wood said the BDR proposed 14 calendar days. She said originally there was a fiscal note attached to the bill for slightly less than $1 million. Mr. Kohn said he did not have the fiscal note with him, but it seemed like a very strange fiscal note. It had a significant number motor vehicles in it. Ms. Haggar said the fiscal note did include 21 new positions.

Justice Hardesty said part of the issue was a disconnect between reality and the budgeting constraints imposed on the Division. He said the Division needed to be released from the constraints of the budgeting process because it was unrealistic. It prevented them from providing adequate and realistic numbers and addressing reality when it differed from projections that were incorrect. He wanted the underpinning of the Division's budget process be reevaluated for a more realistic assessment of the issues. He said he was very reluctant to see PSIs pared back in information. He said everybody in the system was reading the PSI. The less information provided, the bigger the disservice to the entire criminal justice system. He said they needed to make realistic assessments of staffing needs and not be confined to the projection problem.

Ms. Bisbee said the JFA projections for PSIs did not take into account that if the court waived the PSI, they still had to do a report. She said the report started when someone was first brought in and they were notified on intake lists. She said they were still required to do something similar to a PSI report. It was a post-conviction report, but it was the same process, using the same people and had the same statutory requirement. She said it made it even more difficult to determine how many positions were needed. She said it was important to the entire process.

Director Cox agreed with Ms. Bisbee and Justice Hardesty. He said it was critical they had a good product, PSI report, for their classification process. He was not clear on the calendar days, versus work days, or the court days. He asked if it was better if it was court days. Ms. Madris said by doing work days the weekends were removed. Thus, the division had to get it to the court sooner. Where if it was calendar days they were given the weekends and it actually benefitted them. She added work days and court days were the same thing for them. Mr. Frierson chaired the committee where the bill originated. He said his concern was the integrity of the institution if they dictate to a department that they needed them to do something and they could not tell the committee what they need to do it. He said if they made a recommendation it should be 14 calendar days then they need to put forth a good effort on how they can comply with whatever the number was. Ms. Wood said they were not saying they could not do it, they were being honest and direct with them with their current resources. She said given the original fiscal note, they restructured internally, applied more staffing, and utilized overtime.

Mr. Jackson said the subcommittee that reviewed the PSI investigation process originated because of a Nevada Supreme Court decision, the *Stockmeier* decision. He said that case was about an error that occurred in a PSI report and revisiting the error. The primary scope of the subcommittee dealt with the issues about making timely objections.

*Update on The Advisory Committee to Study Laws Concerning Sex Offender Registration (NRS 176D.132)*

Chair Segerblom opened discussion on laws concerning sex offender registrations. Mr. Keith Munro, Nevada Attorney General Office, said he served as the Chair for the Committee to Study Sex Offender Laws. He offered an overview of the Committee's work. He said prior to passage of AB 579 in 2007, the statutes and history of the sex offender registration statutes indicated they were not intended to impose a penal consequence, but to protect the community and assist law enforcement. He said congress passed the Sex Offender Registration and Notification Act (SORNA). It was a provision within the Adam Walsh Child Protection Safety Act. In response to federal legislation the Nevada Legislature passed AB 579. It placed sex offenders in one of three tiers based on their crime of conviction. He said no legislature had sought to repeal AB 579 in its entirety. He said the bill appeared to be Nevada's effort to meet the sex offender standards established by Congress. Nevada was reviewed by the Federal Department of Justice and was found to meet the requirements of the federal Adam Walsh Act.

He said the Committee reviewed the litigation arising from the passage of AB 579. He said after almost four years of litigation the Ninth Circuit Court of Appeals denied a challenge to the constitutionality of AB 579. He said the plaintive cited eleven causes of action. In 2013 the Nevada Supreme Court denied a state court challenge to AB 579. He said in January of 2014 the Nevada Supreme Court stayed the implementation of AB 579. The Court expressed some strong views about the implementation of a portion of AB 579. He said it applied to both juvenile and adult sex offenders. He said most sex offenders were adults and the heinous juvenile sex offenders were often certified as adults. The group of sex offenders the Supreme

Court expressed concern for were not the adults or the juvenile sex offenders who were certified as adults, but the juvenile sex offenders who were adjudicated as juveniles.

Mr. Munro said after passage of AB 579, the federal requirements changed with respect to community notification for juvenile offenders adjudicated as juveniles. He said in January of 2011, supplemental federal guidelines were issues. He said the federal Department of Justice gave discretion to the states as to the appropriate form of community notification with respect to juvenile offenders. He said the federal guidelines brought Nevada out of line with federal requirements regarding notifications for juvenile offenders. Nevada now had a community notification requirement more stringent than what was required by federal law. He said the intent with the passage of AB 579 was to keep Nevada in line with the nationally required standard. He quoted from his exhibits citing a SORNA implementation review of the State of Maryland. He said it was a change as to what was allowable to meet the national standard for juvenile registration. Nevada was again more stringent than the national requirements regarding juvenile registration.

Mr. Munro said the Attorney General decided to use one of her bill draft requests for the upcoming session to address some of the study efforts of the Committee. The Attorney General will present legislation to determine if the Legislature wished, with respect to juvenile offenders, to bring Nevada's statutory structure into conformity with the changes to the federal requirements. He said the issues involved whether the Legislature wanted to provide discretion to district court judges in juvenile cases as to community notification. Second, whether the Legislature wished to change the registration requirements for juveniles in conformity with what was approved for the State of Maryland.

*Presentation on Testing of Offenders for Hepatitis C*

Chair Segerblom opened the discussion on inmate testing for Hepatitis C. John Witherow, Nevada Cure, said he was requesting an amendment of NRS 209.385 to include testing of all prisoners for the Hepatitis C virus. He said the CDC recommended all baby boomers receive a one-time test for Hepatitis C. He said currently prisoners were not tested. They did not know how many prisoners were infected with Hepatitis C because there was no testing. He said the NDOC was charging $425 a prisoner to be tested for the virus. Most prisoners were poor people and did not have the money to pay for the test. He said in Las Vegas a Hepatitis C test can be obtained from $26 to $84. He said the NDOC could work out a contract with a company to do the Hepatitis C testing of all prisoners in a price range between the $26 and $84 amount. He said it was done with the HIV virus and every prisoner was tested for HIV. He said Hepatitis C was transmitted in the same fashion as HIV and was more contagious.

Chair Segerblom asked Mr. Witherow if any states were testing their prisoners for Hepatitis C. He also asked if someone tested positive, what was the state obligated to do. Mr. Witherow said he was not aware of what other states tested, however he was aware there were court decisions saying prisoners who exhibited the symptoms should be tested. Chair Segerblom also asked if people were contracting the virus in prison. Mr. Witherow said yes, there was a

substantial possibility of transmission of the virus in prison through drug use, needle sharing, unauthorized sexual misconduct or with a cell partner using their razor.

Director Cox said the NDOC was working with the Chief Medical Officer, Dr. Green, and had reached out to the federal bureau of prisons to look at their protocol and process. He said they also talked to other states and the National Commission on Correctional Health Care in regards to the best practices and standards. He said they had care and concern for inmate population. He had not yet found a state testing everybody. He said they were actively pursuing the issue and the problem. Chair Segerblom said they would raise the issue with the Legislature in February.

*Presentation on Detention and Incarceration of Inmates, Including: Protective Segregation, Administrative Segregation, Disciplinary Segregation, Disciplinary Detention, Corrective Room Restriction and Solitary Confinement (Senate Bill No. 107)*

Vanessa Spinazola, ACLU, said she had distributed copies of her presentation. She said it was a follow-up to the study mandated in SB 107 about solitary confinement and administrative segregation. She said she gathered stories about Nevada. Solitary confinement caused psychological damage, made rehabilitation difficult, and made re-entry into the community difficult. She said there were people in Nevada prisons who had been in solitary confinement for a long period of time. She said they did not have any information on the average length of stay for adults. The ACLU will not share information on intakes because of fear of retaliation resulting in additional time in segregation. She said there were no statutes regulating segregation. She said they advocated for an actual state level statute. She used the ABA standards for comparison on the treatment of prisoners. Ms. Spinazola said the ACLU received the most intakes from people who believed they were not getting due process and they did not understand why they were placed in segregation. She said Standard 23-3.8 talked about meaningful forms of mental and social stimulation while in segregation. The NDOC said they did not offer any direct program services such as training classes or mentoring to inmates classified within the segregation population. She added they could not benefit from the good time credits if they were unable to do programming. She said Standard 12-3.5 talked about provision of necessities. Ms. Spinazola listed some recommendations from the ACLU taken from the ABA Standards.

Mr. Callaway thanked Ms. Spinazola for not showing the same video she used during the session. He said some numbers showed from 20 to 25 percent of the Clark County Detention Center population suffered from mental illness. He said it may take a month or more before someone was transported to Lakes Crossing for evaluation. He asked how the ACLU proposed, in a facility such as the Detention Center, to house someone when they suffered from severe mental illness. He asked about the rights and safety of other people in the facility to not be placed in a cell with someone with mental illness. He asked what they should do when the law prohibited them from putting someone with mental illness into segregated units.

Ms. Spinazola suggested the person should be seen routinely by a mental health expert. She said sometimes the mentally ill prisoners were segregated in a room and checked every 23 hours. She said the ABA standards permitted some level of segregated housing.

Mr. Callaway said the ACLU believed in some cases it was appropriate to use segregation. Ms. Spinazola replied if it was a mental health unit. She said not segregated housing as it means solitary confinement, but if there were checks and balances and a full review and classification committee then yes, there were instances where they could segregate.

Mr. Spratley asked if the facts were about the state prisons and was it directed to the sheriff's offices and jails also. Ms. Spinazola said the study was to include everybody, but Washoe County did not participate in the study so they did not have their statistics. She said ideally the law would be state wide. Mr. Spratley asked why Washoe County did not participate. He said last year Washoe County offered Ms. Spinazola and several others during the discussion of SB 107 to come to the Washoe County Detention facility at any time, unannounced, for a tour of the facility. Ms. Spinazola said they did not go to the facility. She said it was not about a snap shot, it was about practices over a period of time. She said she would only get a brief picture on any given day.

Mr. Spratley asked if she had reached out to the 17 sheriffs in the State and contacted them regarding policies and best practices. He said the ABA standards seemed like Washoe was in compliance. He said instead of codifying it why didn't they reach out and work cooperatively with the sheriffs. Ms. Spinazola said without a statewide standard, it was difficult when people come out with their policies. She said the policies were all different.

Mr. Siegel commented about seriously mentally ill people who needed to be treated differently and break the business as usual line. He asked Ms. Spinazola about the term due process and what it meant in a prison or jail. He asked if due process required a degree of independence on the part of the adjudicating authority. Ms. Spinazola said the ABA standards talked about a classification committee. She said as part of that the inmate may select an advocate. She said it was typically staff at the prison or they may advocate for themselves. The missing component was the classification committee. She said an evidence based trail with the possibility of appeal was needed.

Ms. Bisbee said she too appreciated not seeing the film again because it had nothing to do with Nevada Corrections. She said she also did not recognize the term on the cover of her presentation, "solitary confinement." She said to her knowledge there was no such thing as solitary confinement in Nevada.

Ms. Spinazola said she used the term solitary confinement because that was what they heard from prisoners and they self-described they were held in solitary confinement. She said it was also a term used by many mental health professionals and corrections professionals. She said she used the definition in the ABA article for segregated housing, which was being prevented from having contact with people or mental stimulation for extended periods of time.

Ms. Bisbee asked if she ever wondered if it confused things, such as using the film during the last legislation session. She said if they used something not relevant to Nevada, how do they change things in Nevada if it was truly wrong. Ms. Spinazola said Nevada prisoners were calling it solitary confinement. She said as an advocacy group they used the terms of the people they served.

Mr. Callaway said currently the detention center had 34 inmates awaiting transportation to Lakes Crossing. He said the average stay for the inmate was about 39.4 days. He said they had a backlog of inmates waiting to go and who were suffering from mental illness. He said they needed to go through the process to determine whether they were capable of standing trial. He asked what they recommended as to who went first. He said the people waiting transport might be violent and suffering from mental illness. He said often they could not be housed with other inmates for the safety and rights of those other inmates.

Mr. Siegel said 40 years ago there was a lawsuit that created Lakes Crossing. He said the information Mr. Callaway stated suggested that Lakes Crossing was grossly inadequate for the current situation. He said the Advisory Commission should have put it on the agenda. They should have recognized the need to study the problem and it was a fiscal issue. Chair Segerblom said it was also a health issue and a committee on health was studying the Lakes Crossing issue.

Mr. Kohn said he agreed with Dr. Siegel. He said 38 days to get to Lakes Crossing was an incredible improvement over last year. He said it was closer to five months previously. He said the Clark County Defender's Office found it necessary to sue the State of Nevada and they had reached some agreements. He said one problem was that Lakes Crossing was only in northern Nevada, but 80 percent of the population was in southern Nevada. He said there was an agreement between Clark County and the State of Nevada that there would be a significant number of beds at the Rawson Neal Center next year. He said they needed to work together on the issue, but he did not think it was something for the Advisory Commission right now.

Mr. Cox said they wanted to work with the ACLU. He said there were communication and definition issues about what solitary confinement was and there were questions about the presentation of the issues. He said they were looking at the processes and procedures, what other states were doing, and were looking at a number of different things. He said Nevada did a lot of things other states do not do in regards to audio visual equipment, access to the equipment, and due process. He said Nevada may have some issues, but not the issues of how you get out of confinement. He said they had an obligation to protect the inmate population and the staff. He said a lot of states made decisions based on litigation and took it out of the hands of correctional professionals. He said he would continue to work with the ACLU and other organizations. He thought the NDOC did a good job and said he would review the issues outlined in Ms. Spinazola's presentation.

Chair Segerblom asked if there was a reason why two people could not be housed together on death row? Mr. Cox replied that you could house them together. He said he wanted people to

come see what they were doing. He said Nevada operated very differently than other states. There were policies and procedures for those inmates outside of the cells. He said he looked at double celling people six or seven years ago. He said the condemned unit inmate population were being treated very well.

Mr. Spratley said the 17 sheriffs and the Sheriff of Washoe County had different codes and statutes than the NDOC. He said the sheriff had certain obligations and duties spelled out in NRS as to what they could do. They were all reaching out and extending the olive branch and invited the ACLU and anybody else who wanted to take a snapshot of the facilities. He said it seemed they were trying to present a picture painted by the tools given to an advocacy group. He recommended she get a framework of what she was fighting against. He said she needed to be able to report factually what was happening in the various sheriff's offices. He wanted to work together to make policies. They needed to compromise and reach a mutual agreement. Ms. Spinazola said if he and the other 16 counties responded to SB 107 and answered all the requirements that the Clark County Detention Center answered, she would visit every single one of the facilities.

Mr. Spratley said the Nevada Sheriffs and Chiefs had a meeting in November and she could get on the agenda and speak to the group. Mr. Callaway said they did respond and she was welcome to come visit their facility at any time. If she felt one visit was just a snapshot, she could come every day if she wished to do so.

*Final Report from the Advisory Commission on the Administration of Justice's Subcommittee on Victims of Crime (NRS 176.01245)*

Attorney General Cortez Masto, Chair of the Subcommittee on Victims of Crime, reported on the final status of the Subcommittee. Ms. Cortez Masto said they held several meetings over the course of the interim and discussed wide ranging topic areas related to victims issues. Ultimately, the Subcommittee voted on three specific BDR recommendations to bring before the entire Advisory Commission.

Chair Cortez Masto said the first BDR allowed the Department of Corrections to provide victim information to the Attorney General's office. She said their goal was to provide information to victims at all stages of the judicial process. The bill would allow them to gather information in death penalty cases and contact the victims directly.

The second Subcommittee BDR recommendation addressed provisions for payment of sexual assault examinations by the Victims of Crime fund. She said that currently by statute, any victim of sexual assault was entitled to a medical exam for which the counties were required to pay. She said the cost of the exam varied across the state depending on the county. They worked with the Nevada Victims of Crime Compensation Fund to see if some of those funds could help pay for the exams. She said they arrived at a compromise so everybody benefitted. It allowed reimbursement to the counties for the cost of the medical examination up to $10,000 or 10 exams, whichever was greater per year.

The third and final BDR recommendation addressed criminal restitution orders. Chair Cortez Masto said criminal debts with a restitution component became a civil liability when the offender was discharged from supervision by Parole and Probation. She said the judgment needed to be renewed so it did not expire. This proposed BDR would provide that the unpaid restitution did not need to be renewed and did not expire until it was paid in full.

*Final Report from the Advisory Commission on the Administration of Justice's Subcommittee to Review Arrestee DNA (NRS 176.01246)*

Steven Yeager said he chaired the Subcommittee to Review Arrestee DNA. He said the Subcommittee had two meetings concerning SB 243. He said they were somewhat limited about information because arrestee DNA was not taken until July 1, 2014. He said the subcommittee came up with three recommendations, that did not require legislation. He said the first one was drafting a letter to the State DNA data base and the central repository asking them to look at states that did automatic expungement.

Chair Segerblom asked what the current expungement law entailed. Mr. Yeager said under SB 243 the burden was on the arrestee to seek expungement under certain qualifying circumstances. He said it required the arrestee fill out certain paperwork, obtain certain documentations, a certified court minutes or letters indicating prosecution did not go forward. They would then submit the information to the central repository for verifications and decide if expungement was appropriate. He said only 2 people had submitted paperwork at this date and both failed to submit the appropriate documentation.

Mr. Yeager said the Subcommittee also talked about the frustration concerning the lack of a centralized database to track criminal charges or dispositions. He said they asked for a letter to the appropriate agencies to look at automatic expungement. He said they wanted to try to get a number on the cost. The third recommendation was to have the parties work together. He said they wanted to encourage the stakeholders to continue to work together and talk about how to better share information and streamline the process. He said the Subcommittee needed more historical information to know how the implementation of SB 243 was going.

Chair Segerblom asked if they were able to determine whether the DNA was being tested quickly around the state and secondly any idea of the cost per DNA test. Mr. Yeager responded in Clark County it took about 8 weeks from the time the sample was taken to the time it was processed and put into CODIS. He said in Washoe County it was about 45 days from sample to uploading the information into the system. The cost everyone agreed upon was $75 per sample.

Chair Segerblom asked how many felony arrests per day there were on average in Clark County. Mr. Yeager said the projections would be about 16,000 samples from Clark County this year since the program started in July. He said about 7,000 samples were anticipated from Washoe County. There were approximately 23,000 qualifying arrestees. He said the number will likely drop if there was already a sample in the system. They do not take another sample.

He said the cost was approximately $1.75 million a year. He said an additional administrative assessment fee of $3 was assessed to anybody convicted of any offense in any court in the State. He said in addition, when somebody was convicted of a felony offense and the DNA was ordered to be taken, they were assessed an additional $75 fee to offset the cost. The projection for the $3 fee was collections of approximately $750,000 to $800,000 a year and did not include the $75 fee if convicted of a felony. He said neither laboratory was concerned at this date about the amount of money collected.

*Final Report from the Advisory Commission on the Administration of Justice's Subcommittee on Medical Use of Marijuana (NRS 176.01247)*

Chair Segerblom opened the discussion on the final report from the Subcommittee on the Medical Use of Marijuana. Mr. Anthony said the Advisory Commission members had the 3 page report from the Subcommittee on the Medical Use of Marijuana. He said there were 20 members on the subcommittee and they had two meetings. He said at the end of the second meeting they chose 10 different recommendations for further discussion.

Chair Segerblom asked Mr. Anthony to begin the discussion on recommendation No. 4 to amend the criminal laws in the area of possession or trafficking which set out weights to determine prosecution. The subcommittee believed the law should only take into account the active level of THC in an edible product. Chair Segerblom said he believed they had talked about that earlier.

Mr. Callaway said they had discussed so many portions of the bill that he did not remember if they discussed it or not. Chair Segerblom said it made sense if you put a small amount of marijuana in an edible, you would not charge the full weight of whatever the end product was. He said it was about the current DUI standard which was a per se standard. Chair Segerblom said all the recommendations were in the exhibit.

Mr. Jackson said the District Attorney's association met yesterday. He said the per se issue came up at the meeting. Mr. Jackson suggested that the statute creating the Subcommittee was specific and that the Subcommittee on the Medical Use of Marijuana was constrained to examine those issues related to medical marijuana and dispensation of the marijuana. He said the DUI laws did not fall within the issue of medical marijuana. The DUI laws broke down into three types of laws; some states without per se, some had a 2 nanogram per milliliter of blood, and some states had gone to 5 nanograms per milliliter. He said there was a huge public safety issue involved. He said it should have been addressed by the full Advisory Commission. He also said the process was in place for the Board of Pharmacy to schedule the substances.

## IV. SUBCOMMITTEES

The Advisory Commission appointed three subcommittees during the 2013-2014 interim. The three subcommittees that met regularly during the interim were the Advisory Commission on

the Administration of Justice's Subcommittee on Victims of Crime, chaired by Attorney General Cortez Masto, the Advisory Commission on the Administration of Justice's Subcommittee to Review Arrestee DNA, chaired by Steve Yeager, and the Advisory Commission on the Administration of Justice's Subcommittee on the Medical Use of Marijuana, chaired by Senator Segerblom.

Additionally, because the statutory jurisdiction of the Advisory Commission's Subcommittee on Juvenile Justice overlapped with the Legislative Committee on Child Welfare and Juvenile Justice, the Advisory Commission did not formally appoint and convene the Subcommittee on Juvenile Justice. Also, the Advisory Commission did not formally appoint a subcommittee pursuant to Assembly Bill No. 365 (2013), as the Supreme Court was addressing the issue of language access through the Certified Court Interpreters Program and the Language Access Committee.

## A. SUBCOMMITTEE ON VICTIMS OF CRIME

The Victims of Crime Subcommittee consisted of the following members:

Catherine Cortez Masto, Attorney General, Chair
Lisa Morris Hibbler, Victims Rights Advocate, Advisory Commission, Vice Chair
Elynne Greene, Victim Advocate, LVMPD
Kathy Harris, LSW, Nevada Urban Indians, Domestic Violence Specialist
Kelly Ann Kossow, Deputy DA, Washoe County
Megan Long, Victim Advocate, Washoe County School District Police Department
Elisabeth MacDowell, Director of Family Justice Clinic, Boyd School of Law
Colleen McCarty, Esq., Gordon Silver
Susan Meuschke, Ex. Director, Nevada Network Against Domestic Violence
Halleh Seddighzadeh, ARMAN (Asylee Refugee Migrant Assistance Network)
Howard Skolnik, Former Director, Nevada Department of Corrections.
Lidia Stiglich, District Judge, Department 8, 2nd Judicial District Court
Kyle Ward, LVMPD, Homicide Review Team

The Subcommittee on Victims of Crime met several times throughout the interim. The Subcommittee held meetings on April 14, 2014, July 1, 2014, and September 30, 2014. The Subcommittee considered issues ranging from domestic violence to the collection of fines, fees and restitution. Chair Cortez Masto reported that the Subcommittee considered numerous topics and proposals; however, the Subcommittee voted upon 3 final proposals for legislation that they wanted to present to the full Advisory Commission:

1. Draft legislation to authorize the NDOC to provide victim information to the Attorney General's office.

2. Draft legislation to allow the Victims of Crime Compensation Fund to reimburse counties for the cost of sexual assault medical examinations up to $10,000 or 10 exams, whichever is greater per year.

3. Draft legislation to provide that restitution orders do not need to be renewed and do not expire until paid in full.

## B. SUBCOMMITTEE ON ARRESTEE DNA

The Subcommittee on Arrestee DNA consisted of the following members:

Steven Yeager, Deputy Public Defender, Clark County, Chair
Rachel Anderson, Professor of Law, UNLV
Tracy Birch, Executive Director, Criminalistics Bureau, Las Vegas Metro
Steve Gresko, Senior Criminalist/CODIS Administrator, WCSO
Renee Romero, Director, Forensics Lab, WCSO
Vanessa Spinazola, Legislative and Advocacy Director, ACLU of Nevada
Bertral Washington, Las Vegas Urban League

The Subcommittee to Review Arrestee DNA (Subcommittee) held two meetings during the interim. The first meeting convened on July 9, 2014, and the second on August 25, 2014. A quorum of the Subcommittee was present at each meeting.

At the meeting held on July 9, 2014, the Subcommittee focused its discussion on the implementation of Senate Bill No. 243 (2013). The meeting proceeded as a roundtable discussion of interested stakeholders, with the Subcommittee discussing the protocols and procedures for the collection, submission, identification, genetic marker analysis, storage, maintenance, uploading and disposition of biological specimens, DNA profiles and DNA records. The Subcommittee also reviewed the total number of arrestee records received since the legislation went into effect on July 1, 2014, and the total dollar amounts raised pursuant to the $3 administrative assessment enacted in the legislation. Finally, the Subcommittee discussed the DNA expungement process and reviewed the expungement application form.

At the second meeting of the Subcommittee held on August 25, 2014, the Subcommittee heard from national expert Julie Samuels of the Urban Institute. Ms. Samuels covered topics from her national research study entitled, "Collecting DNA at Arrest: Policies, Practices and Implementation." The Subcommittee also received testimony from the Central Repository of Nevada Records of Criminal History as to the current process for expungement of DNA records, and continued with an in-depth review of the implementation of Senate Bill No. 243.

At the Subcommittee's final meeting held on August 25, 2014, the Subcommittee voted upon and approved a total of three recommendations to be forwarded to the full Advisory Commission on the Administration of Justice. The Subcommittee's recommendations are as follows:

1. Draft a letter to the State DNA Database (Forensic Science Division of the Washoe County Sheriff's Office) and the Central Repository of Nevada Records of Criminal History, encouraging the entities to research and review the seven states that currently have automatic expungement for arrestee DNA records, and to further develop best practices for Nevada should Nevada choose to proceed with automatic expungement in the future. Additionally, the entities are urged to identify the necessary fiscal resources to develop a working statewide computer information sharing system for tracking and identifying criminal adjudications that, among many other uses, might facilitate tracking and expunging DNA records.

2. Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to consider budgetary funding for a statewide computer database to track criminal records and adjudications that, among many other uses, could assist in identifying and expunging DNA records. This letter will also include a carbon copy of the letter the Subcommittee directs to the State DNA Database and the Central Repository, and will reference the fact that entities are working together to derive actual implementation costs for a computer network information sharing system. The Subcommittee will forward the fiscal findings as soon as they become available.

3. Include a policy statement in the final report of the 2013-14 Advisory Commission on the Administration of Justice, encouraging all interested criminal justice stakeholders (district attorneys, criminal defense attorneys, judges, court clerks, crime laboratories, law enforcement and the Central Repository) to work together to develop a statewide criminal justice information sharing database. In an ideal world, the computer database should include the following information related to DNA and criminal records: criminal charges and records, race/nationality statistics, demographic crime statistics, percentage of felony arrests resulting in conviction (further broken down by type of resulting conviction), any known actual immigration consequences of conviction, data on voluntary versus forced collection of DNA (including whether the DNA is appropriately categorized as arrestee or convicted person DNA), date related to expungement efforts, any exonerations resulting from arrestee DNA, and any other data deemed appropriate or desirable by the interested criminal justice stakeholders.

## C. SUBCOMMITTEE ON MEDICAL MARIJUANA

The Subcommittee on the Medical Use of Marijuana consisted of the following members:

Senator Tick Segerblom, Chair
Senator Mark Hutchison
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Christine Jones Brady, Deputy Public Defender, Washoe County
Yvanna Cancela, Political Director, Culinary Workers Union Local 226

Bob Coffin, Councilmember, City of Las Vegas
Russ Cutolo, Sergeant, Las Vegas Metropolitan Police Department
Chris Giunchigliani, Commissioner, Clark County
Gary Modafferi, Esq.
Sandra Douglass Morgan, City Attorney, City of North Las Vegas
Keith Munro, Assistant Attorney General
Hillary Schieve, Councilmember, City of Reno
Jennifer Solas, Advocate for Persons Who Use Medical Marijuana
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Vanessa Spinazola, Legislative and Advocacy Director, ACLU of Nevada
John Watkins, Esq.
Chad Westom, Health Bureau Chief, Department of Health and Human Services
Kristina Wildeveld, Esq.

The Subcommittee on the Medical Use of Marijuana (Subcommittee) held two meetings during the interim. The first meeting convened on July 9, 2014, and the second on August 21, 2014. A quorum of the Subcommittee was present at each meeting.

At the meeting held on July 9, 2014, the Subcommittee focused its discussion on the implementation of the medical marijuana program pursuant to Senate Bill No. 374 (2013). The Subcommittee heard from representatives of the Department of Health and Human Services, as well as local government representatives. The Subcommittee also received an overview on driving under the influence of marijuana as well as procedures for obtaining a medical marijuana registry identification card.

At the second meeting of the Subcommittee held on August 21, 2014, the Subcommittee heard from the Chairman of the Gaming Control Board, as to the Board's policies on gaming licensees involvement in the medical marijuana industry. Chairman Burnett also discussed the "transfer of interests" in gaming licenses, as the Subcommittee discussed possible methods to allow for the transfer of medical marijuana establishment licenses. The Subcommittee also received testimony from national experts on driving under the influence of marijuana. Additionally, the Subcommittee heard from a number of persons associated with ancillary businesses related to the medical marijuana industry (trimmers, massage therapists, cash management entities, insurance companies and internet travel agencies).

At the Subcommittees final meeting held on August 21, 2014, the Subcommittee voted upon and approved a total of 10 recommendations to be forwarded to the full Advisory Commission on the Administration of Justice. The Subcommittee's recommendations are as follows:

1. Draft legislation to authorize the sale and transportation of medical marijuana across county lines.

2. Draft legislation to amend NRS 453A.200 to further extend the sunset limitation (currently expiring by limitation on March 31, 2016), during which persons who are authorized to engage in the medical use of marijuana and who were cultivating, growing or producing marijuana on or before July 1, 2013, are "grandfathered" to continue such activity. This recommendation would extend the sunset limitation for an additional two years, through March 31, 2018.

3. Draft legislation to authorize the Division of Public and Behavioral Health to adopt regulations requiring background checks and state licensure of third party vendors and ancillary businesses associated with the medical marijuana industry (such as harvesting, trimming, infusion, insurance, cash management, massage therapists, etc.).

4. Draft legislation to amend Nevada's criminal laws to provide that weights for purposes of prosecution of certain marijuana offenses (such as possession and trafficking) must only include the usable active amount of THC or marijuana and not the total weight of an edible or infused product.

5. Draft legislation to provide exceptions for medical marijuana registry identification cardholders for considerations in drug court, child custody, child abuse and neglect proceedings, foster care, and offender program eligibility.

6. Draft legislation to require the University system to allow medical marijuana registry cardholders to possess and use medical marijuana on campus. Further, amend NRS 453A.600 to remove the provisions requiring approval of the Federal Government before the University of Nevada School of Medicine establishes a program for the evaluation and research of the medical use of marijuana.

7. Draft legislation to eliminate the "per se" nanogram amounts for driving under the influence of marijuana or marijuana metabolite. (NRS 484C.110, 484C.120, 488.410) Also, draft legislation to remove any prohibitions in employment contexts for employees who lawfully use medical marijuana. Finally, draft legislation to require the Board of Pharmacy to reschedule marijuana from a Schedule I to a Schedule II controlled substance.

8. Draft legislation to authorize a cooperative (co-op) form of ownership for medical marijuana establishments.

9. Draft legislation to amend state law regarding the allocation of dispensaries by county, to allow the largest local government jurisdictions (by census population) in each county to have the largest number of allocated dispensaries. (NRS 453A.324) Also, draft legislation to repeal the confidentiality provisions of applications, records or other written documentation for LLC's or any business entity that applies for a medical marijuana license through the Division. (NRS 453A.700)

10. Draft legislation to allow for the transfer of marijuana establishment licenses, and model the approach after the "transfer of interests" process used for gaming licenses. Also, draft legislation to establish a regulatory structure, similar to the Nevada Gaming Control Board, to oversee and regulate the medical marijuana program.

## V. DISCUSSION OF ISSUES AND FINAL RECOMMENDATIONS

This report is intended to provide a brief summary, with relevant background, of each final recommendation adopted by the Advisory Commission. The outline is organized by requested action type (drafting legislation, drafting a letter, and including a statement in the final report) as approved at the Advisory Commission's October 21, 2014, work session meeting. At that work session, the Advisory Commission considered 21 total recommendations. Ultimately, the Advisory Commission approved nine recommendations for bill drafts, four recommendations to draft letters and three recommendations to include a statement in the final report.

### A. RECOMMENDATIONS TO DRAFT LEGISLATION

#### 1. *Recommendation on Photo Identification*

Existing law, enacted pursuant to Senate Bill No. 423 (2013), requires the Director to provide a photo identification card, including the name, date of birth and a color photograph of the offender, to an offender upon his or her release if the offender requests such identification and is eligible to acquire a driver's license or identification card. During the Advisory Commission meeting held on November 6, 2013, Commissioner Cox indicated that the Department of Corrections was working to comply with this requirement and looking at other states who issue identification cards while the offenders are incarcerated. Commissioner Hardesty suggested that the Department needs to have the tools necessary to issue licenses, and could perhaps work with the Department of Motor Vehicles.

At the October 21, 2014, work session, the Advisory Commission discussed whether to make the issuance of photo identification mandatory (regardless of whether the inmate so requests), making the issuance a requirement upon inmate intake (rather than on release), and/or requiring the Department of Motor Vehicles or another agency to issue the identification. Commission discussion focused on the need to issue a valid form of identification regardless of the cost. As such, the Advisory Commission voted to approve a recommendation to require the Department of Motor Vehicles to issue a valid driver's license or identification card to an offender upon release from prison by expiration of his or her term of sentence, by pardon or by parole.

> **RECOMMENDATION NO. 1** — Draft legislation to require the Department of Motor Vehicles to issue a valid driver's license or identification card to an offender upon release from prison by expiration of his or her term of sentence, by pardon or by parole. **(BDR 559)**

Attached as **Appendix D** is Senate Bill No. 423 (2013), as Enrolled.

2. *Recommendation on Uniform Pretrial Risk Assessments*

During the Advisory Commission meeting held on May 1, 2014, the Advisory Commission received testimony from Matt Alsdorf, Director of Criminal Justice, Arnold Foundation. Mr. Arnold spoke of the use of pretrial risk assessments, and discussed measuring and managing risk at the earliest stages of the criminal justice process. Mr. Alsdorf expressed the need to ensure that the system operated as fairly and cost efficiently as possible, and stated that the Arnold Foundation sought to identify the areas of criminal justice with the greatest need for transformative change and where they could make a meaningful difference. Mr. Alsdorf said they focused on the front-end of the criminal justice system. Key decisions at the front-end of the system were often made with limited access to critical information and objective data.

Mr. Alsdorf indicated that pretrial risk assessment tools have been shown to be effective, but only 10 percent of jurisdictions utilize them due to cost. They looked for common factors to be used for risk assessments that would minimize financial and human resources. He said they wanted to measure new criminal arrests, and failure to appear, but also the risk that a defendant would commit a violent crime during the pretrial period. They found with nine data points on each defendant they could create a risk assessment that was equally or more predictive than existing tools. He said all nine factors can be gathered without interviewing a defendant from an administrative record. The tools were made up of three six point scales; new criminal activity, new violent criminal activity, and failure to appear. He said the tools were meant to provide data to the decision makers, and they were not meant to replace the decision maker's discretion.

Through the assistance of the Arnold Foundation, the Kentucky PSA-Court pretrial risk assessment has been implemented statewide in Kentucky since July 2013. Mr. Alsdorf said that Kentucky has a statewide integrated court system and a statewide integrated pretrial system. He stated that all the groups reported to the same body so they were able to completely integrate the system; whereas, in most states it varies widely by individual county. Preliminary findings from Kentucky, included in the LJAF Research Summary, indicate that the PSA-Court assessment has been successfully predicting the propensity to reoffend and fail to return to court. Although the PSA-Court "form" is not currently available to Nevada, it is planned to be released through Arnold Foundation pilot projects. Mr. Alsdorf concluded by stating that the ultimate goal of the Arnold Foundation was to make the tools available to everyone at no cost.

During the May 1, 2014, meeting, the Advisory Commission also heard testimony about the Ohio Risk Assessment, including the fact that the Department of Corrections currently uses a Nevada Risk Assessment for inmates modeled after the Ohio instrument. By way of background, in 2006, the Ohio Department of Rehabilitation and Corrections (ODRC) contracted with the University of Cincinnati, Center for Criminal Justice Research to develop a risk and needs assessment system that improved consistency and facilitated communication across criminal justice agencies. The goal was to develop risk/needs assessment tools that were

predictive of recidivism at multiple points in the criminal justice system. Specifically, assessment instruments were to be developed at the following stages: (1) pretrial; (2) community supervision; (3) institutional intake; and (4) community re-entry.

At the October 21, 2014, work session, the Advisory Commission voted to recommend legislation to require the use of a uniform pretrial risk assessment tool statewide. The Advisory Commission noted that the Ohio model was the preferable model, as it has been tested. They also noted that the Supreme Court should be involved in adopting rules for the procedures and implementation of the risk assessment tool.

> **RECOMMENDATION NO. 2** — Draft legislation to require: (1) the use of a uniform pretrial risk assessment tool in criminal proceedings, consistent with the Ohio Risk Assessment System Pretrial Assessment Tool; and (2) the Supreme Court to establish by rule, the policies and procedures for the implementation of the pretrial risk assessment tool. **(BDR 559)**

Attached as **Appendix E** is a copy of the Ohio Risk Assessment System Pretrial Assessment Tool.

3. *Recommendation on Risk Assessments Employed by the Division of Parole and Probation*

During the Advisory Commission meeting held on May 1, 2014, Dwight Gover, Captain, Division of Parole and Probation, gave a presentation on the Division's Offender Assessment and how they utilized their tools. Mr. Gover said that the NRS established a level of supervision for a probationer or parolee under their charge. Mr. Gover said that the Division currently used an assessment tool based on the Wisconsin Client Management System. They utilized the assessment tool to aid in offender supervision levels. Within the first 30 days of supervision, officers were required to complete an initial risk and needs assessment. He said there were approximately 13,000 offenders under active supervision. The risk assessment tool was validated in October 2007, by the National Council on Crime and Delinquency.

At the work session, the Advisory Commission noted that the forms had not been updated in some time. This recommendation would require the Division to review and update the assessment tools, and to report back to next interim's Advisory Commission.

> **RECOMMENDATION NO. 3** — Draft legislation to require the Division of Parole and Probation: (1) to review and update any risk assessment tool currently utilized by the Division; and (2) to report the Division's progress to the Advisory Commission on the Administration of Justice during the 2015-16 interim. **(BDR 559)**

4. *Recommendation on Collection of Fees, Fines and Restitution*

Over the past several interims, the Advisory Commission has heard from a number of presenters, including Justice Hardesty, who have reiterated the need for the centralized collection of fines, administrative assessments, fees and restitution from convicted persons.

Justice Hardesty asserted that many of these past due amounts are not collected simply because no single entity is assigned the primary responsibility for coordinating and collecting the obligations. He suggested that there is also confusion over the priority in which to apply any amounts that are actually collected. Further, many offenders do not complete payment of their obligations before they are released from supervision, which further exacerbates collection problems.

Justice Hardesty also noted that the issue of collecting past due amounts from convicted persons was previously raised in Assembly Bill No. 271 (2009) as was endorsed by the Advisory Commission during the 2008-2009 interim; however, that bill did not pass. Additionally, in 2011, the Advisory Commission again recommended legislation relating to the collection of past due amounts in Assembly Bill No. 196 (2011), this time requiring the State Controller to collect fines, administrative assessments, fees and restitution from persons convicted of certain criminal offenses; however that measure was ultimately amended before it passed. As enrolled, Assembly Bill No. 196 requires the district court to forward to the county treasurer the necessary information for the collection of the debt of a criminal defendant. If a county is unable to collect the debt, the county treasurer may enter into a cooperative agreement with the Office of the State Controller for the purpose of assigning to the Office of the State Controller the responsibility for collecting the debt.

At the work session, Justice Hardesty again noted the pressing need for the centralized collection of past due amounts. As such, the Advisory Commission voted to recommend the drafting of legislation to require the centralized collection of fees, fines and restitution from convicted persons. Additionally, the legislation would require the Administrative Office of the Courts to assist in providing any necessary information.

> **RECOMMENDATION NO. 4** — Draft legislation to require the centralized collection of fees, fines and restitution from convicted persons. The legislation would require the Administrative Office of the Courts to assist in providing any necessary information. **(BDR 559)**

Attached as **Appendix F** is a copy of Assembly Bill No. 271 (2009), First Reprint, and Assembly Bill No. 196 (2011), as Introduced and Enrolled.

5. *Recommendation on Restitution*

The Subcommittee on Victims of Crime spent considerable time reviewing the issue of victim remuneration through restitution. Existing law requires an affidavit of renewal of judgment in order to renew or collect the restitution contained in an existing criminal judgment once the defendant is delinquent in paying the restitution. Existing law also specifies that a restitution order constitutes a civil liability upon the date of a defendant's discharge from probation. At the Subcommittee's final meeting, the Subcommittee voted to recommend proposed legislation which allows enforcement of an order of restitution contained in a criminal judgment without taking the additional renewal steps or within the limited timeframe required under existing law.

At the work session, the Advisory Commission voted to recommend draft legislation to provide that an order of restitution contained in a criminal judgment is enforceable as a civil judgment and that such an order does not expire until it is paid in full.

> **RECOMMENDATION NO. 5** — Draft legislation to provide that an order of restitution contained in a criminal judgment is enforceable as a civil judgment and that such an order does not expire until it is paid in full. **(BDR 560)**

Attached as **Appendix G** is proposed conceptual legislation relating to restitution as submitted by the Subcommittee on Victims of Crime.

6. *Recommendation on Criminal Justice Information Sharing*

During the course of two Subcommittee to Review Arrestee DNA meetings, the Subcommittee members noted and discussed the lack of a statewide computer database to adequately track criminal records. While the Subcommittee noted the potential monumental task and potential fiscal cost, it was encouraged by the statements of interested persons to work together. At the Subcommittee's final meeting held on August 25, 2014, the Subcommittee voted upon and approved a recommendation to the full Advisory Commission to include a policy statement encouraging all interested stakeholders to work together to develop a statewide criminal justice computer database. The Subcommittee noted that in an ideal world, the computer database should include the following information related to DNA and criminal records: criminal charges and records, race/nationality statistics, demographic crime statistics, percentage of felony arrests resulting in conviction (further broken down by type of resulting conviction), any known actual immigration consequences of conviction, data on voluntary versus forced collection of DNA (including whether the DNA is appropriately categorized as arrestee or convicted person DNA), date related to expungement efforts, any exonerations resulting from arrestee DNA, and any other data deemed appropriate or desirable by the interested criminal justice stakeholders.

At the work session on October 21, 2014, the Advisory Commission believed that a stronger statement should be made regarding the development of a statewide criminal justice database. Several members noted that this issue was not new, and in fact had been discussed for several decades. As such, the Advisory Commission recommended the drafting of legislation to require all criminal justice stakeholders to adopt policies and procedures concerning a statewide criminal justice database.

> **RECOMMENDATION NO. 6** — Draft legislation to require all interested criminal justice stakeholders (such as district attorneys, criminal defense attorneys, judges, court clerks, crime laboratories, law enforcement agencies and the Central Repository for Nevada Records of Criminal History) to adopt policies and procedures for developing a statewide criminal justice information sharing database. **(BDR 559)**

7. *Recommendation on Personal Information*

During the 2013-14 interim, the Advisory Commission's Subcommittee on Victims of Crime (NRS 176.01245) held several meetings to discuss ongoing issues impacting victims of crime. At the work session, the full Advisory Commission voted to approve the Subcommittee's recommendation to amend NRS 209.521 as it pertains to the sharing of certain personal information. The proposed bill draft seeks to authorize the Director of the Department of Corrections to release personal information, including, but not limited to, a current or former address which pertains to a victim, to the Office of the Attorney General. The information would be used solely for the purpose of notifying the victim of the status of pending litigation.

> **RECOMMENDATION NO. 7** — Draft legislation to authorize the Director of the Department of Corrections to release personal information, including, but not limited to, a current or former address which pertains to a victim, to the Office of the Attorney General. The information would be used solely for the purpose of notifying the victim of the status of pending litigation. **(BDR 559)**

Attached as **Appendix H** is proposed conceptual legislation relating to the release of certain confidential information as recommended by the Advisory Commission's Subcommittee on Victims of Crime.

8. *Recommendation on the Fund for the Compensation of Victims of Crime*

Existing law permits the payment of compensation to certain persons from the Fund for the Compensation of Victims of Crime. (NRS 217.160) At the Subcommittee on Victims of Crime's final meeting, the Subcommittee voted to recommend proposed legislation to permit the reimbursement of counties for the cost of sexual assault examinations from the Fund. The legislation would also limit the reimbursement per year to a total of ten examinations in each county, or up to $10,000, whichever is greater.

At the work session, the Advisory Commission voted to approve the Subcommittee's recommendation for draft legislation authorizing the Fund for the Compensation of Victims of Crime to be used for the reimbursement of counties for the cost of sexual assault examinations.

> **RECOMMENDATION NO. 8** — Draft legislation authorizing the Fund for the Compensation of Victims of Crime to be used for the reimbursement of counties for the cost of sexual assault examinations. **(BDR 559)**

Attached as **Appendix I** is proposed conceptual legislation relating to reimbursement for the cost of sexual assault examinations as recommended by the Subcommittee on Victims of Crime.

9. *Recommendation on Sentence Credits*

Throughout the interim, the Advisory Commission heard from numerous presenters regarding the number of inmates currently incarcerated under category B offenses. During the meeting held on January 27, 2014, Wendy Naro Ware, Vice President, JFA Institute, gave a presentation on the correctional population forecast, legislative impacts, and various other correctional research projects for Nevada since 1994. She gave an overview of the sentence credits legislation passed in Nevada. Ms. Ware reiterated that Assembly Bill No. 510 (2007) increased sentence credits for C, D, and E felonies that did not include violence, sexual offense or driving under the influence. The credits helped reduce the minimum sentence making parole eligibility occur faster. It also increased good time credit for education, vocational training and substance abuse programs. Ms. Ware also said Assembly Bill No. 136 (2011), which was passed by the legislature but subsequently vetoed by the Governor, would have extended the credits to B felons with the exception of violent crimes, sexual assault, and history of driving under the influence. Ms. Ware testified that there was a consistent increase in the number of category B felons going to prison. She said new commitments went down in total, but a subset of B felons were rising. Commissioner Kohn queried as to how many people would have been impacted by Assembly Bill No. 136 if it had passed. Ms. Ware answered about 48 percent.

Given the ongoing level of discussion on category B felonies during the interim, and in previous years, Commissioner Cox contacted the Office of Justice Programs Diagnostic Center. At the May 1, 2014, meeting, Jessica Herbert, Diagnostic Specialist and Steve Rickman, Senior Advisor, of the Diagnostic Center presented to the Advisory Commission. Katherine Darke-Schmitt, Policy Advisor with the Office of the Assistant Attorney General also provided an overview of the Diagnostic Center. Mrs. Darke-Schmitt said the Diagnostic Center is a technical assistance program operated by the Department of Justice, Office of Justice Programs. The purpose is to assist state, local and tribal criminal justice agencies build capacity to use data to solve criminal justice problems. She said their funding stream allowed them to address criminal justice and safety issues across the spectrum. Based on the preliminary request submitted by Commissioner Cox, the Diagnostic Center accepted Nevada for technical assistance. Throughout the summer months, the Diagnostic Center conducted numerous site visits and conference calls with interested stakeholders.

Jessica Herbert and Steve Rickman of the Diagnostic Center also held an informational conference call with Commissioner Cox and Advisory Commission staff on October 3, 2014, to discuss the preliminary results of their findings. Based on their research, the Diagnostic Center preliminarily supported three legislative policy recommendations for the full Advisory Commission's consideration.

At the work session, the Advisory Commission recommended, based in part on its past examination and work on the issue, to draft legislation to study the use of sentence credits for certain category B felons. In addition, the Advisory Commission noted that the study should include whether a judge should have the authority to use discretion to award such credits, and

whether both the prosecution and defense should be allowed to participate in any credit decisions by the sentencing judge.

> **RECOMMENDATION NO. 9** — Draft legislation to study the use of sentence credits to reduce the minimum term of imprisonment imposed for offenders convicted of certain category B offenses. The study should include a review of the use of judicial discretion at sentencing, to determine whether such credits should be allocated. **(BDR 557)**

Attached as **Appendix J** is a chart detailing the Penalties for Category B Felonies prepared by the Research Division; Assembly Bill No. 136 (Enrolled/Vetoed 2011); Diagnostic Center Status Report.

## B. RECOMMENDATIONS TO DRAFT A LETTER

### 10. *Recommendation to Fund Criminal Justice*

Throughout the interim, the Advisory Commission heard from numerous policy experts and agency officials on the need for increased funding in the area of criminal justice. Certain issues such as staffing levels of the Division of Parole and Probation for the issuance of presentence investigation reports, resources for the Department of Corrections and Parole hearing caseloads, raised concern from numerous members of the Advisory Commission. This request would include funding for: staffing; information technology; and technical assistance for the agencies of the Division of Parole and Probation, the Department of Corrections and the Board of Parole Commissioners.

At the work session held on October 21, 2014, the Advisory Commission discussed the importance of adequately funding and prioritizing criminal justice. The members noted that nearly all of the Advisory Commission's policy recommendations potentially have a fiscal impact, but that in many cases that impact was greatly outweighed by future cost savings. Regardless, the members were reminded that the Advisory Commission is charged with examining the policy considerations of the criminal justice system, and that the financial implications are largely debated in the State's budgetary process. Thus, in support of the Advisory Commission's approved recommendations for legislation, and in furtherance of the pressing financial needs for the entire criminal justice system, the Advisory Commission voted to draft a letter to the Governor and Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance.

> **RECOMMENDATION NO. 10** — Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, to request additional funding for criminal justice in Nevada. This request would include supplemental funding for staffing, information technology and technical assistance for the Division of Parole and Probation, the Department of Corrections and the Board of Parole Commissioners.

Attached as **Appendix K** is a Letter to the Governor, Chair of Assembly Ways and Means, and Chair of Senate Finance, dated January 5, 2015.

11. *Recommendation Regarding Specialty Courts*

At the meeting of the Advisory Commission held on July 8, 2014, the Advisory Commission heard a presentation from numerous judges throughout the state on the pressing need to stabilize funding for specialty courts. Justice Michael Douglas said he had been involved with specialty courts for the past 10 years at the Supreme Court level. He said Nevada had been involved for approximately 20 years, it was one of the founders in the country. Sadly the State had not progressed as far as it should have over the past years. The limitation was funding. He said they appreciated what the Legislature did over the years by allowing various ways of combining money to fund the courts. He said during the past three years they went from bringing in close to $6 million for statewide drug court programs to about $5 million. He said instead of expanding, they have been unable to add a court since 2011.

Justice Hardesty also referenced the reforms made in Oregon in which the Oregon Legislature infused $15 million into specialty court programs that worked. Justice Hardesty said Oregon started the program with seed money. He said the lack of stabilization of funding sources was a challenge. Nevada's drug courts lead the country in best practices and success. He said the Commission needed to understand that all of the successful programs were under jeopardy due to lack of funding.

At the work session, the Advisory Commission discussed the need to find a stable funding source for specialty court. They specifically noted that the funding for specialty courts is well below projected levels because administrative assessments are not being collected or assessed. As such, the Advisory Commission voted to draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, to highlight the need to support the Supreme Court's general fund budget request.

> **RECOMMENDATION NO. 11** — Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging their support of the Supreme Court's $3 million dollar general fund budget request for specialty courts.

Attached as **Appendix K** is a Letter to the Governor, Chair of Assembly Ways and Means and Chair of Senate Finance, dated January 5, 2015.

12. *Recommendation Regarding Automatic Expungement*

The Advisory Commission on the Administration of Justice's Subcommittee to Review Arrestee DNA (NRS 176.01246) held two meetings during the interim. At the Subcommittee's final meeting held on August 25, 2014, the Subcommittee voted upon and approved a total of three recommendations to be forwarded to the full Advisory Commission on the

Administration of Justice. This recommendation is to draft a letter to the State DNA Database (Forensic Science Division of the Washoe County Sheriff's Office) and the Central Repository of Nevada Records of Criminal History, encouraging the entities to research and review the seven states that currently have automatic expungement for arrestee DNA records and to further develop best practices should Nevada choose to proceed with automatic expungement in the future.

At the work session, the Advisory Commission approved the drafting of a letter to the State DNA Database and the Central Repostory for Nevada Records of Criminal History to highlight the issue of DNA expungement.

> **RECOMMENDATION NO. 12** — Draft a letter to the State DNA Database (Forensic Science Division of the Washoe County Sheriff's Office) and the Central Repository for Nevada Records of Criminal History, encouraging the entities to: (1) research and review the seven states that currently utilize automatic expungement for arrestee DNA records; and (2) further develop best practices should Nevada choose to proceed with automatic expungement in the future.

Attached as **Appendix L** is a Letter to the State DNA Database and the Central Repository for Nevada Records of Criminal History dated January 5, 2015.

13. *Recommendation Regarding a Statewide Computer Database*

During the course of two Subcommittee to Review Arrestee DNA meetings, the Subcommittee members acknowledged and discussed the lack of a statewide computer database to adequately track criminal records. While the Subcommittee noted the monumental task and potential fiscal cost, it was encouraged by the statements of interested persons to work together. At the Subcommittee's final meeting held on August 25, 2014, the Subcommittee voted upon and approved a recommendation to draft a letter to the Governor and the respective chairs of the legislative money committees urging them to consider budgetary funding for a statewide computer database for criminal justice. In their deliberations, the Subcommittee noted that such a database could also assist in identifying and expunging DNA records.

In recognizing the need for the Subcommittee's recommendation, the full Advisory Commission approved the following recommendation at their work session.

> **RECOMMENDATION NO. 13** — Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to consider budgetary funding for a statewide computer database to track criminal records and adjudications that, among many other uses, could assist in identifying and expunging DNA records.

Attached as **Appendix K** is a Letter to the Governor, Chair of Assembly Ways and Means and Chair of Senate Finance, dated January 5, 2015.

## C. RECOMMENDATIONS TO INCLUDE A POLICY STATEMENT

### 14. *Recommendation to Support the Nevada State Court Language Access Plan*

During the Advisory Commission meeting held on January 27, 2014, Justice Michael Douglas testified that he was speaking to justice as it pertained to limited English proficiency. According to Justice Douglas, the State has a long history of providing language interpreters in the context of the criminal application; however, he said the State was not doing that in the area of civil litigation and administrative hearings. Justice Douglas testified that the counties of Washoe and Clark were doing an admirable job providing the services; however, it was more difficult in the rural areas. Justice Douglas also indicated that the Department of Justice (DOJ) had interacted with approximately seven states in obtaining voluntary consent decrees for their failure to have a language access plan. He said that Nevada had a fledgling plan for the courts and was revising the plan as they received additional assets. He hoped they would not have an instance where the DOJ comes into the state based upon a complaint and orders compliance. Justice Douglas concluded by saying his aim was to make the Advisory Commission aware of the concern and the need to address the issue.

According to the draft Nevada State Court Language Access Plan, it has three primary purposes:

1) To provide guidance for the consistent application of policies and practices throughout the Nevada court system;
2) To provide the basis for training of judicial employees and staff to serve limited English proficient individuals; and
3) To inform such individuals about available language resources.

Furthermore, the draft Plan reflects the position of the Nevada Judicial Branch to take reasonable steps to provide meaningful access to all individuals in any encounter with Nevada courts regardless of their national origin, or limited ability to read, write, speak or understand the English language.

At the work session, the Advisory Commission voted to include a policy statement in support of the Nevada State Court Language Access Plan.

> **RECOMMENDATION NO. 14** — Include a policy statement in the final report recognizing and supporting the Nevada State Court Language Access Plan, which seeks to promote access to the courts by persons with limited English proficiency. This policy statement also urges the Legislature to study and address the issue of language access in other civil proceedings, such as administrative hearings and proceedings.

15. *Recommendation Regarding Justice Reinvestment Initiatives*

Throughout the interim, the Advisory Commission heard from presenters such as the Vera Institute, Right on Crime, the Council of State Governments and the Oregon Criminal Justice Commission. Additionally, the Chair and Vice-Chair of the Advisory Commission met with the Governor and secured support to contact the Bureau of Justice Assistance, Council of State Governments, Urban Institute and Pew Charitable Trusts to seek funding and technical assistance for justice reinvestment initiatives in Nevada. Although the deadline had already passed for Nevada to seek technical assistance in this biennium, as the Advisory Commission heard from numerous presenters, the Advisory Commission may choose to move forward with justice reinvestment type initiatives without the assistance of a national technical assistance provider. It was noted that other states, such as Alaska, had produced justice reinvestment type reforms on their own accord.

At the Advisory Commission meeting held on November 6, 2013, (and subsequently reaffirmed at later meetings) the Advisory Commission voted to draft a letter to the Pew Charitable Trusts and other technical assistance providers seeking their commitment to the State of Nevada. Although, the Pew Charitable Trusts and CSG indicated that there was no funding available this year for technical assistance, the Advisory Commission is committed to continuing to pursue technical assistance options in the future. At the work session, the Advisory Commission voted to reaffirm the request to continue to seek financial and technical support for justice reinvestment from the Pew Charitable Trusts and others to assist Nevada in research and data gathering for criminal justice reforms.

> **RECOMMENDATION NO. 15** — Include a policy statement in the final report urging the Governor and the Chair and Vice-Chair of the Advisory Commission to continue working with the Pew Charitable Trusts and other technical assistance providers to further develop justice reinvestment type initiatives for Nevada.

Attached as **Appendix C** is a letter to the Pew Charitable Trusts and other technical assistance providers. Also attached as **Appendix M** is a memorandum, highlighting additional staff contacts with the Pew Charitable Trusts and other technical assistance providers since the last Advisory Commission meeting on October 21, 2014.

16. *Recommendation Regarding Drug Overdose Laws*

During the Advisory Commission meeting held on May 1, 2014, Reno Municipal Court Judge Dorothy Nash Holmes testified that 18 states currently have a Naloxone program. She said Naloxone was a prescription which reversed the effects of opioid overdose within two minutes. She compared the drug to Epipens for allergies. Nevada needed to create a policy favoring emergency aid to save lives from overdose. Judge Holmes also proposed amending the Good Samaritan law to encourage the rendering aid.

Judge Holmes stated that the other part of the Naloxone program was a family law issue. She testified that substance abuse impacts families, and that a judge needs to know what was available to the kids. She recommended amending the best interest determination in child custody matters and referenced the fact that a similar law passed in California.

Judge Holmes said two other drug-related areas should also be considered by the Advisory Commission. The first is NRS 484C.400, which provides that a failure to complete treatment on a second DUI offense was guilty of another misdemeanor. She said treatment should be considered as a treatment issue rather than a criminal issue. The other statute is NRS 453.336, which provides penalties for possession of a controlled substance. She said a person convicted on possession of one ounce of marijuana or less was required to be examined by a substance abuse treatment professional or be fined $600. Judge Holmes suggested that the Advisory Commission consider amending the statute to make the examination permissive on the first offense and mandatory on the second offense.

During the work session, the Advisory Commission voted to recommend the inclusion of a policy statement in support the establishment of a Naloxone access law and the amendment of the Good Samaritan law to allow assistance to a victim of overdose. This recommendation also includes a statement of support in favor of legislation relating to certain drug crimes.

> **RECOMMENDATION NO. 16** — Include a policy statement in the final report supporting: (1) the establishment of a Naloxone access law; (2) the amendment of NRS 41.500 (the "Good Samaritan" law) to allow for assistance to a victim of an overdose; (3) the amendment of NRS 484C.400 to remove the provision that failure to complete treatment is another crime; and (4) the amendment of NRS 453.336 for a second offense of possession of less than one ounce of marijuana to authorize, rather than require, a program of treatment and rehabilitation.

Attached as **Appendix N** is background information relating to drug overdose laws, including: The Network for Public Health Law article entitled "Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Overdose Good Samaritan Laws"; NRS 41.500; NRS 453.521; proposed conceptual amendment to NRS 125.480; NRS 484C.400; and NRS 453.336.

## VI. CONCLUSION

Throughout the 2013-2014 interim, the focus of the Advisory Commission was to once again efficiently and effectively review and evaluate the criminal justice system in Nevada. As directed by their statutory charge, the Advisory Commission was able to meet its required duties and complete its work in a thorough and expeditious manner.

Through the use of outside policy experts and consultants, who travelled from near and far, and who testified via video and teleconference, without remuneration, the Advisory

Commission was able to focus on a broad array of best practices from throughout the country. Additionally, the Advisory Commission relied upon members from all aspects of the Nevada criminal justice system and concerned members of the public. Thus, the Advisory Commission was able to generate meaningful discussion and propose sixteen significant recommendations to strengthen Nevada's criminal justice system.

The Advisory Commission wishes to thank all of the individuals who attended, participated and testified throughout the interim. As directed by statute, the Advisory Commission hereby forwards the approved recommendations to the 2015 Nevada Legislature, and promises to remain vigilant in pursuing these important criminal justice reforms throughout the Legislative Session and beyond.

# A

**2013 LEGISLATIVE BILLS INTRODUCED**
**ON BEHALF OF THE ADVISORY COMMISSION**
**ON THE ADMINISTRATION OF JUSTICE**
**(Measures may be viewed at http://www.leg.state.nv.us/Session/77th2013/Reports/)**

## MEASURES ENACTED

**Assembly Bill 91 (BDR 14-740) Assembly Committee on Judiciary**
Assembly Bill 91 allows a court to order a defendant to a program of regimental discipline if the defendant was convicted of a felony involving an act of violence and the district attorney stipulates to the defendant's eligibility for the program. The bill also allows only those defendants who have not been incarcerated in jail for more than a cumulative total of 365 days and who have never been incarcerated in prison to be placed in a program of regimental discipline.

Assembly Bill 91 also requires the Director of the Department of Corrections to make all reasonable efforts to accommodate a defendant in a program of regimental discipline and to consider the facts and circumstances of the offense when determining the defendant's eligibility.

**Assembly Bill 307 (BDR 16-743) Assemblyman Horne**
Assembly Bill 307 requires a county to pay any costs incurred by a hospital for a forensic medical examination of a victim of sexual assault. The bill also specifies that any costs incurred by a county for medical care provided to a victim within 72 hours after arriving for treatment and any costs for a forensic medical examination must be charged to the county where the offense was committed, and that the filing of a police report must not be a prerequisite to qualifying for a forensic medical examination.

Assembly Bill 307 also requires a victim of sexual assault to file a police report or submit to a forensic medical examination in order for the victim or the victim's spouse, relative, or close friend to be eligible for any additional treatment at county expense for physical injuries or emotional trauma suffered as the result of the sexual assault.

**Assembly Bill 423 (BDR 14-741) Assembly Committee on Judiciary**
Assembly Bill 423 requires the Division of Parole and Probation of the Department of Public Safety to disclose the factual content of a presentence investigation report and the Division's recommendations to the court, the defendant, the defendant's attorney, and the prosecuting attorney not later than a certain number of days before sentencing, unless the defendant waives the minimum period.

For the period beginning October 1, 2013, and ending February 28, 2014, the disclosure must take place at least seven working days before sentencing. For the period beginning March 1, 2014, and ending September 30, 2014, the disclosure must take place at least 14 working days before sentencing. And after October 1, 2014, the disclosure must take place at least 21 working days before sentencing.

**Senate Bill 71 (BDR 14-447) Senator Parks**
Senate Bill 71 provides that when a court imposes consecutive sentences, those sentences must be aggregated if the crimes were committed on or after July 1, 2014, unless any of the sentences includes a sentence of life without the possibility of parole or death. In addition, this measure authorizes a prisoner who is serving consecutive sentences to request the Director of the Department of Corrections to aggregate any remaining sentences for which parole has not previously been considered. The aggregation of sentences does not apply to sentences for offenses entered into at different times. This measure provides that for offenses committed and sentences aggregated on or after July 1, 2014, any credits earned to reduce sentences may only reduce the minimum term or minimum aggregate term imposed by the sentence by not more than 58 percent.

For cases where a prisoner was less than 16 years of age at the time of the offense for which he or she was imprisoned, this measure provides that the State Board of Parole Commissioners is not required to release the prisoner if he or she is determined to be a high risk to reoffend in a sexual manner or there is a reasonable probability that the prisoner will be a danger to public safety while on parole. Finally, if a prisoner who was less than 16 years of age at the time of an offense is paroled and then that parole is revoked, that prisoner must not be considered again for parole under these provisions of the law.

## MEASURES THAT DID NOT PASS

**Assembly Bill 325 (BDR 14-742) Assemblyman Martin**
Assembly Bill 325 sought to authorize a court, before sentencing a defendant who has been convicted of a felony and has never been sentenced to prison as an adult for more than six months, to commit the defendant to the Department of Corrections for a complete evaluation. The commitment would not exceed 90 days, but could have been extended once for an additional 60 days at the request of the Department.

The bill further sought to require the Department to evaluate the defendant's previous delinquency or criminal record; social background and capability; and emotional, mental, and physical health; as well as suitable programs and resources that are available to him or her for rehabilitation. At the end of the period of commitment, the Department would have been required to report the results of its evaluation to the court for use in sentencing the defendant to probation or an appropriate term of imprisonment.

This measure would have reinstated, with some changes, the previous provisions of *Nevada Revised Statutes* 176.158, which the Legislature repealed in the 1997 Legislative Session.

**Senate Bill 200 (BDR S-744) Senator Parks**

Assembly Bill No. 93 of the 2011 Legislative Session requires the Department of Corrections to establish a pilot diversion program for certain probation violators. (Chapter 433, Statutes of Nevada 2011, p. 2628) Senate Bill 200 of the 2013 Legislative Session sought to increase from 50 to 100 the maximum number of probation violators for whom the Department is required to provide housing under the pilot diversion program. The bill also sought to extend the sunset date of the pilot diversion program from July 1, 2015, to July 1, 2017.

# B

TICK SEGERBLOM
SENATOR
District No. 3

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# State of Nevada
# Senate

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January 31, 2014

The Honorable Debbie Smith, Chair
Interim Finance Committee
1285 Baring Blvd., #402
Sparks, NV 89434

Dear Chair Smith:

On behalf of the members of the Advisory Commission on the Administration of Justice (NRS 176.0123), I am writing to you today to ask for the Interim Finance Committee's support of the Division of Parole and Probation's Work Program request #C28458, which will be heard at your February 6, 2014, meeting.

As you may be aware, at the Advisory Commission's November 6, 2013, meeting, and again at the January 27, 2014, meeting, the Advisory Commission unanimously voted to support additional funding and staff resources for the Division of Parole and Probation. With the passage of Assembly Bill No. 423 (2013), which was recommended and supported by the 2011-12 Advisory Commission, the Division of Parole and Probation has been under increasing pressure to comply with new statutory timeframes for completing presentence investigation reports. The issue of timely and accurate presentence investigation reports is of great import to all persons involved in the criminal justice system (defendants, attorneys, judges, etc.).

In conclusion, the Advisory Commission urges you to support the Division's Work Program Request which will allow for the continuation of 21 temporary positions and additional funding to help reduce the presentence investigation report backlog. Thank you again for your consideration of this critical issue impacting the criminal justice system in Nevada.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

Tick Segerblom, Chair
Advisory Commission on the
Administration of Justice

On behalf of members:

Justice James Hardesty, Supreme Court, Vice Chair
Senator Greg Brower
Assemblyman Wesley Duncan
Assemblyman Jason Frierson
Judge David Barker, Eighth Judicial District Court
Connie Bisbee, Chair, Board of Parole
Chuck Callaway, Police Director, METRO
Catherine Cortez Masto, Attorney General
James "Greg" Cox, Director, NDOC
Larry Digesti, Representative, State Bar of Nevada
Lisa Morris Hibbler, Victims Rights Advocate
Mark Jackson, Douglas County District Attorney
Phil Kohn, Clark County Public Defender
Jorge Pierrott, Sergeant, Parole and Probation
Richard Siegel, ACLU of Nevada
D. Eric Spratley, Lieutenant, WCSO

cc: Advisory Commission on the Administration of Justice, Members
Bernard W. Curtis, Chief, Division of Parole and Probation
Mark Krmpotic, Senate Fiscal Analyst, LCB

# C

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# Office of the Governor

May 6, 2014

Juliene James
Senior Policy Advisor
Bureau of Justice Assistance
810 Seventh Street NW
Washington, DC 20531
juliene.james@usdoj.gov

Adam Gelb
Project Director
Pew Center on the States
901 E Street, NW, 10th Floor
Washington, DC 20004-1409
agelb@pewtrusts.org

Justice Reinvestment Initiative
Attention: Lindsey Cramer
Urban Institute
2100 M Street, NW
Washington, DC 20037
justicereinvestment@urban.org

Re: Nevada Request for Justice Reinvestment Assistance

Dear Ms. James, Mr. Gelb and Ms. Cramer:

We are writing to you today with the prospect of formally requesting technical assistance through the Justice Reinvestment Initiative (JRI) for the State of Nevada. We believe that the JRI process would be of great assistance to the criminal justice oversight structure we currently have in Nevada through the Advisory Commission on the Administration of Justice (Advisory Commission).

By way of background, the Advisory Commission is codified in the Nevada Revised Statutes (NRS 176.0123) and is charged with comprehensively identifying and studying the elements of Nevada's system of criminal justice. The

Advisory Commission historically meets only during the interim period between biennial legislative sessions in Nevada, and is comprised of 17 members from all areas of the criminal justice spectrum. Attached for your reference you will find copies of: the Nevada Revised Statutes relating to the formation and duties of the Advisory Commission, a list of all current members and the Advisory Commission's last report to the 2013 Nevada Legislature.

In terms of approaching the Justice Reinvestment Initiative process, we are pleased to pronounce that we have the strong bi-partisan support of all three branches of Nevada government. As signatories to this letter, the Executive, Legislative and Judicial branches are firmly committed to the JRI process and outcomes. We have reviewed the reforms that have been made in the other 17 JRI model states, and firmly believe that the political and economic times are opportune for such strategies to be implemented in Nevada. We have specifically been impressed with the strident reforms made in states such as Kentucky and Ohio, and believe that similar reforms may be achievable in Nevada. The Advisory Commission is not limited to any one topic area of criminal justice enhancement.

It is our belief that onsite technical assistance from nationally recognized criminal justice policy experts and researchers would be invaluable to Nevada. We are very aware of data-driven outcomes and their usefulness in enacting lasting policy decisions. Additional technical assistance would provide the Advisory Commission and the Nevada Legislature with the necessary data-driven policy options to further develop lasting criminal justice reforms and to reinvest in community based strategies that improve public safety.

Over the past several months, the Chair and Vice-Chair of the Advisory Commission have been in contact with Marshall Clement, Director, State Initiatives, Council of State Governments Justice Center. We have held several teleconferences with Mr. Clement and have continued to develop a strong shared understanding of the necessary data availability requirements and a firm commitment to the JRI process. Additionally, Mr. Clement recently made a formal presentation regarding the JRI process to the full Advisory Commission on March 5, 2014.

While we understand that there may not be the capacity for a technical assistance provider to formally engage in the JRI process prior to the 2015 Nevada Legislative Session, we would like to request that Nevada be considered for any future Phase I technical assistance. We would also like to invite the Bureau of Justice Assistance to conduct a data assessment site visit in the coming months. As policy makers and stakeholders, we are extremely committed to the JRI process and will make any and all necessary criminal justice agencies and resources available in your efforts to conduct a preliminary data availability assessment.

Thank you again for considering Nevada for the JRI process and for any potential site assessments. We look forward to working with you and your colleagues. Should you have any questions or comments, please feel free to contact any of us directly or the Advisory Commission's primary staff.

Sincerely,

BRIAN SANDOVAL
Governor

TICK SEGERBLOM
Chair, Advisory Commission
Nevada State Senate

JAMES HARDESTY
Vice Chair, Advisory Commission
Nevada Supreme Court

Attachments

# D

Senate Bill No. 423–Committee on Judiciary

CHAPTER.....

AN ACT relating to offenders; requiring the Director of the Department of Corrections to provide certain information upon the release of an offender; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the Director of the Department of Corrections to provide certain information to an offender upon the offender's release from prison. (NRS 209.511) **Section 1** of this bill requires the Director to provide a photo identification card, including the name, date of birth and a color photograph of the offender, to an offender upon his or her release if the offender requests such identification and is eligible to acquire a driver's license or identification card.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

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

**Section 1.** NRS 209.511 is hereby amended to read as follows:

209.511 1. When an offender is released from prison by expiration of his or her term of sentence, by pardon or by parole, the Director:

(a) May furnish the offender with a sum of money not to exceed $100, the amount to be based upon the offender's economic need as determined by the Director;

(b) Shall give the offender notice of the provisions of chapter 179C of NRS and NRS 202.357 and 202.360;

(c) Shall require the offender to sign an acknowledgment of the notice required in paragraph (b);

(d) Shall give the offender notice of the provisions of NRS 179.245 and the provisions of NRS 213.090, 213.155 or 213.157, as applicable;

(e) Shall provide the offender with information relating to obtaining employment, including, without limitation, any programs which may provide bonding for an offender entering the workplace and any organizations which may provide employment or bonding assistance to such a person;

(f) Shall provide the offender with ***a photo identification card issued by the Department and*** information and reasonable assistance relating to acquiring a valid driver's license or identification card to enable the offender to obtain employment, if the offender:

(1) ***Requests a photo identification card; or***

***(2)*** Requests such information and assistance ~~[;]~~ and

~~[(2) Is]~~ ***is*** eligible to acquire a valid driver's license or identification card from the Department of Motor Vehicles;

(g) May provide the offender with clothing suitable for reentering society;

(h) May provide the offender with the cost of transportation to his or her place of residence anywhere within the continental United States, or to the place of his or her conviction;

(i) May, but is not required to, release the offender to a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS; and

(j) Shall require the offender to submit to at least one test for exposure to the human immunodeficiency virus.

2. The costs authorized in paragraphs (a), ***(f),*** (g), (h) and (j) of subsection 1 must be paid out of the appropriate account within the State General Fund for the use of the Department as other claims against the State are paid to the extent that the costs have not been paid in accordance with subsection 5 of NRS 209.221 and NRS 209.246.

3. As used in this section ~~[, "facility]~~ ***:***

***(a) "Facility*** for transitional living for released offenders" has the meaning ascribed to it in NRS 449.0055.

***(b) "Photo identification card" means a document which includes the name, date of birth and a color picture of the offender.***

**Sec. 2.** NRS 483.290 is hereby amended to read as follows:

483.290 1. Every application for an instruction permit or for a driver's license must:

(a) Be made upon a form furnished by the Department.

(b) Be verified by the applicant before a person authorized to administer oaths. Officers and employees of the Department may administer those oaths without charge.

(c) Be accompanied by the required fee.

(d) State the full legal name, date of birth, sex, address of principal residence and mailing address, if different from the address of principal residence, of the applicant and briefly describe the applicant.

(e) State whether the applicant has theretofore been licensed as a driver, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for the suspension, revocation or refusal.

(f) Include such other information as the Department may require to determine the competency and eligibility of the applicant.

2. Every applicant must furnish proof of his or her full legal name and age by displaying ~~[an]~~ *:*

***(a) An*** original or certified copy of the required documents as prescribed by regulation ~~[.]~~ ***; or***

***(b) A photo identification card issued by the Department of Corrections pursuant to NRS 209.511.***

3. The Department shall adopt regulations prescribing the documents an applicant may use to furnish proof of his or her full legal name and age to the Department ~~[.]~~ ***pursuant to paragraph (a) of subsection 2.***

4. At the time of applying for a driver's license, an applicant may, if eligible, register to vote pursuant to NRS 293.524.

5. Every applicant who has been assigned a social security number must furnish proof of his or her social security number by displaying:

(a) An original card issued to the applicant by the Social Security Administration bearing the social security number of the applicant; or

(b) Other proof acceptable to the Department, including, without limitation, records of employment or federal income tax returns.

6. The Department may refuse to accept a driver's license issued by another state, the District of Columbia or any territory of the United States if the Department determines that the other state, the District of Columbia or the territory of the United States has less stringent standards than the State of Nevada for the issuance of a driver's license.

7. With respect to any document presented by a person who was born outside of the United States to prove his or her full legal name and age, the Department:

(a) May, if the document has expired, refuse to accept the document or refuse to issue a driver's license to the person presenting the document, or both; and

(b) Shall issue to the person presenting the document a driver's license that is valid only during the time the applicant is authorized to stay in the United States, or if there is no definite end to the time the applicant is authorized to stay, the driver's license is valid for 1 year beginning on the date of issuance.

8. The Administrator shall adopt regulations setting forth criteria pursuant to which the Department will issue or refuse to issue a driver's license in accordance with this section to a person who is a citizen of any state, the District of Columbia, any territory

of the United States or a foreign country. The criteria pursuant to which the Department shall issue or refuse to issue a driver's license to a citizen of a foreign country must be based upon the purpose for which that person is present within the United States.

9. Notwithstanding any other provision of this section, the Department shall not accept a consular identification card as proof of the age or identity of an applicant for an instruction permit or for a driver's license. As used in this subsection, "consular identification card" has the meaning ascribed to it in NRS 232.006.

**Sec. 3.** NRS 483.860 is hereby amended to read as follows:

483.860 1. Every applicant for an identification card must furnish proof of his or her full legal name and age by presenting ~~[an]~~ ***:***

***(a) An*** original or certified copy of the required documents as prescribed by regulation ~~[.]~~ ***; or***

***(b) A photo identification card issued by the Department of Corrections pursuant to NRS 209.511.***

2. The Director shall adopt regulations:

(a) Prescribing the documents an applicant may use to furnish proof of his or her full legal name and age to the Department ~~[;]~~ ***pursuant to paragraph (a) of subsection 1;*** and

(b) Setting forth criteria pursuant to which the Department will issue or refuse to issue an identification card in accordance with this section to a person who is a citizen of a state, the District of Columbia, any territory of the United States or a foreign country. The criteria pursuant to which the Department shall issue or refuse to issue an identification card to a citizen of a foreign country must be based upon the purpose for which that person is present within the United States.

3. Notwithstanding any other provision of this section, the Department shall not accept a consular identification card as proof of the age or identity of an applicant for an identification card. As used in this subsection, "consular identification card" has the meaning ascribed to it in NRS 232.006.

**Sec. 4.** This act becomes effective:

1. Upon passage and approval for the purpose of performing any preparatory administrative tasks that are necessary to carry out the provisions of this act; and

2. On January 1, 2014, for all other purposes.

# E

# APPENDIX A: SCORING FORMS FOR EACH ASSESSMENT

**OHIO RISK ASSESSMENT SYSTEM: PRETRIAL ASSESSMENT TOOL (ORAS-PAT)**

Name: _____ Date of Assessment: _____

Case#: _____ Name of Assessor: _____

| **Pretrial Items** | | **Verified** |
|---|---|---|
| 1.1. Age at First Arrest<br>0=33 or older<br>1=Under 33 | | |
| 1.2. Number of Failure-to-Appear Warrants Past 24 Months<br>0=None<br>1=One Warrant for FTA<br>2=Two or more FTA Warrants | | |
| 1.3. Three or more Prior Jail Incarcerations<br>0=No<br>1=Yes | | |
| 1.4. Employed at the Time of Arrest<br>0= Yes Full time<br>1= Yes, Part-time<br>2= Not employed | | |
| 1.5. Residential Stability<br>0=Lived at current residence past six months<br>1=Not lived at same residence | | |
| 1.6. Illegal Drug Use during Past Six Month<br>0=No<br>1=Yes | | |
| 1.7. Severe Drug Use Problem<br>0=No<br>1=Yes | | |
| **Total Score:** | | |

| **Scores** | **Rating** | **% of Failures** | **% of Failure to Appear** | **% of New Arrest** |
|---|---|---|---|---|
| **0-2** | **Low** | **5%** | **5%** | **0%** |
| **3-5** | **Moderate** | **18%** | **12%** | **7%** |
| **6+** | **High** | **29%** | **15%** | **17%** |

**Please State Reason if Professional Override:**

**Other Areas of Concern. Check all that Apply:**

_____Low Intelligence*
_____Physical Handicap
_____Reading and Writing Limitations*
_____Mental Health Issues*
_____No Desire to Change/Participate in Programs*
_____Transportation
_____Child Care
_____Language
_____Ethnicity
_____Cultural Barriers
_____History of Abuse/Neglect
_____Interpersonal Anxiety
_____Other _____

*If these items are checked it is strongly recommended that further assessment be conducted to determine level or severity.

**OHIO RISK ASSESSMENT SYSTEM: COMMUNITY SUPERVISION TOOL (ORAS-CST)**

Name: _____ Date of Assessment: _____

Case#: _____ Name of Assessor: _____

**2.0 CRIMINAL HISTORY:**

2.1. Most Serious Arrest Under Age 18 ☐
- 0=None
- 1=Yes, Misdemeanor
- 2=Yes, Felony

2.2. Number of Prior Adult Felony Convictions ☐
- 0=None
- 1=One or Two
- 2=Three or more

2.3. Prior Sentence as Adult to a Jail or Secure Correctional Facility ☐
- 0=No
- 1=Yes

2.4. Received Official Misconduct while Incarcerated as Adult ☐
- 0=No
- 1=Yes

2.5. Prior Sentence to Probation as an Adult ☐
- 0=No
- 1=Yes

2.6. Community Supervision Ever Been Revoked for Technical Violation as Adult ☐
- 0=No
- 1=Yes

**Total Score in Criminal History:** ☐

**3.0 EDUCATION, EMPLOYMENT AND FINANCIAL SITUATION:**

3.1. Highest Education ☐
- 0= High school graduate or higher
- 1= Less than high school or GED

3.2. Ever Suspended or Expelled From School ☐
- 0=No
- 1=Yes

3.3. Employed at the Time of Arrest ☐
- 0= Yes
- 1= No

3.4. Currently Employed ☐
- 0=Yes full time, disabled, or retired
- 1=Not employed or employed part-time

3.5. Better Use of Time ☐
- 0=No, most time structured
- 1=Yes, lots of free time

3.6. Current Financial Situation ☐
- 0=Good
- 1=Poor

**Total Score in Education, Employment, Financial:** ☐

**4.0 FAMILY AND SOCIAL SUPPORT**

4.1. Parents have Criminal Record ☐
- 0= No
- 1=Yes

4.2. Currently Satisfied with Current Marital or Equivalent Situation ☐
- 0=Yes
- 1=No

4.3. Emotional and Personal Support Available from Family or Others ☐
- 0=Strong Support
- 1=None or Weak Support

4.4. Level of Satisfaction with Current Level of Support from Family or Others ☐
- 0=Very Satisfied
- 1=Not Satisfied

4.5. Stability of Residence ☐
- 0=Stable
- 1=Not Stable

**Total Score on Family and Social Support:** ☐

**5.0 NEIGHBORHOOD PROBLEMS**

5.1. High Crime Area ☐
- 0=No
- 1=Yes

5.2. Drugs Readily Available in Neighborhood ☐
- 0=No, Generally not available
- 1=Yes, Somewhat available
- 2=Yes, Easily available

**Total Score in Neighborhood Problems:** ☐

**6.0 SUBSTANCE USE**

6.1. Age First Began Regularly Using Alcohol ☐
- 0=17 or older
- 1=Under Age 17

6.2. Longest Period of Abstinence from Alcohol ☐
- 0=6 months or longer
- 1=Less than 6 months

6.3. Offender Ever Used Illegal Drugs ☐
- 0=No
- 1=Yes

6.4. Drug Use Caused Legal Problems ☐
- 0=None
- 1=One time
- 2=Two or more times

6.5. Drug Use Caused Problems with Employment ☐
- 0=No
- 1=Yes

**Total Score for Substance Use:** ☐

**7.0 PEER ASSOCIATIONS**

7.1. Criminal Friends ☐
- 0=None
- 1=Some
- 2=Majority

7.2. Contact with Criminal Peers ☐
- 0=No contact with criminal peers
- 1=At risk of Contacting criminal peers
- 2=Contact or actively seeks out criminal peers

7.3. Gang Membership ☐
- 0=No, never
- 1=Yes, but not current
- 2=Yes, current

7.4. Criminal Activities ☐
- 0=Strong identification with prosocial activities
- 1=Mixture of pro and anti social activities
- 2=Strong identification with criminal activities

**Total Score for Peers:** ☐

**8.0 CRIMINAL ATTITUDES AND BEHAVIORAL PATTERNS**

For the Following Items Please Rate the Offender:

8.1. Criminal Pride ☐
- 0=No pride in criminal behavior
- 1=Some pride
- 2=A lot of pride

8.2. Expresses Concern about Other's Misfortunes ☐
- 0=Concerned about others
- 1=Limited concern
- 2=No real concern for others

8.3. Feels Lack of Control over Events ☐
- 0=Controls events
- 1=Sometimes lacks control
- 2=Generally lacks control

8.4. Sees No Problem in Telling Lies ☐
- 0=No
- 1=Yes

8.5. Engages in Risk Taking Behavior ☐
- 0=Rarely takes risks
- 1=Sometimes takes risks
- 2=Generally takes risks

8.6. Walks Away from a Fight ☐
- 0=Yes
- 1=Sometimes
- 2=Rarely

8.7. Believes in "Do Unto Others Before They Do Unto You" ☐
- 0=Disagree
- 1=Sometimes
- 2=Agrees

**Total Score Criminal Attitudes and Behavioral Patterns:** ☐

**TOTAL SCORE:** ☐

| Risk Categories for MALES | | |
|---|---|---|
| **Scores** | **Rating** | **Percent of Failures** |
| 0-14 | Low | 9% |
| 15-23 | Moderate | 34% |
| 24-33 | High | 58% |
| 34+ | Very High | 70% |

| Risk Categories for FEMALES | | |
|---|---|---|
| **Scores** | **Rating** | **Percent of Failures** |
| 0-14 | Low | 7% |
| 15-21 | Moderate | 23% |
| 22-28 | High | 40% |
| 29+ | Very High | 50% |

**Domain Levels**

**1.0 Criminal History**

| | Score | Failure |
|---|---|---|
| _____ | Low (0-3) | 27% |
| | Med (4-6) | 46% |
| | High (7-8) | 53% |

**2.0 Education, Employment and Financial Situation**

| | Score | Failure |
|---|---|---|
| _____ | Low (0-1) | 21% |
| | Med (4-6) | 37% |
| | High (7-8) | 55% |

**3.0 Family and Social Support**

| | Score | Failure |
|---|---|---|
| _____ | Low (0-1) | 32% |
| | Med (2-3) | 41% |
| | High (4-5) | 48% |

**4.0 Neighborhood Problems**

| | Score | Failure |
|---|---|---|
| _____ | Low (0) | 17% |
| | Med (1) | 35% |
| | High (2-3) | 45% |

**5.0 Substance Use**

| | Score | Failure |
|---|---|---|
| _____ | Low (0-2) | 27% |
| | Med (3-4) | 40% |
| | High (5-6) | 45% |

**6.0 Peer Associations**

| | Score | Failure |
|---|---|---|
| _____ | Low (0-1) | 21% |
| | Med (2-4) | 43% |
| | High (5-8) | 64% |

**7.0 Criminal Attitudes and Behavioral Patterns**

| | Score | Failure |
|---|---|---|
| _____ | Low (0-3) | 24% |
| | Med (4-8) | 44% |
| | High (9-13) | 59% |

**Professional Override:**

**Reason for Override (note overrides should not be based solely on offense):**

**Other Areas of Concern. Check all that Apply:**

_____Low Intelligence*
_____Physical Handicap
_____Reading and Writing Limitations*
_____Mental Health Issues*
_____No Desire to Change/Participate in Programs*
_____Transportation
_____Child Care
_____Language
_____Ethnicity
_____Cultural Barriers
_____History of Abuse/Neglect
_____Interpersonal Anxiety
_____Other _____

*If these items are checked it is strongly recommended that further assessment be conducted to determine level or severity.

# F

**(Reprinted with amendments adopted on April 16, 2009)**
**FIRST REPRINT** **A.B. 271**

ASSEMBLY BILL NO. 271–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE)

MARCH 9, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to the collection of fines, administrative assessments, fees and restitution owed by certain convicted persons. (BDR 14-903)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to convicted persons; requiring the Office of Court Administrator to collect fines, administrative assessments, fees and restitution from a person convicted of certain offenses; providing that a person convicted of certain offenses may be placed on administrative probation under certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that if a fine, administrative assessment, fee or restitution imposed upon a defendant is delinquent: (1) the defendant is liable for a collection fee; (2) the entity responsible for collecting the delinquent amount may report the delinquency to credit reporting agencies, may contract with a collection agency and may request that the court take appropriate action; and (3) the court may request that a prosecuting attorney undertake collection efforts, may order the suspension of the driver's license of the defendant and may, in the case of a delinquent fine or administrative assessment, order that the defendant be confined in the appropriate prison, jail or detention facility. (NRS 176.064)

**Sections 1, 3 and 6** of this bill provide that if a defendant is ordered to pay a fine, administrative assessment, fee or restitution for a felony or gross misdemeanor, the Office of Court Administrator is responsible for: (1) collecting the fine, administrative assessment, fee or restitution; and (2) distributing the fine, administrative assessment, fee or restitution to the entity entitled to receive it. **Section 1** also requires: (1) each district court, the Chief of the Division of Parole and Probation of the Department of Public Safety and the Director of the Department of Corrections to provide, upon request and in the manner prescribed

by the Office of Court Administrator, necessary information to the Office of Court Administrator regarding the amount of any fine, administrative assessment, fee or restitution owed by a person convicted of a felony or gross misdemeanor; and (2) the Office of Court Administrator to collaborate with each judicial district, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution.

Existing law provides that a court may suspend the execution of the sentence of a person and grant probation to the person under certain circumstances. (NRS 176A.100) **Sections 2 and 5** of this bill provide that at the time of granting probation to a person convicted of a felony or gross misdemeanor or during or at the termination of the period of probation of such a person, the court may also place the person on administrative probation, to commence after termination of the period of probation, if any fine, administrative assessment, fee or restitution is imposed against the person as part of his sentence. During the period of administrative probation: (1) the Office of Court Administrator is required to supervise the person to ensure the collection of any fine, administrative assessment, fee or restitution owed; (2) the person is not required to pay any fee for supervision; and (3) the person remains subject to certain statutory provisions that authorize the court to take action against the person, including suspending his driver's license.

**Section 4** of this bill authorizes the court to terminate the period of probation of a person and order that the person be placed on administrative probation if the person has satisfied all conditions of his probation other than the payment of any fines, administrative assessments, fees or restitution. (NRS 176A.500)

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

**Section 1.** NRS 176.064 is hereby amended to read as follows:

176.064 1. ***If a fine, administrative assessment, fee or restitution is imposed upon a defendant pursuant to this chapter for a felony or gross misdemeanor, the Office of Court Administrator shall, in collaboration with the appropriate district court, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution:***

***(a) Collect the fine, administrative assessment, fee or restitution from each defendant through any lawful means, including, without limitation, taking any or all of the actions set forth in this section; and***

***(b) Distribute the fine, administrative assessment, fee or restitution collected to the entity that is entitled to receive the fine, administrative assessment, fee or restitution.***

*2.* If a fine, administrative assessment, fee or restitution is imposed upon a defendant pursuant to this chapter, whether or not the fine, administrative assessment, fee or restitution is in addition to any other punishment, and the fine, administrative assessment, fee or restitution or any part of it remains unpaid after the time established by the court for its payment, the defendant is liable for a

collection fee, to be imposed by the court at the time it finds that the fine, administrative assessment, fee or restitution is delinquent, of:

(a) Not more than $100, if the amount of the delinquency is less than $2,000.

(b) Not more than $500, if the amount of the delinquency is $2,000 or greater, but is less than $5,000.

(c) Ten percent of the amount of the delinquency, if the amount of the delinquency is $5,000 or greater.

~~[2. A state]~~

***3. The Office of Court Administrator*** or ***a*** local entity that is responsible for collecting a delinquent fine, administrative assessment, fee or restitution may, in addition to attempting to collect the fine, administrative assessment, fee or restitution through any other lawful means, take any or all of the following actions:

(a) Report the delinquency to reporting agencies that assemble or evaluate information concerning credit.

(b) Request that the court take appropriate action pursuant to subsection ~~[3.]~~ ***4.***

(c) Contract with a collection agency licensed pursuant to NRS 649.075 to collect the delinquent amount and the collection fee. The collection agency must be paid as compensation for its services an amount not greater than the amount of the collection fee imposed pursuant to subsection ~~[1,]~~ ***2,*** in accordance with the provisions of the contract.

~~[3.]~~ ***4.*** The court may, on its own motion or at the request of ~~[a state]~~ ***the Office of Court Administrator*** or ***a*** local entity that is responsible for collecting the delinquent fine, administrative assessment, fee or restitution, take any or all of the following actions, in the following order of priority if practicable:

(a) Request that a prosecuting attorney undertake collection of the delinquency, including, without limitation, the original amount and the collection fee, by attachment or garnishment of the defendant's property, wages or other money receivable.

(b) Order the suspension of the driver's license of the defendant. If the defendant does not possess a driver's license, the court may prohibit the defendant from applying for a driver's license for a specified period. If the defendant is already the subject of a court order suspending or delaying the issuance of his driver's license, the court may order the additional suspension or delay, as appropriate, to apply consecutively with the previous order. At the time the court issues an order suspending the driver's license of a defendant pursuant to this paragraph, the court shall require the defendant to surrender to the court all driver's licenses then held by the defendant. The court shall, within 5 days after issuing the order, forward to the Department of Motor Vehicles the licenses, together

with a copy of the order. At the time the court issues an order pursuant to this paragraph delaying the ability of a defendant to apply for a driver's license, the court shall, within 5 days after issuing the order, forward to the Department of Motor Vehicles a copy of the order. The Department of Motor Vehicles shall report a suspension pursuant to this paragraph to an insurance company or its agent inquiring about the defendant's driving record, but such a suspension must not be considered for the purpose of rating or underwriting.

(c) For a delinquent fine or administrative assessment, order the confinement of the person in the appropriate prison, jail or detention facility, as provided in NRS 176.065 and 176.075.

~~[4.]~~ ***5.*** Money collected from a collection fee imposed pursuant to subsection ~~[1]~~ *2* must be distributed in the following manner:

(a) Except as otherwise provided in paragraph (d), if the money is collected by or on behalf of a municipal court, the money must be deposited in a special fund in the appropriate city treasury. The city may use the money in the fund only to develop and implement a program for the collection of fines, administrative assessments, fees and restitution.

(b) Except as otherwise provided in paragraph (d), if the money is collected by or on behalf of a Justice Court or district court, the money must be deposited in a special fund in the appropriate county treasury. The county may use the money in the special fund only to develop and implement a program for the collection of fines, administrative assessments, fees and restitution.

(c) Except as otherwise provided in paragraph (d), if the money is collected by ~~[a state entity,]~~ ***the Office of Court Administrator,*** the money must be deposited in an account, which is hereby created in the State Treasury. The ***Office of*** Court Administrator may use the money in the account ~~[only]~~ to develop and implement a program for the collection of fines, administrative assessments, fees and restitution ~~[in this State.]~~ ***and to pay any costs associated with the administrative probation of persons as set forth in section 2 of this act.***

(d) If the money is collected by a collection agency, after the collection agency has been paid its fee pursuant to the terms of the contract, any remaining money must be deposited in the state, city or county treasury, whichever is appropriate, to be used ~~[only]~~ for the purposes set forth in paragraph (a), (b) or (c) of this subsection.

***6. To carry out the provisions of this section:***

***(a) Each district court, the Chief of the Division of Parole and Probation of the Department of Public Safety and the Director of the Department of Corrections shall, upon the request of and in the manner prescribed by the Office of Court Administrator,***

*provide to the Office of Court Administrator such information in their possession regarding the amount of any fine, administrative assessment, fee or restitution owed by a person convicted of a felony or gross misdemeanor as determined necessary by the Office of Court Administrator.*

*(b) The Office of Court Administrator shall collaborate with each district court, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution.*

**Sec. 2.** Chapter 176A of NRS is hereby amended by adding thereto a new section to read as follows:

*1. If a person is convicted of a felony or gross misdemeanor and granted probation pursuant to this chapter, the court may, at the time of granting probation or, upon request of the Office of Court Administrator or the Chief Parole and Probation Officer, during or at the termination of the period of probation, also impose a period of administrative probation, to commence after termination of the period of probation, if any fine, administrative assessment, fee or restitution is imposed on the person as part of his judgment and sentence.*

*2. During the period of administrative probation, the Office of Court Administrator shall supervise the person placed on administrative probation to ensure the collection of any fine, administrative assessment, fee or restitution imposed on the person as part of his judgment and sentence.*

*3. The period of administrative probation must last for a fixed time as determined by the court, except that the court may terminate the administrative probation before the fixed time if the person placed on administrative probation has paid all required fines, administrative assessments, fees and restitution.*

*4. A person placed on administrative probation:*

*(a) Is not required to pay any fee for supervision pursuant to NRS 213.1076 or any other provision of law during the period of administrative probation; and*

*(b) Except as otherwise provided in this paragraph, remains subject to the provisions of NRS 176.064, and the Office of Court Administrator may attempt to collect any fines, administrative assessments, fees and restitution owed by the person through any lawful means, including, without limitation, taking any or all of the actions set forth in NRS 176.064. A person placed on administrative probation is not subject to confinement in the appropriate prison, jail or detention facility, as provided in NRS 176.065 and 176.075, for a delinquent fine or administrative assessment.*

*5. Except as otherwise provided in this section, administrative probation pursuant to this section shall be deemed not to constitute a form of probation for the purposes of any other provision of law.*

**Sec. 3.** NRS 176A.430 is hereby amended to read as follows:

176A.430 1. The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable. Such an order may require payment for medical or psychological treatment of any person whom the defendant has injured. In appropriate circumstances, the court shall include as a condition of probation or suspension of sentence that the defendant execute an assignment of wages earned by him while on probation or subject to the conditions of suspension of sentence to the ~~[Division]~~ ***Office of Court Administrator*** for restitution.

2. All money received by the ~~[Division]~~ ***Office of Court Administrator*** for restitution for:

(a) One victim may; and

(b) More than one victim must,

➥ be deposited with the State Treasurer for credit to the Restitution Trust Fund. All payments from the Fund must be paid as other claims against the State are paid.

3. If restitution is not required, the court shall set forth the circumstances upon which it finds restitution impracticable in its order of probation or suspension of sentence.

4. Failure to comply with the terms of an order for restitution is a violation of a condition of probation or suspension of sentence unless the defendant's failure has been caused by economic hardship resulting in his inability to pay the amount due. The defendant is entitled to a hearing to show the existence of such a hardship.

5. If, within 3 years after the defendant has been discharged from probation, the ~~[Division]~~ ***Office of Court Administrator*** has not located the person to whom the restitution was ordered, the money paid by the defendant must be deposited with the State Treasurer for credit to the Fund for the Compensation of Victims of Crime.

**Sec. 4.** NRS 176A.500 is hereby amended to read as follows:

176A.500 1. The period of probation or suspension of sentence may be indeterminate or may be fixed by the court and may at any time be extended or terminated by the court, but the period, including any extensions thereof, must not be more than:

(a) Three years for a:

(1) Gross misdemeanor; or

(2) Suspension of sentence pursuant to NRS 176A.260 or 453.3363; or

(b) Five years for a felony.

➥ ***At any time during the period of probation or suspension of sentence, if a probationer has satisfied all conditions of probation other than the payment of any fines, administrative assessments, fees or restitution, the court may terminate the period of probation and order that the person be placed on administrative probation as set forth in section 2 of this act. Any period of administrative probation ordered by the court pursuant to this subsection or section 2 of this act must not be counted or considered for the purposes of the limitation on the period of probation set forth in this subsection.***

2. At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Except for the purpose of giving a dishonorable discharge from probation, and except as otherwise provided in this subsection, the time during which a warrant for violating any of the conditions of probation is in effect is not part of the period of probation. If the warrant is cancelled or probation is reinstated, the court may include any amount of that time as part of the period of probation.

3. Any parole and probation officer or any peace officer with power to arrest may arrest a probationer without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the parole and probation officer, violated the conditions of probation. Except as otherwise provided in subsection 4, the parole and probation officer, or the peace officer, after making an arrest shall present to the detaining authorities, if any, a statement of the charges against the probationer. The parole and probation officer shall at once notify the court which granted probation of the arrest and detention or residential confinement of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation.

4. A parole and probation officer or a peace officer may immediately release from custody without any further proceedings any person he arrests without a warrant for violating a condition of probation if the parole and probation officer or peace officer determines that there is no probable cause to believe that the person violated the condition of probation.

5. An offender who is sentenced to serve a period of probation for a felony who has no serious infraction of the regulations of the Division, the terms and conditions of his probation or the laws of the State recorded against him, and who performs in a faithful,

orderly and peaceable manner the duties assigned to him, must be allowed for the period of his probation a deduction of 20 days from that period for each month he serves.

**Sec. 5.** NRS 213.1076 is hereby amended to read as follows:

213.1076 1. The Division shall:

(a) Except as otherwise provided in this section, charge each parolee, probationer or person supervised by the Division through residential confinement a fee to defray the cost of his supervision.

(b) Adopt by regulation a schedule of fees to defray the costs of supervision of a parolee, probationer or person supervised by the Division through residential confinement. The regulation must provide for a monthly fee of at least $30.

2. The Chief may waive the fee to defray the cost of supervision, in whole or in part, if he determines that payment of the fee would create an economic hardship on the parolee, probationer or person supervised by the Division through residential confinement.

3. Unless waived pursuant to subsection 2, the payment by a parolee, probationer or person supervised by the Division through residential confinement of a fee charged pursuant to subsection 1 is a condition of his parole, probation or residential confinement.

***4. This section does not apply to a person who is subject to administrative probation pursuant to NRS 176A.500 or section 2 of this act.***

**Sec. 6.** NRS 213.126 is hereby amended to read as follows:

213.126 1. Unless complete restitution was made while the parolee was incarcerated, the Board shall impose as a condition of parole, in appropriate circumstances, a requirement that the parolee make restitution to the person or persons named in the statement of parole conditions, including restitution to a governmental entity for expenses related to extradition, at the times specified in the statement unless the Board finds that restitution is impracticable. The amount of restitution must be the amount set by the court pursuant to NRS 176.033. In appropriate circumstances, the Board shall include as a condition of parole that the parolee execute an assignment of wages earned by him while on parole to the ~~[Division]~~ ***Office of Court Administrator*** for restitution.

2. All money received by the ~~[Division]~~ ***Office of Court Administrator*** for restitution for:

(a) One victim may; and

(b) More than one victim must,

➥ be deposited in the State Treasury for credit to the Restitution Trust Fund which is hereby created.

3. The ~~[Division]~~ ***Office of Court Administrator*** shall make pro rata payments from the money received from the parolee to each

person to whom the restitution was ordered pursuant to NRS 176.033. Such a payment must be made:

(a) If the money received from the parolee in a single payment is $200 or more or if the total accumulated amount received from the parolee is $200 or more, whenever money is received from the parolee.

(b) If the money received from the parolee in a single payment is less than $200 or if the total accumulated amount received from the parolee is less than $200, at the end of each year until the parolee has paid the entire restitution owed.

➥ Any money received from the parolee that is remaining at the end of each year must be paid at that time in pro rata payments to each person to whom the restitution was ordered. A final pro rata payment must be made to such persons when the parolee pays the entire restitution owed.

4. A person to whom restitution was ordered pursuant to NRS 176.033 may at any time file an application with the ~~[Division]~~ ***Office of Court Administrator*** requesting the ~~[Division]~~ ***Office of Court Administrator*** to make a pro rata payment from the money received from the parolee. If the ~~[Division]~~ ***Office of Court Administrator*** finds that the applicant is suffering a serious financial hardship and is in need of financial assistance, the ~~[Division]~~ ***Office of Court Administrator*** shall pay to the applicant his pro rata share of the money received from the parolee.

5. All payments from the Fund must be paid as other claims against the State are paid.

6. If restitution is not required, the Board shall set forth the circumstances upon which it finds restitution impracticable in its statement of parole conditions.

7. Failure to comply with a restitution requirement imposed by the Board is a violation of a condition of parole unless the parolee's failure was caused by economic hardship resulting in his inability to pay the amount due. The defendant is entitled to a hearing to show the existence of that hardship.

8. If, within 3 years after the parolee is discharged from parole, the ~~[Division]~~ ***Office of Court Administrator*** has not located the person to whom the restitution was ordered, the money paid to the ~~[Division]~~ ***Office of Court Administrator*** by the parolee must be deposited in the fund for the compensation of victims of crime.

**Sec. 7.** This act becomes effective on January 1, 2010.

ASSEMBLY BILL NO. 196–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE)

FEBRUARY 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the collection of fines, administrative assessments, fees and restitution owed by certain convicted persons. (BDR 18-557)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to the State Controller; requiring the State Controller to collect fines, administrative assessments, fees and restitution from persons convicted of certain criminal offenses; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that if a fine, administrative assessment, fee or restitution imposed upon a defendant is delinquent: (1) the defendant is liable for a collection fee; (2) the entity responsible for collecting the delinquent amount may report the delinquency to credit reporting agencies, may contract with a collection agency and may request that the court take appropriate action; and (3) the court may request that a prosecuting attorney undertake collection efforts, may order the suspension of the driver's license of the defendant and may, in the case of a delinquent fine or administrative assessment, order that the defendant be confined in the appropriate prison, jail or detention facility. (NRS 176.064)

This bill provides that if a defendant is convicted of a felony or gross misdemeanor and ordered to pay a fine, administrative assessment, fee or restitution, the State Controller is responsible for: (1) collecting the fine, administrative assessment, fee or restitution; and (2) distributing the fine, administrative assessment, fee or restitution to the entity entitled to receive it. **Sections 1 and 2** of this bill require: (1) each district court, the Chief of the Division of Parole and Probation of the Department of Public Safety and the Director of the Department of Corrections to provide, upon request and in the manner prescribed by the State Controller, necessary information to the State Controller regarding the amount of any fine, administrative assessment, fee or

restitution owed by a person convicted of a felony or gross misdemeanor; and (2) each district court, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution to collaborate with the State Controller.

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

**Section 1.** Chapter 227 of NRS is hereby amended by adding thereto a new section to read as follows:

***1. The State Controller shall:***

***(a) Collect any fine, administrative assessment, fee or restitution imposed upon a defendant convicted of a felony or gross misdemeanor pursuant to chapter 176 of NRS; and***

***(b) Distribute a fine, administrative assessment, fee or restitution collected pursuant to subsection 1 to the entity that is entitled to receive the fine, administrative assessment, fee or restitution.***

***2. To carry out the provisions of subsection 1, the State Controller shall:***

***(a) Collaborate with the appropriate district court, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution; and***

***(b) Use any lawful means necessary to collect the fines, administrative assessments, fees and restitution, including, without limitation, taking any or all of the actions set forth in NRS 176.064.***

**Sec. 2.** NRS 176.064 is hereby amended to read as follows:

176.064 1. If a fine, administrative assessment, fee or restitution is imposed upon a defendant pursuant to this chapter, whether or not the fine, administrative assessment, fee or restitution is in addition to any other punishment, and the fine, administrative assessment, fee or restitution or any part of it remains unpaid after the time established by the court for its payment, the defendant is liable for a collection fee, to be imposed by the court at the time it finds that the fine, administrative assessment, fee or restitution is delinquent, of:

(a) Not more than $100, if the amount of the delinquency is less than $2,000.

(b) Not more than $500, if the amount of the delinquency is $2,000 or greater, but is less than $5,000.

(c) Ten percent of the amount of the delinquency, if the amount of the delinquency is $5,000 or greater.

2. ~~[A]~~ ***The State Controller or a*** state or local entity that is ~~[responsible for collecting]~~ ***involved in the collection of*** a delinquent fine, administrative assessment, fee or restitution may, in addition to attempting to collect the fine, administrative assessment, fee or restitution through any other lawful means, take any or all of the following actions:

(a) Report the delinquency to reporting agencies that assemble or evaluate information concerning credit.

(b) Request that the court take appropriate action pursuant to subsection 3.

(c) Contract with a collection agency licensed pursuant to NRS 649.075 to collect the delinquent amount and the collection fee. The collection agency must be paid as compensation for its services an amount not greater than the amount of the collection fee imposed pursuant to subsection 1, in accordance with the provisions of the contract.

3. The court may, on its own motion or at the request of ***the State Controller or*** a state or local entity that is ~~[responsible for collecting]~~ ***involved in the collection of*** the delinquent fine, administrative assessment, fee or restitution, take any or all of the following actions, in the following order of priority if practicable:

(a) Request that a prosecuting attorney undertake collection of the delinquency, including, without limitation, the original amount and the collection fee, by attachment or garnishment of the defendant's property, wages or other money receivable.

(b) Order the suspension of the driver's license of the defendant. If the defendant does not possess a driver's license, the court may prohibit the defendant from applying for a driver's license for a specified period. If the defendant is already the subject of a court order suspending or delaying the issuance of the defendant's driver's license, the court may order the additional suspension or delay, as appropriate, to apply consecutively with the previous order. At the time the court issues an order suspending the driver's license of a defendant pursuant to this paragraph, the court shall require the defendant to surrender to the court all driver's licenses then held by the defendant. The court shall, within 5 days after issuing the order, forward to the Department of Motor Vehicles the licenses, together with a copy of the order. At the time the court issues an order pursuant to this paragraph delaying the ability of a defendant to apply for a driver's license, the court shall, within 5 days after issuing the order, forward to the Department of Motor Vehicles a copy of the order. The Department of Motor Vehicles shall report a suspension pursuant to this paragraph to an insurance company or its agent inquiring about the defendant's driving record,

but such a suspension must not be considered for the purpose of rating or underwriting.

(c) For a delinquent fine or administrative assessment, order the confinement of the person in the appropriate prison, jail or detention facility, as provided in NRS 176.065 and 176.075.

4. Money collected from a collection fee imposed pursuant to subsection 1 must be distributed in the following manner:

(a) Except as otherwise provided in paragraph (d), if the money is collected by or on behalf of a municipal court, the money must be deposited in a special fund in the appropriate city treasury. The city may use the money in the fund only to develop and implement a program for the collection of fines, administrative assessments, fees and restitution.

(b) Except as otherwise provided in paragraph (d), if the money is collected by or on behalf of a justice court or district court, the money must be deposited in a special fund in the appropriate county treasury. The county may use the money in the special fund only to develop and implement a program for the collection of fines, administrative assessments, fees and restitution.

(c) Except as otherwise provided in paragraph (d), if the money is collected by ~~[a state entity,]~~ ***the State Controller,*** the money must be deposited in an account, which is hereby created in the State Treasury. The ~~[Court Administrator]~~ ***State Controller*** may use the money in the account only to develop and implement a program for the collection of fines, administrative assessments, fees and restitution in this State.

(d) If the money is collected by a collection agency, after the collection agency has been paid its fee pursuant to the terms of the contract, any remaining money must be deposited in the state, city or county treasury, whichever is appropriate, to be used only for the purposes set forth in paragraph (a), (b) or (c) . ~~[of this subsection.]~~

***5. To carry out the provisions of this section:***

***(a) Each district court, the Chief of the Division and the Director of the Department of Corrections shall, upon the request of and in the manner prescribed by the State Controller, provide to the State Controller such information in their possession regarding the amount of any fine, administrative assessment, fee or restitution owed by a person convicted of a felony or gross misdemeanor as determined necessary by the State Controller.***

***(b) Each district court, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution shall collaborate with the State Controller.***

**Sec. 3.** NRS 176.0916 is hereby amended to read as follows:

176.0916 1. If the Division is supervising a probationer or parolee pursuant to an interstate compact and the probationer or parolee is or has been convicted in another jurisdiction of violating a law that prohibits the same or similar conduct as an offense listed in subsection 4 of NRS 176.0913, the Division shall arrange for a biological specimen to be obtained from the probationer or parolee.

2. After a biological specimen is obtained from a probationer or parolee pursuant to this section, the Division shall:

(a) Provide the biological specimen to the forensic laboratory that has been designated by the county in which the probationer or parolee is residing to conduct or oversee genetic marker testing for the county pursuant to NRS 176.0917; and

(b) Submit the name, social security number, date of birth and any other information identifying the probationer or parolee to the Central Repository ~~[.]~~ ***for Nevada Records of Criminal History.***

3. Except as otherwise authorized by federal law or by specific statute, a biological specimen obtained pursuant to this section, the results of a genetic marker analysis and any information identifying or matching a biological specimen with a person must not be shared with or disclosed to any person other than the authorized personnel who have possession and control of the biological specimen, results of a genetic marker analysis or information identifying or matching a biological specimen with a person, except pursuant to:

(a) A court order; or

(b) A request from a law enforcement agency during the course of an investigation.

4. A person who violates any provision of subsection 3 is guilty of a misdemeanor.

5. A probationer or parolee, to the extent of his or her financial ability, shall pay the sum of $150 to the ~~[Division]~~ ***State Controller*** as a fee for obtaining the biological specimen and for conducting the analysis to determine the genetic markers of the biological specimen. Except as otherwise provided in subsection 6, the fee required pursuant to this subsection must be collected from a probationer or parolee at the time the biological specimen is obtained from the probationer or parolee.

6. A probationer or parolee may arrange to make monthly payments of the fee required pursuant to subsection 5. If such arrangements are made, the ~~[Division]~~ ***State Controller*** shall provide a probationer or parolee with a monthly statement that specifies the date on which the next payment is due.

7. Any unpaid balance for a fee required pursuant to subsection 5 is a charge against the ~~[Division.]~~ ***State Controller.***

8. The ~~[Division]~~ ***State Controller*** shall deposit money that is collected pursuant to this section in the Fund for Genetic Marker Testing, which is hereby created in the State General Fund. The money deposited in the Fund for Genetic Marker Testing must be used to pay for the actual amount charged to the Division for obtaining biological specimens from probationers and parolees, and for conducting an analysis to determine the genetic markers of the specimens.

**Sec. 4.** NRS 176A.430 is hereby amended to read as follows:

176A.430 1. The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable. Such an order may require payment for medical or psychological treatment of any person whom the defendant has injured. In appropriate circumstances, the court shall include as a condition of probation or suspension of sentence that the defendant execute an assignment of wages earned while on probation or subject to the conditions of suspension of sentence to the ~~[Division]~~ ***State Controller*** for restitution.

2. All money received by the ~~[Division]~~ ***State Controller*** for restitution for:

(a) One victim may; and

(b) More than one victim must,

➥ be deposited with the State Treasurer for credit to the Restitution Trust Fund. All payments from the Fund must be paid as other claims against the State are paid.

3. If restitution is not required, the court shall set forth the circumstances upon which it finds restitution impracticable in its order of probation or suspension of sentence.

4. Failure to comply with the terms of an order for restitution is a violation of a condition of probation or suspension of sentence unless the defendant's failure has been caused by economic hardship resulting in the defendant's inability to pay the amount due. The defendant is entitled to a hearing to show the existence of such a hardship.

5. If, within 3 years after the defendant has been discharged from probation, the ~~[Division]~~ ***State Controller*** has not located the person to whom the restitution was ordered, the money paid by the defendant must be deposited with the State Treasurer for credit to the Fund for the Compensation of Victims of Crime.

**Sec. 5.** NRS 213.126 is hereby amended to read as follows:

213.126 1. Unless complete restitution was made while the parolee was incarcerated, the Board shall impose as a condition of

parole, in appropriate circumstances, a requirement that the parolee make restitution to the person or persons named in the statement of parole conditions, including restitution to a governmental entity for expenses related to extradition, at the times specified in the statement unless the Board finds that restitution is impracticable. The amount of restitution must be the amount set by the court pursuant to NRS 176.033. In appropriate circumstances, the Board shall include as a condition of parole that the parolee execute an assignment of wages earned by the parolee while on parole to the ~~[Division]~~ ***State Controller*** for restitution.

2. All money received by the ~~[Division]~~ ***State Controller*** for restitution for:

(a) One victim may; and

(b) More than one victim must,

➥ be deposited in the State Treasury for credit to the Restitution Trust Fund which is hereby created.

3. The ~~[Division]~~ ***State Controller*** shall make pro rata payments from the money received from the parolee to each person to whom the restitution was ordered pursuant to NRS 176.033. Such a payment must be made:

(a) If the money received from the parolee in a single payment is $200 or more or if the total accumulated amount received from the parolee is $200 or more, whenever money is received from the parolee.

(b) If the money received from the parolee in a single payment is less than $200 or if the total accumulated amount received from the parolee is less than $200, at the end of each year until the parolee has paid the entire restitution owed.

➥ Any money received from the parolee that is remaining at the end of each year must be paid at that time in pro rata payments to each person to whom the restitution was ordered. A final pro rata payment must be made to such persons when the parolee pays the entire restitution owed.

4. A person to whom restitution was ordered pursuant to NRS 176.033 may at any time file an application with the ~~[Division]~~ ***State Controller*** requesting the ~~[Division]~~ ***State Controller*** to make a pro rata payment from the money received from the parolee. If the ~~[Division]~~ ***State Controller*** finds that the applicant is suffering a serious financial hardship and is in need of financial assistance, the ~~[Division]~~ ***State Controller*** shall pay to the applicant his or her pro rata share of the money received from the parolee.

5. All payments from the Fund must be paid as other claims against the State are paid.

6. If restitution is not required, the Board shall set forth the circumstances upon which it finds restitution impracticable in its statement of parole conditions.

7. Failure to comply with a restitution requirement imposed by the Board is a violation of a condition of parole unless the parolee's failure was caused by economic hardship resulting in his or her inability to pay the amount due. The defendant is entitled to a hearing to show the existence of that hardship.

8. If, within 3 years after the parolee is discharged from parole, the ~~[Division]~~ ***State Controller*** has not located the person to whom the restitution was ordered, the money paid to the ~~[Division]~~ ***State Controller*** by the parolee must be deposited in the Fund for the Compensation of Victims of Crime.

**Sec. 6.** This act becomes effective on July 1, 2011.

Assembly Bill No. 196–Committee on Judiciary

CHAPTER.....

AN ACT relating to the State Controller; authorizing a county treasurer to enter into a cooperative agreement with the Office of the State Controller for the purpose of assigning the responsibility of collecting fines, administrative assessments and fees from certain criminal defendants; making various changes relating to the collection of fines, administrative assessments and fees from certain criminal defendants; making various changes relating to debt collection between this State and the Federal Government; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that if a fine, administrative assessment, fee or restitution imposed upon a defendant is delinquent: (1) the defendant is liable for a collection fee; (2) the entity responsible for collecting the delinquent amount may report the delinquency to credit reporting agencies, may contract with a collection agency and may request that the court take appropriate action; and (3) the court may request that a prosecuting attorney undertake collection efforts, may order the suspension of the driver's license of the defendant and may, in the case of a delinquent fine or administrative assessment, order that the defendant be confined in the appropriate prison, jail or detention facility. (NRS 176.064)

**Sections 7 and 11** of this bill require the district court to forward to the county treasurer the necessary information for the collection of the debt of a criminal defendant. If a county is unable to collect the debt, **sections 7, 11 and 14** of this bill authorize the county treasurer to enter into a cooperative agreement with the Office of the State Controller for the purpose of assigning to the Office of the State Controller the responsibility for collecting the debt.

Under existing law, a judgment entered by the court ordering a defendant to pay a fine, administrative assessment or restitution constitutes a lien. (NRS 176.275) **Section 8** of this bill requires a district court judge to inform a defendant at the time of sentencing of the provisions of NRS 176.275, and that if the lien is not satisfied, collection efforts may be undertaken against the defendant.

**Sections 9 and 12** of this bill require a defendant to pay costs and fees associated with the efforts to collect a debt.

**Section 14** authorizes the Office of the State Controller to enter into a cooperative agreement with a governmental entity for the purpose of establishing the Office of the State Controller as the collection agent for the governmental entity.

**Section 15** of this bill authorizes the State Controller or his or her designee to enter into a reciprocal agreement with the Federal Government for the collection and offset of indebtedness.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

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

**Sections 1-5.** (Deleted by amendment.)

**Sec. 6.** Chapter 176 of NRS is hereby amended by adding thereto the provisions set forth as sections 7, 8 and 9 of this act.

**Sec. 7.** ***1. If a fine, administrative assessment or fee is imposed pursuant to this chapter upon a defendant who pleads guilty or guilty but mentally ill or is found guilty or guilty but mentally ill of a felony or gross misdemeanor, the district court entering the judgment of conviction shall forward to the county treasurer or other office assigned by the county to make collections the information necessary to collect the fine, administrative assessment or fee. The county treasurer or other office assigned by the county to make collections is responsible for such collection efforts and has the authority to collect the fine, administrative assessment or fee.***

***2. If the county treasurer or other office assigned by the county to make collections is unable to collect the fine, administrative assessment or fee after 60 days, the county treasurer may assign to the Office of the State Controller the responsibility for collection of the fine, administrative assessment or fee through a cooperative agreement pursuant to section 14 of this act, so long as the Office of the State Controller is willing and able to make such collection efforts.***

***3. If the county treasurer and the Office of the State Controller enter into a cooperative agreement pursuant to section 14 of this act, the county treasurer or other county office assigned by the county to make collections shall forward to the Office of the State Controller the necessary information. For the purposes of this section, the information necessary to collect the fine, administrative assessment or fee shall be considered and limited to:***

***(a) The name of the defendant;***

***(b) The date of birth of the defendant;***

***(c) The social security number of the defendant;***

***(d) The last known address of the defendant; and***

***(e) The nature and the amount of money owed by the defendant.***

***4. If the Office of the State Controller is successful in collecting the fine, administrative assessment or fee, the money***

*collected must be returned to the originating county, minus the costs and fees actually incurred in collecting the fine, administrative assessment or fee pursuant to section 9 of this act.*

*5. Any money collected pursuant to subsection 4 must be deposited in the State Treasury, pursuant to NRS 176.265.*

*6. Any record created pursuant to subsection 3 that contains personal identifying information shall not be considered a public record pursuant to NRS 239.010 and must be treated pursuant to NRS 239.0105.*

*7. Unless otherwise prohibited by law, the entity responsible for collecting the fine, administrative assessment or fee pursuant to this section has the authority to compromise the amount to be collected for the purpose of satisfying the judgment.*

**Sec. 8.** *If a district court imposes a fine, administrative assessment or fee upon a defendant who pleads guilty or guilty but mentally ill or is found guilty or guilty but mentally ill of a felony or gross misdemeanor, the district court judge shall advise the defendant at the time of sentencing that:*

*1. The judgment constitutes a lien, pursuant to NRS 176.275; and*

*2. If the defendant does not satisfy the lien, collection efforts may be undertaken against the defendant pursuant to the laws of this State.*

**Sec. 9.** *1. A defendant who pleads guilty or guilty but mentally ill or is found guilty or guilty but mentally ill who owes a fine, administrative assessment or fee, pursuant to section 7 of this act, must be assessed by and pay to the county treasurer or other office assigned by the county to make collections the following costs and fees if the county treasurer or other office assigned by the county to make collections is successful in collecting the fine, administrative assessment or fee:*

*(a) The costs and fees actually incurred in collecting the fine, administrative assessment or fee; and*

*(b) A fee payable to the county treasurer in the amount of 2 percent of the amount of the fine, administrative assessment or fee assigned to the county treasurer or other office assigned by the county to make collections.*

*2. The total amount of the costs and fees required to be collected pursuant to subsection 1 must not exceed 35 percent of the amount of the fine, administrative assessment or fee or $50,000, whichever is less.*

**Sec. 10.** Chapter 178 of NRS is hereby amended by adding thereto the provisions set forth as sections 11 and 12 of this act.

**Sec. 11.** *1. If a district court orders a defendant to pay for expenses incurred by the county or State in providing the defendant with an attorney pursuant to NRS 178.3975 or makes an execution on the property of the defendant pursuant to NRS 178.398, the district court entering the judgment shall forward to the county treasurer or other office assigned by the county to make collections the information necessary to collect the fee. The county treasurer or other office assigned by the county to make collections is responsible for such collection efforts and has the authority to collect the fee.*

*2. If the county treasurer or other office assigned by the county to make collections is unable to collect the fee after 60 days, the county treasurer may assign to the Office of the State Controller the responsibility for collection of the fee through a cooperative agreement pursuant to section 14 of this act, so long as the Office of the State Controller is willing and able to make such collection efforts.*

*3. If the county treasurer and the Office of the State Controller enter into a cooperative agreement pursuant to section 14 of this act, the county treasurer or other county office assigned by the county to make collections shall forward to the Office of the State Controller the necessary information. For purposes of this section, the information necessary to collect the fee shall be considered and limited to:*

*(a) The name of the defendant;*

*(b) The date of birth of the defendant;*

*(c) The social security number of the defendant;*

*(d) The last known address of the defendant; and*

*(e) The nature and the amount of money owed by the defendant.*

*4. If the Office of the State Controller is successful in collecting the fee, the money collected must be returned to the originating county, minus the costs and fees actually incurred in collecting the fee.*

*5. Any money collected must be paid to the county or state public defender's office which bore the expense and which was not reimbursed by another governmental agency, pursuant to NRS 178.3975.*

*6. Any record created pursuant to subsection 3 that contains personal identifying information shall not be considered a public*

***record pursuant to NRS 239.010 and must be treated pursuant to NRS 239.0105.***

***7. Unless otherwise prohibited by law, the entity responsible for collecting the fee pursuant to this section, has the authority to compromise the amount to be collected for the purpose of satisfying the judgment.***

**Sec. 12.** ***1. A defendant who owes a fee pursuant to section 11 of this act, must be assessed by and pay to the county treasurer or other office assigned by the county to make collections, the following costs and fees if the county treasurer or other office assigned by the county to make collections is successful in collecting the fee:***

***(a) The costs and fees actually incurred in collecting the fee; and***

***(b) A fee payable to the county treasurer in the amount of 2 percent of the amount of the fee assigned to the county treasurer or other office assigned by the county to make collections.***

***2. The total amount of the costs and fees required to be collected pursuant to subsection 1 must not exceed 35 percent of the amount of the fee or $50,000, whichever is less.***

**Sec. 13.** Chapter 353 of NRS is hereby amended by adding thereto the provisions set forth as sections 14 and 15 of this act.

**Sec. 14.** ***The Office of the State Controller may act as the collection agent for any governmental entity pursuant to a cooperative agreement entered into between the Office of the State Controller and the governmental entity.***

**Sec. 15.** ***The State Controller or his or her designee may enter into a reciprocal agreement with the Federal Government for the collection and offset of indebtedness, pursuant to which the State will offset from state tax refunds and from payments otherwise due to vendors and contractors providing goods or services to the departments, agencies or institutions of this State, non tax related debt owed to the Federal Government, and the Federal Government will offset from federal payments to vendors and taxpayers debt owed to the State of Nevada.***

**Sec. 16.** This act becomes effective on July 1, 2011.

# G

BILL DRAFT REQUEST FROM ATTORNEY GENERAL

REQUEST LIMITED TO

ONE SUBJECT ONLY

FOR LCB USE ONLY

BDR #_____

FROM: Advisory Commission on the Administration of Justice's Subcommittee on the Rights of Victims and Sources of Funding for Victims of Crime, Victims of Crime Subcommittee

TO: LEGISLATIVE COUNSEL

I. Intent of Proposed Bill: (Brief summary of intended effect)
Addresses criminal restitution orders.

II. Justification or Purpose: (Brief narrative of requirement. Use continuation sheet if necessary)
Existing law requires an affidavit of renewal of judgment in order to renew or collect the restitution contained in an existing criminal judgment once the defendant is delinquent in paying the restitution. NRS 17.214; NRS 176.064; NRS 176.275. Existing law also specifies that a restitution order constitutes a civil liability upon the date of a defendant's discharge from probation. NRS 176A.850 and NRS 176A.870.

This bill allows enforcement of an order of restitution contained in a criminal judgment without taking the additional steps or within the limited timeframe required under existing law.

III. NRS Title, Chapter and Section affected: (If applicable)
NRS Title 14, Chapter 176, Section 176.275; NRS Title 14, Chapter 176A, Sections 176A.850 and 176A.870.

IV. Effective Date:
_X_ Default (October 1, 2015)

___ July 1, 2015

___ Upon Passage and Approval

___ Other _____

V. Suggested language: (Optional) (Use continuation sheet if necessary)
**Section 1.** NRS 176.275 is hereby amended to read as follows:

176.275 ***1.*** A judgment which imposes a fine or administrative assessment or requires a defendant to pay restitution or repay the expenses of a defense constitutes a lien in like manner as a judgment for money rendered in a civil action.

***2. A criminal restitution order may be recorded and is enforceable as any civil judgment, except that a criminal restitution order does not require renewal pursuant to NRS 17.214. A criminal restitution order does not expire until paid in full.***

**Sec. 2.** NRS 176A.850 is hereby amended to read as follows:

176A.850 1. A person who:

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

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

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

~ may be granted an honorable discharge from probation by order of the court.

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

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

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

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

(1) The right to vote; and

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

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

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

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

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

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

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

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

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

(a) Of a category A felony.

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

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

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

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

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

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

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

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

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

(c) The date on which the person's civil right to hold office will be restored pursuant to paragraph (c) of subsection 3; and

(d) The date on which the person's civil right to serve as a juror in a criminal action will be restored pursuant to paragraph (d) of subsection 3.

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

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

(a) Official documentation of honorable discharge from probation, if it contains the provisions set forth in subsection 6; or

(b) A court order restoring the person's civil rights,

~ as proof that the person has been restored to the civil rights set forth in subsection 3.

**Sec. 3.** NRS 176A.870 is hereby amended to read as follows:

176A.870 A defendant whose term of probation has expired and:

1. Whose whereabouts are unknown;
2. Who has failed to make restitution in full as ordered by the court, without a verified showing of economic hardship; or
3. Who has otherwise failed to qualify for an honorable discharge as provided in NRS 176A.850,

~ is not eligible for an honorable discharge and must be given a dishonorable discharge. A dishonorable discharge releases the probationer from any further obligation, except a civil liability arising on the date of discharge for any unpaid restitution ***which remains enforceable pursuant to NRS 176.275***, but does not entitle the probationer to any privilege conferred by NRS 176A.850.

VI. FISCAL NOTE:

Effect on the State

Yes _____ No __X___ Contains Appropriation _____

Executive Budget _____ Effect Less Than $2,000 _____

Effect on Local Government

Yes _____ No __X___ Contains Appropriation _____

VII. Name of person to be consulted if more information is needed:

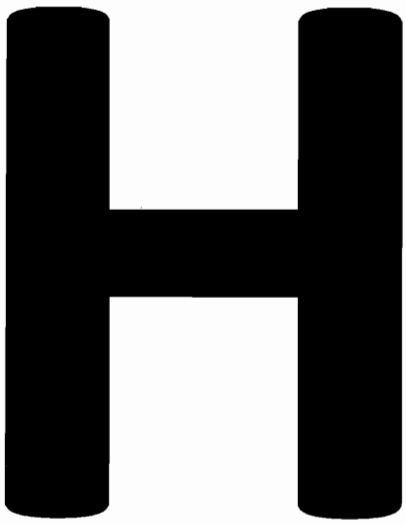
Name:_____ Telephone No._____

VIII. Name, title and mailing address of person to whom a copy of the drafted bill request should be mailed:

***

_____
Signature on behalf of Attorney General

_____
Date



BILL DRAFT REQUEST FROM ATTORNEY GENERAL

REQUEST LIMITED TO

ONE SUBJECT ONLY

FOR LCB USE ONLY

BDR #_____

FROM: Advisory Commission on the Administration of Justice's Subcommittee on the Rights of Victims and Sources of Funding for Victims of Crime, Victims of Crime Sub-committee

TO: LEGISLATIVE COUNSEL

I. Intent of Proposed Bill: (Brief summary of intended effect)
Permits limited access to Department of Corrections' confidential data.

II. Justification or Purpose: (Brief narrative of requirement. Use continuation sheet if necessary)
This bill allows the Department of Corrections to provide confidential victim information collected pursuant to NRS 209.521 to the Office of the Attorney General. The Attorney General may only use this information for the limited purpose of notifying victim registrants of the status of pending litigation.

III. NRS Title, Chapter and Section affected: (If applicable)
NRS Title 16, Chapter 209, Section 209.521.

IV. Effective Date:
_X_ Default (October 1, 2015)

___ July 1, 2015

___ Upon Passage and Approval

___ Other _____

V. Suggested language: (Optional) (Use continuation sheet if necessary)
**Section 1.** NRS 209.521 is hereby amended to read as follows:
209.521 1. If a victim of an offender provides his or her current address to the Director and makes a written request for notification of the offender's release or escape, the Director shall notify the victim if the offender:
(a) Will be released into the community for the purpose of employment, training or education, or for any other purpose for which release is authorized; or
(b) Has escaped from the custody of the Department.

2. An offender must not be temporarily released into the community for any purpose unless notification of the release has been given to every victim of the offender who has requested notification and has provided his or her current address.
3. The Director may not be held responsible for any injury proximately caused by the Director's failure to give any notice required pursuant to subsection 1 or 2 if no address was provided to the Director or the address provided is inaccurate or not current.
4. All personal information, including, but not limited to, a current or former address, which pertains to a victim and which is received by the Director pursuant to this section is confidential.
***5. The Director may authorize the distribution of confidential personal information collected pursuant to this section to the Office of the Attorney General, upon request of that office, for the limited purpose of notifying victim registrants of the status of pending litigation.***
***6.*** ~~5.~~ As used in this section, "victim" has the meaning ascribed to it in NRS 213.005.

VI. FISCAL NOTE:

Effect on the State

Yes _____ No __X___ Contains Appropriation _____

Executive Budget _____ Effect Less Than $2,000 _____

Effect on Local Government

Yes _____ No __X___ Contains Appropriation _____

VII. Name of person to be consulted if more information is needed:

Name:_____ Telephone No. _____

VIII. Name, title and mailing address of person to whom a copy of the drafted bill request should be mailed:

***

_____
Signature on behalf of Attorney General

BILL DRAFT REQUEST FROM ATTORNEY GENERAL

REQUEST LIMITED TO ONE SUBJECT ONLY

FOR LCB USE ONLY

BDR #_____

FROM: Advisory Commission on the Administration of Justice's Subcommittee on the Rights of Victims and Sources of Funding for Victims of Crime, Victims of Crime Subcommittee

TO: LEGISLATIVE COUNSEL

I. Intent of Proposed Bill: (Brief summary of intended effect)
Provision for payment of sexual assault examinations by the Victims of Crime Fund.

II. Justification or Purpose: (Brief narrative of requirement. Use continuation sheet if necessary)
This bill permits reimbursement of counties for the cost of sexual assault examinations by the Victims of Crime Fund. The bill limits the reimbursement per year of ten (10) examinations in each county, or up to $10,000, whichever is greater.

III. NRS Title, Chapter and Section affected: (If applicable)
NRS Title 15, Chapter 193.

IV. Effective Date:
_X_ Default (October 1, 2015)

___ July 1, 2015

___ Upon Passage and Approval

___ Other _____

V. Suggested language: (Optional) (Use continuation sheet if necessary)
**Section 1.** NRS 217.160 is hereby amended to read as follows:
217.160 1. The compensation officer may order the payment of compensation:
(a) To or for the benefit of the victim ~~[.]~~ ,

***(1) Including to any county for reimbursement of costs associated with a forensic medical examination pursuant to NRS 217.300, and***

***(2) Reimbursement for the costs associated with a forensic medical examination shall be limited to a maximum of ten (10) examinations or $10,000, whichever is greater, per county, per year.***

(b) If the victim has suffered personal injury, to any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury.
(c) If the victim dies, to or for the benefit of any one or more of the dependents of the victim.
(d) To a minor who is a member of the household or immediate family of a victim of a battery which constitutes domestic violence pursuant to NRS 33.018 who needs an assessment, a psychological evaluation or psychological counseling for emotional trauma suffered by the minor as a result of the battery.
(e) To a member of the victim's household or immediate family for psychological counseling for emotional trauma suffered by the member as a result of the crime of murder as defined in NRS 200.010.
2. As used in this section:
(a) "Battery" has the meaning ascribed to it in paragraph (a) of subsection 1 of NRS 200.481.
(b) "Household" means an association of persons who live in the same home or dwelling and who:
(1) Have significant personal ties to the victim; or
(2) Are related by blood, adoption or marriage, within the first degree of consanguinity or affinity.
(c) "Immediate family" means persons who are related by blood, adoption or marriage, within the first degree of consanguinity or affinity.

VI. FISCAL NOTE:

Effect on the State

Yes __X___ No _____ Contains Appropriation _____

Executive Budget _____ Effect Less Than $2,000 _____

Effect on Local Government

Yes __X___ No _____ Contains Appropriation _____

VII. Name of person to be consulted if more information is needed:

Name:_____ Telephone No._____

VIII. Name, title and mailing address of person to whom a copy of the drafted bill request

should be mailed:

***

_____

Signature on behalf of Attorney General

_____

Date

# J

Legislative Counsel Bureau, Research Division Publication

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

**(By Category)**

**Revised: July 2014**

## CATEGORY B FELONIES

**A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years. Fines are optional unless otherwise noted. Mandatory restitution is included for those sentences noted by an asterisk (*). (NRS 193.130)**

| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| Aid or conceal child escaped from a state detention facility (63.610) | 1 to 6 years | Not more than $5,000 |
| Securities: False or misleading information regarding publicly traded security (90.650) | 1 to 20 years* | Not more than $500,000 |
| Attempted A felony (193.330) | 2 to 20 years | No fine |
| Attempted B felony with maximum penalty of more than 10 years (193.330) | 1 to 10 years | No fine |
| Treason (196.010) | 2 to 10 years | No fine |
| Rescuing gross misdemeanor or misdemeanor prisoner, use of weapon (199.100) | 1 to 6 years | Not more than $5,000 |
| Intimidating public officer, force involved and subsequent offense (199.300) | 2 to 10 years | Not more than $10,000 |
| Substitution of child (199.370) | 1 to 10 years | Not more than $10,000 |
| Conspiracy to commit robbery; sexual assault; kidnapping in first or second degrees; arson in the first or second degrees; involuntary servitude; assuming rights of ownership of another person; trafficking in persons; sex trafficking; or using personal identifying information unlawfully (199.480) | 1 to 6 years | Not more than $5,000 |
| Conspiracy to commit murder (199.480) | 2 to 10 years | Not more than $5,000 |
| Solicitation to commit murder (199.500) | 2 to 15 years | Not more than $10,000 |
| Voluntary manslaughter (200.080) | 1 to 10 years | Not more than $10,000 |
| Killing unborn quick child (200.210) | 1 to 10 years | Not more than $10,000 |
| Woman taking drugs to terminate pregnancy, after 24th week (200.220) | 1 to 10 years | Not more than $10,000 |
| Killing by overloading vessel, willful conduct (200.230) | 1 to 10 years | Not more than $10,000 |
| Mayhem (200.280) | 2 to 10 years | Not more than $10,000 |
| Kidnapping, second degree (200.330) | 2 to 15 years | Not more than $15,000 |
| Aiding or abetting kidnapping in the second degree (200.340) | 2 to 15 years | No fine |
| Robbery (200.380) | 2 to 15 years | No fine |
| Battery with intent to commit mayhem, robbery, or grand larceny (200.400) | 2 to 10 years | Not more than $10,000 |
| Battery with intent to kill (200.400) | 2 to 20 years | No fine |
| Administration of a drug to aid commission of felony (200.405) | 1 to 10 years | No fine |
| Administration of drug to aid commission of violent crime (200.408) | 1 to 20 years | No fine |
| Challenges to fight or acting for another in challenge to fight; use of deadly weapon (200.450) | 1 to 6 years | Not more than $5,000 |
| False imprisonment either by prisoner **without** deadly weapon or by other person **with** deadly weapon (200.460) | 1 to 6 years | No fine |
| False imprisonment by prisoner with deadly weapon (200.460) | 1 to 20 years | No fine |
| False imprisonment using person as a shield (200.460) | 1 to 15 years | No fine |
| Involuntary servitude crimes (200.463) | 5 to 20 years | Not more than $50,000 |
| Involuntary servitude crimes; substantial bodily harm (200.463) | 7 to 20 years | Not more than $50,000 |
| Knowingly recruiting, transporting, or providing person for involuntary servitude or benefiting from involuntary servitude (200.464) | 1 to 15 years | Not more than $50,000 |
| Sale or purchase of another person; related acts (200.465) | 5 to 20 years | Not more than $50,000 |
| Trafficking in persons for financial gain (200.467) | 1 to 10 years | Not more than $50,000 |
| Trafficking in persons for illegal purposes (200.468) | 1 to 20 years | Not more than $50,000 |
| Assault with deadly weapon (200.471) | 1 to 6 years | Not more than $5,000 |
| Assault with a deadly weapon upon an officer, school employee, health care provider, taxicab driver, transit officer, or sports official (200.471) | 1 to 6 years | Not more than $5,000 |

Legislative Counsel Bureau, Research Division Publication

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

**(By Category)**

**Revised: July 2014**

## CATEGORY B FELONIES

**A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years. Fines are optional unless otherwise noted. Mandatory restitution is included for those sentences noted by an asterisk (*). (NRS 193.130)**

| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| Assault with a deadly weapon upon an officer, school employee, health care provider, taxicab driver, transit officer, or sports official by a probationer, prisoner, or parolee (200.471) | 1 to 6 years | Not more than $5,000 |
| Battery upon an officer, school employee, health care provider, taxicab driver, transit officer, or sports official performing his duty, substantial bodily harm or strangulation (200.481) | 2 to 10 years | Not more than $10,000 |
| Battery with a deadly weapon (200.481) | 2 to 10 years | Not more than $10,000 |
| Battery with a deadly weapon, substantial bodily harm or strangulation (200.481) | 2 to 15 years | Not more than $10,000 |
| Battery by prisoner, probationer, or parolee without a weapon (200.481) | 1 to 6 years | No fine |
| Battery by a prisoner, probationer, or parolee with a deadly weapon (200.481) | 2 to 10 years | No fine |
| Battery by a prisoner, probationer, or parolee with a deadly weapon, substantial bodily harm or strangulation (200.481) | 2 to 15 years | No fine |
| Criminal neglect of patient, resulting in death (200.495) | 1 to 20 years | No fine |
| Criminal neglect of patient, resulting in substantial bodily harm (200.495) | 1 to 6 years | Not more than $5,000 |
| Child abuse/neglect: Causing a child to suffer unjustifiable physical pain or mental suffering resulting in substantial bodily or mental harm (200.508) | 2 to 20 years | No fine |
| Child abuse/neglect: Causing a child to suffer unjustifiable physical pain or mental suffering, no substantial bodily or mental harm (200.508) | 1 to 6 years | No fine |
| Child abuse/neglect: Causing a child to suffer unjustifiable physical pain or mental suffering, no substantial bodily or mental harm, subsequent violation (200.508) | 2 to 15 years | No fine |
| Child abuse/neglect: Permitting or allowing child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, resulting in substantial bodily or mental harm (200.508) | 2 to 20 years | No fine |
| Mutilation of genitalia of female child (200.5083) | 2 to 10 years | Not more than $10,000 |
| Abuse of older person or vulnerable person, subsequent offense (200.5099) | 2 to 6 years* | No fine |
| Abuse of older person or vulnerable person; substantial bodily or mental harm or death (200.5099) | 2 to 20 years* | No fine |
| Neglecting or permitting older person or vulnerable person to suffer by person with legal responsibility; resulting in substantial bodily or mental harm or death (200.5099) | 2 to 6 years* | No fine |
| Exploitation of older person or vulnerable person, value $650 - $5,000 (200.5099) | 2 to 10 years* | Not more than $10,000 |
| Exploitation of older person or vulnerable person, value more than $5,000 (200.5099) | 2 to 20 years* | Not more than $25,000 |
| Isolation of older person or vulnerable person, subsequent offense (200.5099) | 2 to 10 years* | Not more than $5,000 |
| Aggravated stalking (200.575) | 2 to 15 years | Not more than $5,000 |
| Entering property with intent to conceal self and peer through opening of dwelling; possession of deadly weapon (200.603) | 1 to 6 years | Not more than $5,000 |
| Distribution of child pornography (200.725) | 1 to 15 years | Not more than $15,000 |
| Intentionally viewing pornography depicting child less than 16 years of age controlled through the Internet, subsequent offense (200.727) | 1 to 6 years | Not more than $5,000 |
| Performance of a health care procedure without a license, resulting in substantial bodily harm, second or subsequent offense (200.830) | 2 to 20 years | $2,000 to $5,000 |
| Performance of a health care procedure without a license, resulting in death (200.830) | 2 to 20 years; no probation or suspended sentence | $2,000 to $5,000 |
| Performance of a surgical procedure without a license, resulting in no substantial bodily harm, second or subsequent offense (200.840) | 2 to 20 years | $2,000 to $5,000 |

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

(By Category)
Revised: July 2014

## CATEGORY B FELONIES

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| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| Performance of a surgical procedure without a license, resulting in substantial bodily harm (200.840) | 2 to 20 years | $2,000 to $5,000 |
| Performance of a surgical procedure without a license, resulting in death (200.840) | 2 to 20 years; no probation or suspended sentence | $2,000 to $5,000 |
| Possession of child pornography, first offense (201.730) | 1 to 6 years | Not more than $5,000 |
| Abortion not pursuant to law (201.120) | 1 to 10 years | Not more than $10,000 |
| Knowingly engaging in conduct likely to spread HIV (201.205) | 2 to 10 years | Not more than $10,000 |
| Pandering of a child, force or threat of force (201.300) | 2 to 20 years | Not more than $20,000; plus not more than $100,000 (child 14 or more) **OR** not more than $500,000 (child under 14); plus not more than $500,000 if conspiracy in addition to offense |
| Pandering of a child, no force or threat of force (201.300) | 1 to 10 years | Not more than $10,000; plus not more than $100,000 (child 14 or more) **OR** not more than $500,000 (child under 14); plus not more than $500,000 if conspiracy in addition to offense |
| Detention of child in brothel because of debt, force or threat of force (201.330) | 2 to 20 years | Not more than $20,000; plus not more than $100,000 (child 14 or more) **OR** not more than $500,000 (child under 14); plus not more than $500,000 if conspiracy in addition to offense |
| Detention of child in brothel because of debt, no force or threat of force (201.330) | 1 to 10 years | Not more than $10,000; plus not more than $100,000 (child 14 or more) **OR** not more than $500,000 (child under 14); plus not more than $500,000 if conspiracy in addition to offense |
| Transporting a prostitute - child; force or threat of force (201.340) | 2 to 20 years | Not more than $20,000; plus not more than $100,000 (child 14 or more) **OR** not more than $500,000 (child under 14); plus not more than $500,000 if conspiracy in addition to offense |

Legislative Counsel Bureau, Research Division Publication

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

(By Category)

Revised: July 2014

## CATEGORY B FELONIES

**A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years. Fines are optional unless otherwise noted. Mandatory restitution is included for those sentences noted by an asterisk (*). (NRS 193.130)**

| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| Transporting a prostitute - child; no force or threat of force (201.340) | 1 to 10 years | Not more than $10,000; plus not more than $100,000 (child 14 or more) **OR** not more than $500,000 (child under 14); plus not more than $500,000 if conspiracy in addition to offense |
| Prostitute knowingly engaging in conduct likely to spread HIV (201.358) | 2 to 10 years | Not more than $10,000 |
| Unlawful sexual conduct between present or former school employee or volunteer and pupil who is 14 or 15 years old at time of conduct (201.540) | 1 to 6 years | Not more than $5,000 |
| Using a computer, system or network to lure a child, person believed to be a child, or mentally ill person to engage in sexual conduct (201.560) | 1 to 10 years | Not more than $10,000 |
| Luring a child, person believed to be a child, or mentally ill person to engage in sexual conduct (201.560) | 2 to 15 years | Not more than $10,000 |
| Luring a child, person believed to be a child, or mentally ill person to provide material harmful to minors (201.560) | 1 to 6 years | Not more than $10,000 |
| Willfully poisoning food, water, or medicine (202.170) | 2 to 15 years | Not more than $10,000 |
| Setting spring gun and causing injury (202.255) | 1 to 6 years | Not more than $5,000 |
| Setting spring gun and causing death (202.255) | 1 to 10 years; may be prosecuted as murder depending on circumstances | Not more than $10,000 |
| Possession, manufacture, or disposition of bomb (202.260) | 1 to 6 years | Not more than $5,000 |
| Possession of components of explosive or incendiary device (202.261) | 1 to 6 years | Not more than $5,000 |
| Discharging firearm into occupied structure (202.285) | 1 to 6 years | Not more than $5,000 |
| Drive-by shooting (202.287) | 2 to 15 years | Not more than $5,000 |
| Permitting minor to unlawfully handle firearm; subsequent offense (202.300) | 1 to 6 years | Not more than $5,000 |
| Unlawful sale of firearm to minor (202.310) | 1 to 6 years | Not more than $5,000 |
| Unlawful use of stun gun (202.357) | 1 to 6 years | Not more than $5,000 |
| Possession of stun gun by person convicted of a felony or a fugitive from justice (202.357) | 1 to 6 years | Not more than $5,000 |
| Possession of firearm by ex-felon, fugitive from justice, or user of controlled substance (202.360) | 1 to 6 years | Not more than $5,000 |
| Unlawful sale of firearm to felon, fugitive from justice, person adjudicated mentally ill, or person unlawfully in the United States (202.362) | 1 to 10 years | Not more than $10,000 |
| Ex-felon, possession of tear gas (202.380) | 1 to 6 years | Not more than $5,000 |
| Knowingly assisting in crimes involving weapons of mass destruction, biological or chemical agents, or similar lethal agents (202.446) | 2 to 15 years* | Not more than $10,000 |
| Unlawful threats involving act of terrorism, biological or chemical agents, or similar lethal agents (202.448) | 2 to 20 years | Not more than $5,000 |
| Delivering a "hoax substance" causing substantial bodily harm or death (202.449) | 2 to 20 years* | Not more than $5,000 |
| Transportation or receipt of explosives for unlawful purpose, no substantial bodily harm (202.780) | 2 to 10 years | $2,000 to $10,000 |
| Transportation or receipt of explosives for unlawful purpose, with substantial bodily harm (202.780) | 2 to 20 years | $2,000 to $20,000 |
| Use or possession of explosives during commission of a felony, first offense (202.820) | 1 to 10 years | Not more than $10,000 |

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

**(By Category)**
**Revised: July 2014**

## CATEGORY B FELONIES

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| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| Use or possession of explosives during commission of felony, subsequent offense (202.820) | 2 to 20 years | No fine |
| Use of explosives to destroy property, no substantial bodily harm (202.830) | 2 to 10 years | $2,000 to $10,000 |
| Use of explosives to destroy property, with substantial bodily harm (202.830) | 2 to 20 years | $2,000 to $20,000 |
| Bomb threats (202.840) | 1 to 6 years | Not more than $5,000 |
| Criminal anarchy (203.115) | 1 to 6 years | Not more than $10,000 |
| Criminal syndicalism (203.117) | 1 to 6 years | Not more than $5,000 |
| Arson, first degree (205.010) | 2 to 15 years | Not more than $15,000 |
| Arson, second degree (205.015) | 1 to 10 years | Not more than $10,000 |
| Arson, aiding and abetting, with the intent to defraud (205.030) | 1 to 6 years* | Not more than $5,000 |
| Burglary (205.060) | 1 to 10 years; no probation or suspended sentence if previously convicted of burglary or invasion of the home | Not more than $10,000 |
| Burglary with a weapon (205.060) | 2 to 15 years; no probation or suspended sentence if previously convicted of burglary or invasion of the home | Not more than $10,000 |
| Invasion of the home (205.067) | 1 to 10 years; no probation or suspended sentence if previously convicted of burglary or invasion of the home | Not more than $10,000 |
| Invasion of the home with a deadly weapon (205.067) | 2 to 15 years; no probation or suspended sentence if previously convicted of burglary or invasion of the home | Not more than $10,000 |
| Burglary using explosives (205.075) | 2 to 15 years | No fine |
| Participation in organized retail theft, aggregated value of loss within 90-day period of $3,500 to $10,000 (205.08345) | 1 to 10 years* | Not more than $10,000, mandatory |
| Participation in organized retail theft, aggregated value of loss within 90-day period of $10,000 or more (205.08345) | 2 to 15 years* | Not more than $20,000, mandatory |
| Theft; value of $3,500 or more (205.0835) | 1 to 10 years* | Mandatory fine, not more than $10,000 |
| Grand larceny, value of $3,500 or more (205.220 and 205.222) | 1 to 10 years* | Mandatory fine, not more than $10,000 |
| Grand larceny of firearm (205.226) | 1 to 10 years* | Mandatory fine, not more than $10,000 |
| Grand larceny of motor vehicle, value proven to be $3,500 or more (205.228) | 1 to 10 years* | Mandatory fine, not more than $10,000 |
| Theft of scrap metal, aggregated value of loss within 90-day period of $3,500 or more (205.267) | 1 to 10 years* | Mandatory fine, not more than $10,000 |

Legislative Counsel Bureau, Research Division Publication

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

(By Category)

Revised: July 2014

## CATEGORY B FELONIES

**A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years. Fines are optional unless otherwise noted. Mandatory restitution is included for those sentences noted by an asterisk (*). (NRS 193.130)**

| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| Taking not amounting to robbery, value $3,500 or more (205.270) | 1 to 10 years*; no probation or suspended sentence if victim was elderly or handicapped | Mandatory fine, not more than $10,000 |
| Theft from vending machine, value of $3,500 or more (205.2707) | 1 to 10 years* | Mandatory fine, not more than $10,000 |
| Receiving or transporting stolen vehicle, value proven to be $3,500 or more (205.273) | 1 to 10 years* | Mandatory fine, not more than $10,000 |
| Receiving or possessing stolen goods, value $3,500 or more (205.275) | 1 to 10 years* | Mandatory fine, not more than $10,000 |
| Extortion (205.320) | 1 to 10 years* | Not more than $10,000 |
| Extortion for a debt (205.322) | 1 to 6 years* | Not more than $10,000 |
| Pattern of mortgage lending fraud (205.372) | 3 to 20 years | Not more than $50,000; subject to additional civil penalty not to exceed $5,000 each violation. |
| Defrauding another, two or more similar transactions within 4-year period, aggregated value of loss more than $650 (205.377) | 1 to 20 years* | Not more than $10,000 |
| Obtaining money, property, rent, or labor by false pretenses, value $650 or more (205.380) | 1 to 6 years* | Not more than $10,000 |
| Pattern of false representation of title (205.395) | 3 to 20 years | Not more than $50,000; subject to additional civil penalty not to exceed $5,000 each violation |
| Obtaining and using another's personal identifying information to harm, impersonate, or access nonpublic records of another or for unlawful purpose (205.463) | 1 to 20 years* | Not more than $100,000 |
| Obtaining and using an older or vulnerable person's personal identifying information to harm or for unlawful purpose (205.463) | 3 to 20 years* | Not more than $100,000 |
| Obtaining and using the personal identifying information of five or more persons to harm or for unlawful purpose (205.463) | 3 to 20 years* | Not more than $100,000 |
| Obtaining and using another's personal identifying information to harm or for unlawful purpose that causes loss of $3,000 or more (205.463) | 3 to 20 years* | Not more than $100,000 |
| Obtaining and using an older or vulnerable person's personal identifying information to avoid prosecution for a category A or B felony (205.463) | 3 to 20 years* | Not more than $100,000 |
| Public officer or employee unlawfully obtaining and using another's personal identifying information to harm other person or for unlawful purpose (205.464) | 5 to 20 years* | Not more than $100,000 |
| Public officer or employee unlawfully obtaining and using an older or vulnerable person's personal identifying information to harm other person or for unlawful purpose (205.464) | 7 to 20 years* | Not more than $100,000 |
| Public officer or employee unlawfully obtaining and using the personal identifying information of five or more persons to harm or for unlawful purpose (205.464) | 7 to 20 years* | Not more than $100,000 |
| Public officer or employee unlawfully obtaining and using another's personal identifying information to harm or for unlawful purpose that causes loss of $3,000 or more (205.464) | 7 to 20 years* | Not more than $100,000 |
| Public officer or employee obtaining and possessing, selling or transferring an older or vulnerable person's personal identifying information to establish false identity (205.464) | 1 to 20 years* | Not more than $100,000 |
| Public officer or employee obtaining and possessing, selling or transferring the personal identifying information of five or more persons to establish false identity (205.464) | 7 to 20 years* | Not more than $100,000 |

Legislative Counsel Bureau, Research Division Publication

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

**(By Category)**

**Revised: July 2014**

## CATEGORY B FELONIES

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| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| Public officer or employee obtaining and possessing, selling or transferring another's personal identifying information to establish false identity that causes loss of $3,000 or more (205.464) | 7 to 20 years* | Not more than $100,000 |
| Aiding public officer or employee to commit crimes involving an older or vulnerable person's personal identifying information (205.464) | 1 to 20 years* | Not more than $100,000 |
| Aiding public officer or employee to commit crimes involving the personal identifying information of five or more persons (205.464) | 1 to 20 years* | Not more than $100,000 |
| Aiding public officer or employee to commit crimes involving another's personal identifying information that causes loss of $3,000 or more (205.464) | 1 to 20 years* | Not more than $100,000 |
| False identification crimes involving personal identifying information of an older or vulnerable person (205.465) | 1 to 20 years | Not more than $100,000 |
| False identification crimes involving the personal identifying information of five or more persons (205.465) | 1 to 20 years | Not more than $100,000 |
| False identification crimes involving another's personal identifying information that causes loss of $3,000 or more (205.465) | 1 to 20 years | Not more than $100,000 |
| Establishing or possessing financial forgery laboratory (205.46513) | 1 to 20 years | Not more than $100,000 |
| Unlawful use of scanning device or reencoder with intent to defraud (205.605) | 1 to 20 years* | Not more than $100,000 |
| False signals endangering cars, physical injury or property damage results (206.300) | 1 to 10 years | Not more than $10,000 |
| Habitual criminal, current conviction for felony *plus* two prior felonies (207.010) | 5 to 20 years; no probation or suspended sentence | No fine |
| Habitually fraudulent felon, current conviction for felony involving fraud plus two prior felonies that include elements of fraud. Victim of each offense was an older person, a vulnerable person, or a mentally disabled person. (207.014) | 5 to 20 years; no probation or suspended sentence: **prosecutor must charge** | No fine |
| Coercion, force or threat of force (207.190) | 1 to 6 years | Not more than $5,000 |
| Unlawful contact with child under 16 years of age or with mentally ill person, subsequent offense (207.260) | 1 to 6 years | Not more than $5,000 |
| Racketeering (207.400) | 5 to 20 years | Not more than $25,000 |
| Escape of felony prisoner, use of weapon or substantial bodily harm (212.090) | 2 to 20 years | Not more than $20,000 |
| Escape of felony prisoner, no aggravating factors (212.090) | 1 to 10 years | Not more than $10,000 |
| Escape from prison, gross misdemeanor or misdemeanor prisoner, use of weapon (212.090) | 1 to 6 years | Not more than $5,000 |
| Possession by felony prisoner of escape tools (212.093) | 1 to 6 years | Not more than $5,000 |
| Unauthorized absences from prison (212.095) | Penalty under NRS 212.090 | |
| Aiding escape of felony prisoner (212.100) | 1 to 10 years | Not more than $10,000 |
| Aid in escape of gross misdemeanor or misdemeanor prisoner, use of weapon (212.100) | 1 to 6 years | Not more than $5,000 |
| Custodian allowing escape of felon (212.110) | 1 to 6 years | Not more than $10,000 |
| Ministerial officer allowing escape (212.120) | 1 to 6 years | Not more than $10,000 |
| Furnishing weapons or drugs to prisoner (212.160) | 1 to 6 years | Not more than $5,000 |
| Possession of weapon or facsimile by prisoner (212.185) | 1 to 6 years | No fine |
| Gassing by prisoner in lawful confinement (212.189) | 2 to 10 years; consecutive after current sentence, no probation or suspended sentence | Not more than $10,000 |

Legislative Counsel Bureau, Research Division Publication

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

**(By Category)**

**Revised: July 2014**

## CATEGORY B FELONIES

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| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| Major violation of lifetime supervision (213.1243) | 1 to 6 years | Not more than $5,000 |
| Elections: Tampering or interfering with a mechanical voting system, device, or program used to count ballots (293.755) | 2 to 20 years | No fine |
| Abuse or neglect of patient by mental health provider, ***either*** for first violation that results in substantial bodily harm ***or*** for subsequent violation (435.645) | 1 to 6 years | Not more than $5,000 |
| Abuse of child receiving mental health treatment; substantial bodily harm (433B.340) | 1 to 6 years | Not more than $5,000 |
| Willful use of aversive intervention on person with a disability or improper use of restraint; ***either*** first violation with substantial bodily harm ***or*** subsequent violation (449.783) | 1 to 6 years | Not more than $5,000 |
| Maintaining drug house, first offense (453.316) | 1 to 6 years | Not more than $10,000 |
| Maintaining drug house, subsequent offense (453.316) | 2 to 10 years; no probation or suspended sentence | Not more than $20,000 |
| Import, sell, et cetera, Schedule I or II drugs, first offense (453.321) | 1 to 6 years | Not more than $20,000 |
| Import, sell, et cetera, Schedule I or II drugs, second offense (453.321) | 2 to 10 years; no probation or suspended sentence | Not more than $20,000 |
| Import, sell, et cetera, Schedule I or II drugs, third or subsequent offense (453.321) | 3 to 15 years; no probation or suspended sentence | Not more than $20,000 |
| Import, sell, et cetera, Schedule III, IV, or V drugs, second offense (453.321) | 2 to 10 years; no probation or suspended sentence | Not more than $15,000 |
| Import, sell, et cetera, Schedule III, IV, or V drugs, third or subsequent offense (453.321) | 3 to 15 years; no probation or suspended sentence | Not more than $20,000 |
| Unlawful acts relating to manufacture or compounding of certain controlled substances (453.322) | 3 to 15 years; no probation | Not more than $100,000 |
| Allowing child to be present where controlled substances are being used, substantial bodily harm results (453.3325) | 6 to 20 years; no probation or suspended sentence | Not more than $20,000 |
| Allowing child to be present where controlled substances are unlawfully sold, exchanged, given away or administered, no substantial bodily harm or death (453.3325) | 3 to 15 years; no probation or suspended sentence | Not more than $10,000 |
| Allowing child to be present where controlled substances are unlawfully sold, exchanged, given away or administered, substantial bodily harm results (453.3325) | 6 to 20 years; no probation or suspended sentence | Not more than $20,000 |
| Allowing child to be present where controlled substances are unlawfully manufactured, no substantial bodily harm or death (453.3325) | 5 to 20 years; no probation or suspended sentence | Not more than $15,000 |
| Possession not for sale of flunitrazepam or GHB (453.336) | 1 to 6 years | No fine |
| Possession for purpose of sale, Schedule I or II drugs, flunitrazepam, or GHB; third or subsequent offense (453.337) | 3 to 15 years; no probation or suspended sentence | Not more than $20,000 |
| Trafficking, Schedule I drugs (except marijuana), flunitrazepam, or GHB: 4 to 14 grams (453.3385) | 1 to 6 years; no probation or suspended sentence | Mandatory fine, not more than $50,000 |

Legislative Counsel Bureau, Research Division Publication

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

**(By Category)**
**Revised: July 2014**

## CATEGORY B FELONIES

**A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years. Fines are optional unless otherwise noted. Mandatory restitution is included for those sentences noted by an asterisk (*). (NRS 193.130)**

| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| Trafficking, Schedule I drugs (except marijuana), flunitrazepam, or GHB: 14 to 28 grams (453.3385) | 2 to 15 years; no probation or suspended sentence | Mandatory fine, not more than $100,000 |
| Trafficking marijuana, 2,000 to 10,000 pounds (453.339) | 2 to 10 years; no probation or suspended sentence | Mandatory fine, not more than $50,000 |
| Trafficking, Schedule II drugs, 200 to 400 grams (453.3395) | 2 to 10 years; no probation or suspended sentence | Mandatory fine, not more than $100,000 |
| Filling or delivering of prescriptions by illegal Internet pharmacy; Schedule I drug involved or drug causes substantial bodily harm or death (453.3638) | 3 to 15 years; no probation or suspended sentence | Not more than $100,000 |
| Unlawful acts relating to filling prescriptions via the Internet: Schedule I drug involved or drug causes substantial bodily harm or death (453.3639) | 3 to 15 years; no probation or suspended sentence | Not more than $100,000 |
| Unlawful acts relating to prescribing of drugs with knowledge of involvement of illegal Internet pharmacy; Schedule I drug involved or drug causes substantial bodily harm or death (453.3643) | 3 to 15 years; no probation or suspended sentence | Not more than $100,000 |
| Conspiracy to violate the Uniform Controlled Substances Act, second offense (453.401) | 2 to 10 years; no probation or suspended sentence | Not more than $10,000 |
| Conspiracy to violate the Uniform Controlled Substances Act, third or subsequent offense (453.401) | 3 to 15 years; no probation or suspended sentence | Not more than $20,000 |
| Using minor as an agent or furnishing drugs to minor (454.306) | 5 to 20 years | Not more than $20,000 |
| Gaming without a license (463.360) | 1 to 10 years | Not more than $50,000 |
| Gaming crimes, first offense (includes attempts and conspiracy to commit crimes) (465.088) | 1 to 6 years | Not more than $10,000 |
| Gaming crimes, second or subsequent violation (includes attempts and conspiracy to commit crimes) (465.088) | 1 to 6 years; no probation or suspended sentence | Not more than $10,000 |
| Unlawful dissemination of certain wire information (465.090) | 1 to 6 years | Not more than $5,000 |
| Theft of fire prevention device, value of $650 or more (475.105 - Punished as grand larceny. See 205.222.) | 1 to 10 years* | Mandatory fine, not more than $10,000 |
| Unlawful purchase, sale, disposal, or transfer of a motor vehicle or part knowing the identification number has been falsely attached, removed, destroyed, or altered (482.551) | 1 to 10 years | Not more than $60,000 |
| Failure to stop at accident involving death or personal injury (484.219) | 2 to 15 years | Mandatory fine, $2,000 to $5,000 |
| Failure to obey signal by officer and: (1) causes property damage; or (2) operates a vehicle in dangerous manner (484.348) | 1 to 6 years | Not more than $5,000 |
| Failure to obey signal by officer, resulting in death or bodily harm (484.348) | 2 to 20 years | Not more than $50,000 |
| Failure to obey roadblock, resulting in death, substantial bodily harm, or property damage over $1,000 (484.3595) | 1 to 6 years | Not more than $5,000 |
| Reckless driving, willful conduct resulting in death or substantial bodily harm (484.377) | 1 to 6 years | Mandatory fine, $2,000 to $5,000 |

# PENALTIES FOR FELONIES UNDER *NEVADA REVISED STATUTES*

(By Category)
Revised: July 2014

## CATEGORY B FELONIES

**A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years. Fines are optional unless otherwise noted. Mandatory restitution is included for those sentences noted by an asterisk (*). (NRS 193.130)**

| CRIME AND NRS CITATION | PENALTY | |
|---|---|---|
| | Prison Term | Fine |
| DUI, third offense in 7 years (484.3792) | 1 to 6 years; no probation or suspended sentence except in certain circumstances | Mandatory fine, $2,000 to $5,000 |
| DUI and previous conviction of felony DUI; DUI causing substantial bodily harm or death or homicide resulting from driving under the influence (484.3792) | 2 to 15 years; no probation or suspended sentence except in certain circumstances | Mandatory fine, $2,000 to $5,000 |
| DUI causing substantial bodily harm or death (484.3795) | 2 to 20 years; no probation or suspended sentence | Mandatory fine, $2,000 to $5,000 |
| Knowingly selling a motor vehicle whose odometer has been fraudulently altered (484.6067) | 1 to 6 years | Not more than $10,000 |
| Watercraft DUI causing substantial bodily harm or death (488.420) | 2 to 20 years; no probation or suspended sentence | Mandatory fine, $2,000 to $5,000 |
| Watercraft DUI, and previous conviction of watercraft DUI causing substantial bodily harm or death (488.427) | 2 to 15 years | Mandatory fine, $2,000 to $5,000 |
| Staging fights between dogs, third offense (574.070) | 1 to 6 years | Not more than $5,000 (A fine of not more than $10,000 is mandatory if the violation is by an entity other than a natural person.) |
| Representing or aiding unauthorized insurer in violation of Unauthorized Insurers Act (685B.083) | ***No penalty specified*** | ***No penalty specified*** |
| Transacting unauthorized insurance business (685B.087) | ***No penalty specified*** | ***No penalty specified*** |

Assembly Bill No. 136–Committee on Judiciary

CHAPTER.....

AN ACT relating to criminal laws; revising provisions governing credits for offenders sentenced for certain crimes; revising provisions governing the sealing and removal of certain records; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that certain credits to the sentence of an offender convicted of certain category C, D or E felonies must be deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and from the maximum term imposed by the sentence, except in certain circumstances. (NRS 209.4465) **Section 1** of this bill adds to the exceptions that an offender who has been convicted of being a habitual criminal or a habitual felon may not have credits applied to both the minimum and maximum term imposed by the sentence. **Section 1** further provides that an offender convicted of a category B felony also qualifies to have certain credits deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and from the maximum term imposed by the sentence, except in certain circumstances.

Existing law authorizes a person arrested for alleged criminal conduct to petition for the sealing of all records relating to the arrest if the charges were dismissed or the person was acquitted of the charges. (NRS 179.255) **Section 1.3** of this bill authorizes such a person to petition for the sealing of all records relating to an arrest if the prosecuting attorney declines to prosecute the charges.

Existing law also provides that a person arrested, or issued a citation or a warrant, for alleged criminal conduct may apply to the Central Repository for Nevada Records of Criminal History to remove the record of criminal history if the charge was dismissed, acquittal was entered or the disposition of the charge was favorable to the accused. (NRS 179A.160) **Section 1.7** of this bill authorizes such a person to apply to have the record of criminal history removed if the prosecuting attorney declined to prosecute the charges.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[~~omitted material~~]** is material to be omitted.

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

**Section 1.** NRS 209.4465 is hereby amended to read as follows:

209.4465 1. An offender who is sentenced to prison for a crime committed on or after July 17, 1997, who has no serious infraction of the regulations of the Department, the terms and conditions of his or her residential confinement or the laws of the State recorded against the offender, and who performs in a faithful, orderly and peaceable manner the duties assigned to the offender, must be allowed:

(a) For the period the offender is actually incarcerated pursuant to his or her sentence;

(b) For the period the offender is in residential confinement; and

(c) For the period the offender is in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888,

➥ a deduction of 20 days from his or her sentence for each month the offender serves.

2. In addition to the credits allowed pursuant to subsection 1, the Director may allow not more than 10 days of credit each month for an offender whose diligence in labor and study merits such credits. In addition to the credits allowed pursuant to this subsection, an offender is entitled to the following credits for educational achievement:

(a) For earning a general educational development certificate, 60 days.

(b) For earning a high school diploma, 90 days.

(c) For earning his or her first associate degree, 120 days.

3. The Director may, in his or her discretion, authorize an offender to receive a maximum of 90 days of credit for each additional degree of higher education earned by the offender.

4. The Director may allow not more than 10 days of credit each month for an offender who participates in a diligent and responsible manner in a center for the purpose of making restitution, program for reentry of offenders and parolees into the community, conservation camp, program of work release or another program conducted outside of the prison. An offender who earns credit pursuant to this subsection is eligible to earn the entire 30 days of credit each month that is allowed pursuant to subsections 1 and 2.

5. The Director may allow not more than 90 days of credit each year for an offender who engages in exceptional meritorious service.

6. The Board shall adopt regulations governing the award, forfeiture and restoration of credits pursuant to this section.

7. Except as otherwise provided in subsection 8, credits earned pursuant to this section:

(a) Must be deducted from the maximum term imposed by the sentence; and

(b) Apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole.

8. Credits earned pursuant to this section by an offender who has not been convicted of:

(a) Any crime that is punishable as a felony involving the use or threatened use of force or violence against the victim;

(b) A sexual offense that is punishable as a felony;

(c) A violation of NRS 484C.110, 484C.120, 484C.130 or 484C.430 that is punishable as a felony; ~~[or]~~

(d) ***Being a habitual criminal pursuant to NRS 207.010, a habitual felon pursuant to NRS 207.012 or a habitually fraudulent felon pursuant to NRS 207.014; or***

***(e)*** ~~[A]~~ ***Except as otherwise provided in subsection 9, a*** category A or B felony,

➥ apply to eligibility for parole and must be deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and must be deducted from the maximum term imposed by the sentence.

***9. Credits earned by an offender who has been convicted of a category B felony apply to eligibility for parole, must be deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and must be deducted from the maximum term imposed by the sentence if the offender:***

***(a) Has not been convicted of an offense listed in paragraphs (a) to (d), inclusive, of subsection 8;***

***(b) Has not served three or more separate terms of imprisonment for three separate felony convictions in this State;***

***(c) Has not served five or more separate terms of imprisonment for five separate felony convictions, regardless of the jurisdiction in which the offender was convicted;***

***(d) Is not serving a sentence for which an additional penalty was imposed for the use of a firearm pursuant to NRS 193.165; and***

***(e) Is not serving a sentence for violating the provisions of NRS 202.360.***

**Sec. 1.3.** NRS 179.255 is hereby amended to read as follows:

179.255 1. If a person has been arrested for alleged criminal conduct and the charges are dismissed ***, the prosecuting attorney having jurisdiction declined prosecution of the charges*** or such person is acquitted of the charges, the person may petition:

(a) The court in which the charges were dismissed, at any time after the date the charges were dismissed; ~~[or]~~

(b) ***The court having jurisdiction in which the charges were declined for prosecution, at any time after 180 days after the date of the declination; or***

***(c)*** The court in which the acquittal was entered, at any time after the date of the acquittal,

➥ for the sealing of all records relating to the arrest and the proceedings leading to the dismissal , ***declination*** or acquittal.

2. If the conviction of a person is set aside pursuant to NRS 458A.240, the person may petition the court that set aside the conviction, at any time after the conviction has been set aside, for the sealing of all records relating to the setting aside of the conviction.

3. A petition filed pursuant to subsection 1 or 2 must:

(a) Be accompanied by a current, verified record of the criminal history of the petitioner received from the local law enforcement agency of the city or county in which the petitioner appeared in court;

(b) Include a list of any other public or private agency, company, official and other custodian of records that is reasonably known to the petitioner to have possession of records of the arrest and of the proceedings leading to the dismissal , ***declination*** or acquittal and to whom the order to seal records, if issued, will be directed; and

(c) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

4. Upon receiving a petition pursuant to subsection 1, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the charges were dismissed , ***declined for prosecution*** or the acquittal was entered in a district court or justice court, the prosecuting attorney for the county; or

(b) If the charges were dismissed , ***declined for prosecution*** or the acquittal was entered in a municipal court, the prosecuting attorney for the city.

➥ The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

5. Upon receiving a petition pursuant to subsection 2, the court shall notify:

(a) If the conviction was set aside in a district court or justice court, the prosecuting attorney for the county; or

(b) If the conviction was set aside in a municipal court, the prosecuting attorney for the city.

➥ The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

6. If, after the hearing on a petition submitted pursuant to subsection 1, the court finds that there has been an acquittal ***, that the prosecution was declined*** or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal ***, declination*** or dismissal which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

7. If, after the hearing on a petition submitted pursuant to subsection 2, the court finds that the conviction of the petitioner was set aside pursuant to NRS 458A.240, the court may order sealed all records relating to the setting aside of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

***8. If the prosecuting attorney having jurisdiction previously declined prosecution of the charges and the records of the arrest have been sealed, the prosecuting attorney may subsequently file the charges at any time before the running of the statute of limitations for those charges. If such charges are filed with the court, the court shall order the inspection of the records without the prosecuting attorney having to petition the court pursuant to NRS 179.295.***

**Sec. 1.5.** NRS 179.295 is hereby amended to read as follows:

179.295 1. The person who is the subject of the records that are sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 may petition the court that ordered the records sealed to permit inspection of the records by a person named in the petition, and the court may order such inspection. Except as otherwise provided in this section ***, subsection 8 of NRS 179.255*** and NRS 179.259 and 179.301, the court may not order the inspection of the records under any other circumstances.

2. If a person has been arrested, the charges have been dismissed and the records of the arrest have been sealed, the court may order the inspection of the records by a prosecuting attorney upon a showing that as a result of newly discovered evidence, the person has been arrested for the same or a similar offense and that there is sufficient evidence reasonably to conclude that the person will stand trial for the offense.

3. The court may, upon the application of a prosecuting attorney or an attorney representing a defendant in a criminal action, order an inspection of such records for the purpose of obtaining

information relating to persons who were involved in the incident recorded.

4. This section does not prohibit a court from considering a conviction for which records have been sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 in determining whether to grant a petition pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 for a conviction of another offense.

**Sec. 1.7.** NRS 179A.160 is hereby amended to read as follows:

179A.160 1. If a person has been arrested or issued a citation, or has been the subject of a warrant for alleged criminal conduct and the person is acquitted of the charge or the disposition of the charge is favorable to the person, at any time after the charge is dismissed, acquittal is entered or disposition of the charge in favor of the person is final, the person who is the subject of a record of criminal history relating to the arrest, citation or warrant may apply in writing to the Central Repository and the agency which maintains the record to have it removed from the files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a person.

2. ***If a person has been arrested or issued a citation, or has been the subject of a warrant for alleged criminal conduct and the prosecuting attorney having jurisdiction declined prosecution, at any time after 180 days after the declination, the person who is the subject of a record of criminal history relating to the arrest, citation or warrant may apply in writing to the Central Repository and the agency which maintains the record to have it removed from the files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a person.***

*3.* The Central Repository and the agency shall remove the record unless:

(a) The defendant is a fugitive;

(b) The case is under active prosecution according to a current certificate of a prosecuting attorney;

(c) The disposition of the case was a deferred prosecution, plea bargain or other similar disposition;

(d) The person who is the subject of the record has a prior conviction for a felony or gross misdemeanor in any jurisdiction in the United States; or

(e) The person who is the subject of the record has been arrested for or charged with another crime, other than a minor traffic

violation, since the arrest, citation or warrant which the person seeks to have removed from the record.

~~[3.]~~ *4.* This section does not restrict the authority of a court to order the deletion or modification of a record in a particular cause or concerning a particular person or event.

**Sec. 2.** For the purpose of calculating the credits earned by an offender pursuant to NRS 209.4465, the amendatory provisions of section 1 of this act must be applied:

1. Retroactively to January 1, 2005, to reduce the minimum term of imprisonment of an offender described in subsections 8 and 9 of NRS 209.4465, as amended by section 1 of this act, who was placed in the custody of the Department of Corrections before January 1, 2012, and who remains in such custody on January 1, 2012.

2. Retroactively to January 1, 2011, to reduce the maximum term of imprisonment of an offender who was placed on parole before January 1, 2012.

3. In the manner set forth in NRS 209.4465 for all offenders in the custody of the Department of Corrections commencing on January 1, 2012, and for all offenders who are on parole commencing on January 1, 2012.

**Sec. 3.** This act becomes effective on January 1, 2012.

OJP DIAGNOSTIC CENTER
Data-Driven Crime Solutions

# Diagnostic Center Status Report
# ACAJ Work Session – October 21, 2014

The purpose of this interim report is to provide supporting documentation and evidence for the recommendations presented to the Advisory Commission on the Administration of Justice (ACAJ) on October 21, 2014.

On behalf of Nevada Governor Brian Sandoval, Nevada Department of Corrections (NDOC) Director Greg Cox requested the U.S. Department of Justice, Office of Justice Programs Diagnostic Center evaluate the definition and population of Category B felony offenders to bring about more consistency and fairer sentencing. Initial research of Category B felony offenses revealed historical legislative acts impacted the application of good time credit for Category B felony offenses and resulted in shifts in the prison population. In evaluating this, the Diagnostic Center agreed to assist the State of Nevada in the implementation of data-driven strategies to:

1. Evaluate sentencing models and apply evidence-based solutions; and
2. Determine what Category B offenses, if any, can be classified to other categories (increase or decrease in severity) for more consistency and fairer sentencing.

During the interim, Diagnostic Center Senior Advisor Steve Rickman and Diagnostic Specialist Jessica Herbert interviewed stakeholders and reviewed Nevada state legislation, national legislative trends and Category B offender data from NDOC and Clark County Sheriff's Office.

In August 2014, this preliminary data analysis was presented to a focus group of ACAJ members. In addition to general NDOC population trends and demographics, six (6) scenarios were presented to the focus group. Based on preponderance of views expressed during the focus group, the following recommendations were made:

Recommendation I: Draft legislation to extend A.B. 510 credits to all Category B felons, excluding those convicted of crimes with physical harm. In addition, allow judges to use discretion to exclude eligibility of good time credits for all other Category B felony offenses based on aggravating factors such as: threatened physical harm, significant financial harm and extensive criminal history.

Recommendation II: Draft legislation to increase drug thresholds for Category B trafficking offenses to mirror national drug legislation trends.

Recommendation III: Draft legislation to statutorily differentiate between residential and commercial burglaries. This recommendation seeks to differentiate between a burglary and a theft—where no forced entry is committed—in a commercial location.

**The Strain of Correctional Budgets**

Between 1980 and 1995, the United States' total prison population increased 242 percent, reaching an estimated 1.1 million offenders.[1] Research shows this was a steady increase and has reached unsustainable levels.[2] Truth-in-sentencing and mandatory minimum sentencing practices are contributors to these trends.

In addition, there are other factors that increased budgets for criminal justice agencies.

- Operational costs of correctional facilities rose to support the increase in population. In 2001, the national average cost per inmate was $22,650 per year, or $62.05 per day.[3] By 2010, the average cost per inmate ranged from $31,286 to $60,076 annually.[4] Although Nevada's annual rates remain lower than other states, the overall increase strains the correctional budget.[5]
- One effect of longer sentencing is the rising age of incarcerated persons. In July 2014, the PEW Charitable Trusts reported the number of persons over the age of 55 in state and federal prisons increased 204 percent between 1999 and 2012.[6]
- From 2005 to 2011, the number of female offenders increased by 16 percent nationwide – 36% in Nevada alone. This increases medical costs due to special needs and circumstances.[7]

**Alternative Sentencing and Reduction of Costs**

The unintended consequences to truth-in-sentencing and mandatory minimum sentencing models resulted in state and federal reforms, such as the Second Chance Act of 2008, the Fair Sentencing Act of 2010 and the Sentencing Reform Act. These laws created alternative sentencing options, increased program funding for rehabilitative services and promoted partnerships across all criminal justice stakeholders (judicial, legislative, law enforcement, probation and parole).[8]

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[1] Federation of American Scientists. 1996. "GAO -Federal And State Prisons: Inmate Populations, Costs, And Projection Models (Letter Report, 11/25/96, GAO/GGD-97-15)." Accessed June 26 2014. http://fas.org/irp/gao/ggd97015.htm.
[2] Federation of American Scientists. 1996. "GAO -Federal And State Prisons: Inmate Populations, Costs, And Projection Models (Letter Report, 11/25/96, GAO/GGD-97-15)." Accessed June 26 2014. http://fas.org/irp/gao/ggd97015.htm.
[3] Stephan, James J.2004. "State Prison Expenditures, 2001." Bureau of Justice Statistics. Accessed on July 17, 2014. http://www.bjs.gov/content/pub/pdf/spe01.pdf.
[4] Henrichson, Christian and Ruth Delaney. 2012. "The Price of Prisons: What Incarceration Costs Taxpayers." Vera Institute of Justice, Center on Sentencing and Corrections. Accessed on July 17, 2014. http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf.
[5] Henrichson, Christian and Ruth Delaney. 2012. "The Price of Prisons: What Incarceration Costs Taxpayers." Vera Institute of Justice, Center on Sentencing and Corrections. Accessed on July 17, 2014. http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf.
[6] PEW Charitable Trusts. 2014. "Managing Prison Health Care Spending." Accessed July 17, 2014. http://www.pewtrusts.org/en/research-and-analysis/reports/2014/05/15/managing-prison-health-care-spending.
[7] PEW Charitable Trusts. 2014. "Public Safety, Public Spending: Forecasting America's Prison Population 2007-2011." Accessed July 17, 2014. http://www.pewtrusts.org/en/research-and-analysis/reports/2007/02/14/public-safety-public-spending-forecasting-americas-prison-population-20072011.
[8] United States Courts. Task Force Urged to Curb Over-Federalization of Criminal Law. 2014. Accessed July 17, 2014. http://news.uscourts.gov/task-force-urged-curb-over-federalization-criminal-law. See also, The Sentencing Project, "Policy Brief: Fewer Prisoners, Less Crime." Accessed October 7, 2014. http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf.

Individual state research, such as in Illinois, evaluated the impact of truth-in-sentencing. Much of this research confirms the rise of prison populations even if the numbers of admitted offenders does not increase.[9] The state of Wisconsin began sentencing reforms in the early 2000s to address requests for certainty and uniformity of incarceration lengths.[10] More recent reforms in other states as part of the Justice Reinvestment Initiative (JRI) Act include mandatory reentry programs, reallocation of funding to programs and treatment options and intermediate sanctions.

The states outlined below have diverted from truth in sentencing and/or mandatory minimums and as a result have seen significant changes to their criminal justice system:

- Kentucky implemented mandatory reentry supervision programs, resulting in a 30 percent reduction in new offense rates, saving of 872 prison beds per year and providing an overall savings of $29 million in the first year of the program.[11]
- Georgia and Texas adopted reforms to better fund probation and parole departments, and drug and community treatment facilities, resulting in over $2 billion in savings.[12]
- Texas' Right on Crime reform campaign offers alternatives to incarceration for juveniles and adults. The state legislature changed mandatory sentencing crimes and increased funding for probation and parole to employ evidence-based supervision practices.[13]
- Oregon focused on low-level property and drug possession offenses, adjusting those sentencing structures and focusing on results-oriented policy statements and rehabilitative options so when an offender does get out of prison, they are productive in society.[14]

[9] Olson, David E. 2013. "Drivers of the Sentenced Population: Length of Time Served in Prison." Loyola University Chicago. Accessed July 16, 2014. http://works.bepress.com/cgi/viewcontent.cgi?article=1021&context=david_e_olson.
[10] Wisconsin Briefs. 2002. Legislative Reference Bureau. Brief 02-7. Accessed July 17, 2014. http://legis.wisconsin.gov/lrb/pubs/wb/02wb7.pdf.
[11] PEW Charitable Trusts. 2014. "Kentucky Mandatory Reentry Supervision." Accessed June 26 2014. Accessed July 17, 2014. http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/06/kentucky-mandatory-reentry-supervision.
[12] Towns, Zoe. 2014. Justice Reinvestment In Oregon. The PEW Center on the States. Accessed on July 17, 2014. http://www.oregon.gov/CJC/docs/2012_cps_meeting_1_zoe.pdf
[13] Right on Crime. State Reform Statistics. Accessed on July 22, 2014. www.rightoncrime.com.
[14] The Urban Institute. 2014. "Justice Reinvestment State Assessment Report." Accessed on July 17, 2014. http://www.urban.org/UploadedPDF/412994-Justice-Reinvestment-Initiative-State-Assessment-Report.pdf. See also http://www.urban.org/UploadedPDF/412879-the-justice-reinvestment-initiative.pdf.

**Evidence supporting Recommendation I:**

**Expanding Application of Good Time Credits**

The rising costs of incarceration are no longer sustainable for state budgets. This recommendation allows for nonviolent offenders to be eligible for good time credits, potentially decreasing the length of sentences and saving costs. The recommendation also allows for the use of judicial discretion to further exclude other Category B offenders based on aggravating factors to isolate more serious or repeat offenders.

Approximately 29 state legislatures enacted reforms to release low-level, nonviolent offenders. These approaches include:[15]

1. Expanding judicial discretion,
2. Limiting automatic sentence enhancements, and
3. Repealing or revising mandatory minimum sentences.

The goal of this recommendation is to encourage fairer and consistent sentencing practices while expending fewer state resources.

**Evidence supporting Recommendation II:**

**National Trends on Drug Legislation**

In the past decade, federal drug policies have been shifting to distinguish between low-level users and major drug traffickers. While the Smarter Sentencing Act of 2014 suggests courts decrease sentence lengths of federal drug offenders, individual states have led the way to decrease jail populations and focus funding toward substance abuse and treatment options.

New York City changed its policies and practices that affected enforcement and sentencing of drug offenses, contributing to a 26 percent decrease in the prison population between 1999 and 2012.[16] New Jersey saw a 26 percent reduction in its prison population during the same time frame through reforms affecting admissions, sentence lengths and increased rates of parole.[17] Both states experienced a greater decrease in crime as compared to national rates.

[15] Vera Institute. February 2014. "Playbook for Change? States Reconsider Mandatory Sentences." Accessed October 10, 2014. http://www.vera.org/sites/default/files/resources/downloads/mandatory-sentences-policy-report-summary-v3.pdf.
[16] The Sentencing Project, "Policy Brief: Fewer Prisoners, Less Crime." Accessed October 7, 2014. http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf.
[17] The Sentencing Project, "Policy Brief: Fewer Prisoners, Less Crime." Accessed October 7, 2014. http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf.

Between 2009 and 2013, 26 states eased drug thresholds and/or duration of drug offense sentences.[18] Each of these states has unique offense categorizations, however some trends include:[19]

- Eliminating mandatory minimum sentencing;
- Distinguishing drug users and addicts from career criminals;
- Allowing for probation, suspended sentences, parole, earned time and work release for third or subsequent drug offenses if the weight threshold is below the trafficking level;
- Decreasing the categorization of drug offenses to lower felony categories;
- Decreasing the sentencing ranges for offenders;
- Creating provisions to consider low-level traffickers to be eligible for intervention programs; and
- Using alternative sentencing methods (e.g. house arrest, intense supervision, electronic monitoring) for low-quantity drug felonies.

Initial analysis of these trends does not suggest there is an adverse impact on crime; some states continue to report a decline in crime.[20]

**Evidence supporting Recommendation III:**

**Burglary versus Larceny/Theft Offenses**

At a national level, burglary offenses are defined as a forced entry of a property with the intent to commit a felony offense. Nevada's current definition also allows for the inclusion of theft from commercial property without forced entry. As written, this statute applies to shoplifting offenders, regardless of the value of the stolen property, resulting in lengthy sentences as well as the exclusion of the sentencing credits for low-level offenders. This disparity with national legislation has been voiced by Nevada stakeholders as a large concern in the distribution of justice.

Recommendation III seeks to draft legislation to differentiate between residential and commercial property offense locations by requiring that a forced entry must occur at the commercial offense location in order to qualify as a burglary offense. The theft of items from commercial properties (e.g., grocery stores, retail locations) not involving forced entry would be charged as larceny/theft cases. Thefts from homes, resort/hotel rooms or other properties would continue to be charged under the refined burglary statute.

**Steps for the future**

The goal of these reforms is to prevent the exhaustion of state correctional resources and potentially expand evidence –based community-programs to increase public safety. Several states continue to enact sentencing reforms, participate in JRI and use alternative sentencing programs to reshape their prison population. These

[18] Desilver, Drew. "Feds may be rethinking the drug war, but states have been leading the way." Pew Research Center. Accessed October 7, 2014. Found at http://www.pewresearch.org/fact-tank/2014/04/02/feds-may-be-rethinking-the-drug-war-but-states-have-been-leading-the-way/.

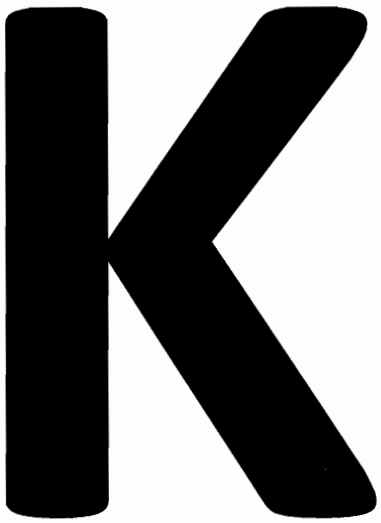
[19] The Pew Center on the States, Justice Reinvestment Initiative state review.

[20] Pew Charitable Trusts, *Time Served: The High Cost, Low Return of Longer Prison Terms,* June 2012.

states have experienced decreases in recidivism, operational costs and certain crimes. However, more research and evaluation is needed to ensure trends are not reversed.

For Nevada, the Diagnostic Center suggests reviewing the entire categorization of criminal offenses and corresponding sentencing guidelines. This evaluation, similar to the analysis for Category B offenses, will provide other opportunities to employ evidence–based prison alternatives and avoid increasing corrections costs while maintaining public safety.

We will continue with our analysis on category B offenses including impacts of potential changes and provide a complete report within the next 90 days.



TICK SEGERBLOM
SENATOR
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# State of Nevada
# Senate

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January 5, 2015

The Honorable Brian Sandoval
Nevada State Governor
101 North Carson Street
Carson City, NV 89701

The Honorable Ben Kieckhefer
Nevada State Senate
Chair, Senate Committee on Finance
10045 Goler Wash Court
Reno, NV 89521-3029

The Honorable Paul Anderson
Nevada State Assembly
Chair, Assembly Committee on Ways and Means
5540 East Cartwright Avenue
Las Vegas, NV 89110

Dear Governor Sandoval, Senator Kieckhefer and Assemblyman Anderson:

On behalf of the members of the Advisory Commission on the Administration of Justice (NRS 176.0123), I am writing to you today to ask for your continued and much needed support of the criminal justice system as you prepare the budget for the upcoming biennium.

As you are probably aware, throughout the 2013-14 interim, the Advisory Commission considered many significant policy recommendations impacting Nevada's system of criminal justice. During a work session held on October 21, 2014, the Advisory Commission unanimously voted to request the drafting of this letter to highlight three pressing needs in the area of criminal justice.

First, the Advisory Commission believes that it is imperative to adequately fund the State's criminal justice agencies. Throughout the Great Recession, our State agencies have faced reduced budgets, along with staffing cuts and employee attrition. In light of these fiscal needs, the Advisory Commission felt it was important to highlight the need to fund appropriate staffing levels, information technology advancements, and technical assistance opportunities for the Division of Parole and Probation, the Department of Corrections and the Board of Parole Commissioners. The Division of Parole and Probation has confronted tremendous staffing shortfalls, especially in the area of preparing presentence investigation reports within the time required. The Department of Corrections has similarly faced issues in employee retention, and the Board of Parole Commissioners has continued to manage one of the highest caseloads in the United States.

Second, the Advisory Commission would urge your support for the Supreme Court's $3 million general fund budget request for the operation of our specialty courts. Throughout the interim, the Advisory Commission heard from numerous presenters on the compelling need for specialty court funding. The Advisory Commission is aware that the amount of money received for specialty courts is well below projected levels because administrative assessments are not being collected or assessed. Specialty court programs currently being operated in Nevada include: adult drug courts, mental health court; felony DUI court; veteran's court; a family drug court; family mental health court; juvenile drug court; and a prison reentry court. The Advisory Commission feels strongly that a properly funded and self-sustaining specialty court program is key to reducing recidivism and saving incarceration costs.

Third, the Advisory Commission urges you to consider budgetary funding for a statewide computer database to track criminal records and adjudications. Over the years, the Advisory Commission has heard from a number of policy experts that Nevada is extremely lacking in criminal justice information gathering and statistical information. This is due largely in part to having 17 different judicial districts that do not have the technological capability to share records with each other and the other criminal justice agencies, such as the Division of Parole and Probation, the Department of Corrections and the Board of Parole Commissioners. It was also noted that a statewide criminal database would be helpful in tracking DNA records and identifying non-convicted records for expungement.

Thank you for your consideration of these three paramount fiscal issues affecting the criminal justice system in Nevada. As Chair of the Advisory Commission, it is my pledge to continue to work with you during the Legislative Session to ensure the viability and successful operation of our criminal justice system.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

Senator Tick Segerblom, Chair
Advisory Commission on the
Administration of Justice

On behalf of members:

Justice James Hardesty, Supreme Court, Vice Chair
Senator Greg Brower
Assemblyman Wes Duncan
Assemblyman Jason Frierson
Judge David Barker, Eighth Judicial District Court
Connie Bisbee, Chair, Board of Parole
Chuck Callaway, Police Director, METRO
Catherine Cortez Masto, Attorney General
James "Greg" Cox, Director, NDOC
Larry Digesti, Representative, State Bar of Nevada
Lisa Morris Hibbler, Victims Rights Advocate
Mark Jackson, Douglas County District Attorney
Phil Kohn, Clark County Public Defender
Jorge Pierrott, Sergeant, Parole and Probation
Richard Siegel, ACLU of Nevada
D. Eric Spratley, Lieutenant, WCSO

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January 5, 2015

Steve Gresko
CODIS Administrator
Forensic Science Division
Washoe County Sheriff's Office
911 Parr Blvd.
Reno, NV 89512

Julie Butler
Division Administrator
Central Repository of Nevada Records of Criminal History
333 W. Nye Lane, Suite 100
Carson City, Nevada 89706

Dear Mr. Gresko and Ms. Butler:

On behalf of the members of the Advisory Commission on the Administration of Justice (NRS 176.0123), I am writing to you today to encourage your agencies to work together to continue to review and study the DNA records expungement process.

As you are aware, during the 2013-14 interim, the Advisory Commission devoted a significant amount of time and energy to the issue of DNA records. Pursuant to Senate Bill No. 243 (2013), the Advisory Commission appointed a Subcommittee to Review Arrestee DNA. That Subcommittee, chaired by Steven Yeager, met several times and considered broad testimony from both in-state and out of state policy experts. During the course of their discussions, much focus was devoted to the issue of expunging the DNA records of persons who were not ultimately convicted.

As such, the Subcommittee recommended, and the full Advisory Commission unanimously requested, the drafting of this letter encouraging you to work collaboratively to research and review the processes and procedures of the seven states that currently utilize automatic expungement for arrestee DNA records. We anticipate that your research will continue to

further develop best practices should Nevada choose to proceed with automatic expungement in the future. Finally, it is the hope of the Advisory Commission that this research may be completed for our review during the next interim.

Thank you again for all of your hard work towards the successful implementation of Senate Bill No. 243. On behalf of the members of the Advisory Commission, I look forward to continuing to work with you on the emerging issues surrounding DNA records and the expungement process.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

Senator Tick Segerblom, Chair
Advisory Commission on the
Administration of Justice

On behalf of members:

Justice James Hardesty, Supreme Court, Vice Chair
Senator Greg Brower
Assemblyman Wes Duncan
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Phil Kohn, Clark County Public Defender
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Richard Siegel, ACLU of Nevada
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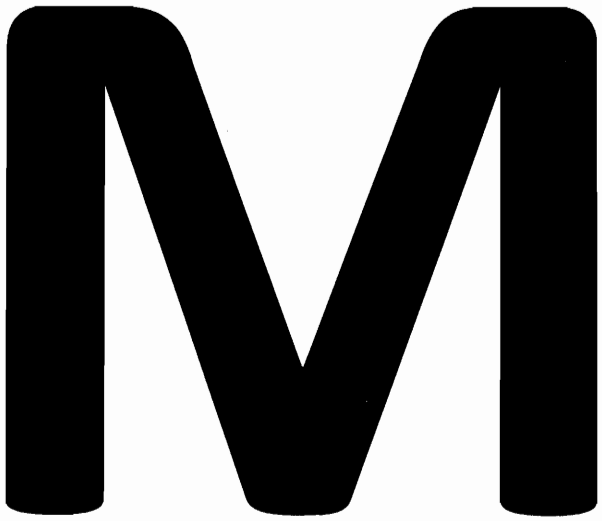

# MEMORANDUM

DATE: December 3, 2014

TO: Members of the Advisory Commission on the Administration of Justice

FROM: Nicolas Anthony, Senior Principal Deputy Legislative Counsel

SUBJECT: Update on Pew Justice Reinvestment Summit and Pew Results First Initiative

At the Advisory Commission on the Administration of Justice's meeting held on October 21, 2014, several members of the Commission requested an update as to ongoing research and continuing staff communication with the Pew Charitable Trusts (regarding the Justice Reinvestment Initiative process). This memorandum responds to that request and provides an update as to staff's recent involvement with Pew on several fronts.

As you may be aware, several Commission members were recently invited to a National Justice Reinvestment Summit held by the Pew Charitable Trusts. Simultaneously, members from the Pew-McArthur Results First Initiative convened a set of Policy Overview and Technical Working Group meetings in Carson City.

## JUSTICE REINVESTMENT SUMMIT

On November 17-19, 2014, the Pew Charitable Trusts along with the Justice Center of the Council of State Governments and the Bureau of Justice Assistance of the U.S. Department of Justice held a joint Justice Reinvestment National Summit in San Diego, California. A copy of the Conference Agenda, along with supporting materials from recent justice reinvestment reforms in other states, is attached for your review.

The National Summit provided a platform to learn about new trends in justice reinvestment including: trends in other states (such as California's passage of Assembly Bill 109 (2011) and Proposition 47 (2014)); leading change in the Legislature; what works in drug policy; data driven justice reforms; juvenile justice; and performance measures. Several plenary sessions focused on the growing bipartisan support to curb criminal justice spending and better utilize resources to protect communities. Attendees heard from national policy experts such as former Speaker Newt Gingrich, Grover Norquist and Van Jones.

## RESULTS FIRST INITIATIVE

The Results First Initiative is a joint project of the Pew Charitable Trusts and the MacArthur Foundation, which works with states to implement cost-benefit analysis that helps states invest in policies and programs that are proven to work. Results First studies individual programs in states and then compares that information on a dollar-cost basis to programs that are working in other states. Attached for your information are two issue briefs which provide an overview and greater background.

On November 17-18, 2014, Results First consultants from the Pew Charitable Trusts convened two meetings in Carson City to provide an overview of the Results First Initiative. As described by the consultants, Results First intends to begin with a review of the programs within the adult criminal justice system in Nevada. It is anticipated that the project could then be expanded into other policy areas such as juvenile justice and child welfare.

The two meetings in Carson City were attended by representatives of the Legislature, Judiciary, Nevada Department of Corrections, Board of Parole Commissioners, Division of Parole and Probation, as well as representatives from numerous criminal justice agencies throughout the State. During the initial meeting on November 17, 2014, it was indicated that Results First typically takes about one year to implement. As such, and in light of the impending 2015 Legislative Session, several participants thought that it might be beneficial to wait on applying for Results First until after the conclusion of the 2015 Legislative Session. With that said, technical stakeholders from various state agencies are still planning on meeting to gather preliminary data over the next several months. The Nevada Department of Corrections has voluntarily agreed to begin taking a preliminarily inventory of their existing programs.

In terms of next steps, the Results First representatives asked for a formal letter of commitment from the new legislative leadership, the Governor and the Judiciary. At present, staff is continuing to work with the three branches of government to gauge their level of support and commitment as to timing and resources.

## CONCLUDING REMARKS

I trust this information is helpful. Should you have any questions, please do not hesitate to contact me at (775) 684-6830 or nanthony@lcb.state.nv.us.

# N

# LEGAL INTERVENTIONS TO REDUCE OVERDOSE MORTALITY: NALOXONE ACCESS AND OVERDOSE GOOD SAMARITAN LAWS

## Background

Fatal drug overdose has increased more than six-fold in the past three decades, and now claims the lives of over 36,000 Americans every year.[1] Nearly 15,000 of these deaths are known to have been caused by opioids, and the actual number is likely higher.[2] This increase is mostly driven by prescription opioids such as oxycontin and hydrocodone, which now account for more overdose deaths than heroin and cocaine combined.[3] Opioid overdose is typically reversible through the timely administration of the drug naloxone and the provision of emergency care.[4] However, access to naloxone and other emergency treatment is often limited by laws and that pre-date the overdose epidemic. In an attempt to reverse this unprecedented increase in preventable overdose deaths, a number of states have recently amended those laws to increase access to emergency care and treatment for opiate overdose.

## Law as both problem and solution

Although naloxone (commonly known by its trade name, Narcan) is a prescription drug, it is not a controlled substance and has no abuse potential.[5] It is regularly carried by medical first responders and can be administered by ordinary citizens with little or no formal training.[6] Yet, it is often not available when and where it is needed. Because opioid overdose often occurs when the victim is with friends or family members, those people may be the best situated to act to save his or her life by administering naloxone. Unfortunately, neither the victim nor his companions typically carry the drug. Law is at least partially responsible for this lack of access. State practice laws generally discourage or prohibit the prescription of drugs to a person other than the intended recipient (a process referred to as third-party prescription) or to a person the physician has not personally examined (a process referred to as prescription via standing order). Additionally, some prescribers are wary of prescribing naloxone because of liability concerns.[7] Likewise, even where naloxone is available, bystanders to a drug overdose may be afraid to administer it for fear of civil or criminal repercussions.[8] Finally, overdose bystanders may fail to summon medical assistance for fear of arrest, particularly for existing warrants as well as drug crimes such as possession of paraphernalia or controlled substances.[9]

Since most of these barriers are rooted in unintended consequences of laws passed for other purposes, they may be addressed through relatively simple changes to those laws. At the urging of organizations including the U.S. Conference of Mayors, the American Medical Association and the American Public Health Association, a number of states have addressed the overdose epidemic by removing some legal barriers to the seeking of emergency medical care and the timely administration of naloxone.[10] These changes come in two general varieties: the first encourages the wider prescription and use of naloxone by clarifying that prescribers acting in good faith may prescribe the drug to persons who may be able to use it to reverse overdose and by removing the possibility of negative legal action against prescribers and lay administrators. The second type encourages bystanders to become "Good Samaritans" by summoning emergency responders without fear of arrest or other negative legal consequences.[11]

## Overview of naloxone access and Good Samaritan laws

In 2001, New Mexico became the first state to amend its laws to make it easier for medical professionals to prescribe and dispense naloxone, and for lay administrators to use it without fear of legal repercussions.[12] As of March 15, 2014, seventeen other states (NY, IL, WA, CA, RI, CT, MA, NC, OR, CO, VA, KY, MD, VT, NJ, OK and OH) and the District of Columbia have made similar changes.[13] Based partly on these changes, at least 188 community-based overdose prevention programs now distribute naloxone. As of 2010, those programs had provided training and naloxone to over 50,000 people, resulting in over 10,000 overdose reversals.[14] A recent evaluation of one such program in Massachusetts, which trained over 2,900 potential overdose bystanders, reported that opioid overdose death rates were significantly reduced in communities in which the program was implemented compared to those in which it was not.[15]

In 2007, New Mexico became the first state to amend its laws to encourage Good Samaritans to summon aid in the event of an overdose. As of March 15, 2014, thirteen other states (WA, NY, CT, IL, CO, RI, FL, MA, CA, NC, NJ, VT, and DE) and the District of Columbia have followed suit.[16] Additionally, Alaska law explicitly requires courts to take the fact that a Good Samaritan summoned medical assistance into account at sentencing, and Maryland law permits courts to consider that fact in mitigation.[17] Initial evidence from Washington state, which amended its law in 2010, is positive, with 88 percent of drug users surveyed indicating that they would be more likely to summon emergency personnel during an overdose as a result of the legal change.[18]

The following tables document laws that have been amended or enacted to increase access to naloxone and encourage bystanders to summon medical assistance in the event of overdose. Tables 1 and 1a cover laws aimed at increasing lay access to naloxone by reducing barriers to prescription and administration ("state naloxone access laws"). Tables 2 and 2a address criminal concerns for Good Samaritans who summon aid in overdose situations ("state overdose Good Samaritan laws"). Tables 1 and 2 are broken down into columns, with each column identifying whether a particular state law addresses a certain characteristic. Tables 1a and 2a provide more detailed descriptions of each law, with quotes from those laws where practicable. For those states that have passed laws too recently for those laws to have been codified, only the relevant bill is listed. This chart will be updated regularly to reflect changes in this rapidly evolving area of law.

Note that these tables cover only laws that were passed specifically to address drug overdose. That does not necessarily mean the activities covered by the laws in these tables are not permitted in other states, only that they are not explicitly authorized by laws created for that purpose. For example, North Carolina's Project Lazarus, which has seen marked success using an integrated model that includes partnering with local physicians, pharmacists and law enforcement officials, operated for many years without the benefit of explicit authorizing legislation.[19] Additionally, existing Good Samaritan laws may provide an overdose Good Samaritan some protection, particularly from civil action.[20] The categories listed were chosen because of their prevalence in existing laws and may not necessarily reflect best practices.[21]

## Conclusion

Opioid overdose kills thousands of Americans every year. Many of those deaths are preventable through the timely provision of a relatively cheap, safe and effective drug and the summoning of emergency responders. As with most public health problems, there is no magic bullet to preventing overdose deaths. A comprehensive solution that includes input and active involvement from medical providers, policy makers and public health, law enforcement and elected officials is likely necessary to create large-scale, lasting change. Evaluation is necessary to ensure that legal changes have the intended effect and to suggest additional amendments.[22]

However, it is reasonable to believe that laws that encourage the prescription and use of naloxone and the timely seeking of emergency medical assistance will have the intended effect of reducing opioid overdose deaths. Since such laws have few if any foreseeable negative effects, can be implemented at little or no cost, and will likely save both lives and resources, they may represent some of the lowest-hanging public health fruit available to policymakers today.

# Table 1: Characteristics of state naloxone access laws

**As of March 15, 2014**

| State | Citation | Effective date | Removes civil liability for prescribers | 3rd party prescription OK | Removes civil liability for lay administration | Removes criminal liability for prescribers | Removes criminal liability for lay administration | Lay administration not UPM[23] | State program created[24] | No criminal liability for possession of naloxone w/o prescription |
|---|---|---|---|---|---|---|---|---|---|---|
| NM | N.M. Stat. Ann. § 24-23-1 (2001) | Apr. 3, 2001 | - | - | Yes[25] | - | Yes[26] | - | - | - |
| NM | N.M. Stat. Ann. § 24-23-2 (2001) | Apr. 3, 2001 | Yes | - | - | Yes | - | - | - | - |
| NM | N.M.A.C. 7.32.7 (2001) | Sept. 13, 2001 | - | - | - | - | - | Yes[27] | Yes | - |
| CT | Conn. Gen. Stat. § 17a-714a (2003) | Oct. 1, 2003 | Yes | - | - | Yes | - | - | - | - |
| NY | N.Y. Pub. Health Law § 3309 (2009) | Apr. 1, 2006 | - | - | Yes[28] | - | - | Yes | Yes | - |
| NY | N.Y. Comp. Codes R. & Regs. Tit. 10, § 80.138 (2007) | Feb. 1, 2007 | - | Yes[29] | - | - | - | Yes[30] | Yes | - |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| CA[31] | Cal Civ Code § 1714.22 (2008)<br>(Replaced by new version as of Jan. 1, 2011) | Jan. 1, 2008 (originally set to sunset Jan 1, 2011) | Yes[32] | -[33] | - | Yes[34] | - | - | - | - |
| IL | 20 Ill. Comp. Stat. Ann. 301/5-23 (2010) | Jan 1. 2010 | - | Yes[35] | - | - | - | Yes[36] | Yes | Yes[37] |
| WA | Wash. Rev. Code § 69.50.315 (2010) | June 6, 2010 | - | - | - | - | Yes[38] | Yes[39] | - | Yes[40] |
| WA | Wash. Rev. Code §18.130.345 (2010) | June 10, 2010 | - | Yes | - | - | - | Yes | - | - |
| CA[41] | Cal Civ Code § 1714.22 (2011)<br>(Replaced by new version as of Jan. 1, 2014) | Jan. 1, 2011 (originally set to sunset Jan 1, 2015) | Yes[42] | -[43] | - | Yes[44] | - | Yes[45] | - | Yes[46] |
| RI | R.I. Gen. Laws § 21-28.8-3 (2012) | June 18, 2012<br>(sunsets July 1, 2015) | - | - | Yes | - | Yes | - | - | - |
| MA | Mass. Gen. Laws ch. 94c, § 34A (2012) | August 2, 2012 | - | - | Yes[47] | - | Yes[48] | Yes[49] | - | Yes |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| MA | Mass. Gen. Laws ch. 94c, § 19(d) (2012) | August 2, 2012 | -[50] | Yes | - | - | - | - | - | - |
| CT | Conn. Gen. Stat. § 17a-714a (2012) | Oct 1, 2012[51] | Yes | - | - | Yes | - | - | - | - |
| DC | Law L19-0243 (2012) | March 19, 2013 | - | - | Yes | - | Yes | - | - | Yes |
| NC | S.B. 20 (2013) | April 9, 2013 | Yes | Yes | Yes | Yes | Yes | Yes[52] | - | - |
| CO | S.B. 13-014 (2013) | May 10, 2013 | Yes | Yes | Yes | Yes | Yes | - | -[53] | - |
| OR | S.B. 384 (2013) | June 6, 2013 | - | Yes[54] | Yes[55] | - | - | - | -[56] | - |
| KY | H.B. 366 (2013) | June 25, 2013 | -[57] | Yes | Yes[58] | - | Yes | - | - | - |
| VA | H.B. 1672 (2013) | July 1, 2013 | - | Yes[59] | Yes[60] | - | Yes[61] | Yes | Yes | - |
| NJ | S.B. 2082 (2013) | July 1, 2013 | Yes[62] | Yes | Yes[63] | Yes | Yes[64] | -[65] | -[66] | Yes[67] |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| VT | ACT075 (2013) | July 1, 2013 | Yes | Yes | Yes | Yes | Yes | - | Yes | Yes |
| MD | S.B. 160 (2013) | Oct. 1, 2013 | -[68] | Yes | -[69] | - | Yes[70] | Yes | Yes | Yes[71] |
| OK | H.B. 1782 (2013) | Nov. 1, 2013 | -[72] | Yes[73] | -[74] | - | -[75] | - | - | - |
| CA | A.B. 635 (2013) | Jan. 1, 2014 | Yes | Yes[76] | Yes | Yes | Yes | Yes | -[77] | Yes |
| OH | H.B. 170 (2014) | Mar. 11, 2014 | Yes[78] | Yes | Yes | Yes | Yes | Yes | - | - |

# Table 1a: Summary of state naloxone access laws

As of March 15, 2014

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
|---|---|---|---|
| NM | N.M. Stat. Ann. § 24-23-1 (2001) | Apr. 3, 2001 | "A. A person authorized under federal, state or local government regulations, other than a licensed health care professional permitted by law to administer an opioid antagonist, may administer an opioid antagonist to another person if:<br>(1) he, in good faith, believes the other person is experiencing a drug overdose; and<br>(2) he acts with reasonable care in administering the drug to the other person.<br>B. A person who administers an opioid antagonist to another person pursuant to Subsection A of this section shall not be subject to civil liability or criminal prosecution as a result of the administration of the drug." |
| NM | N.M. Stat. Ann. § 24-23-2 (2001) | Apr. 3, 2001 | "A licensed health care professional, who is permitted by law to prescribe an opioid antagonist, if acting with reasonable care, may prescribe, dispense, distribute or administer an opioid antagonist without being subject to civil liability or criminal prosecution." |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
|---|---|---|---|
| NM | N.M.A.C. 7.32.7 (2001) | Sept. 13, 2001 | "A person, other than a licensed health care professional permitted by law to administer an opioid antagonist, is authorized to administer an opioid antagonist to another person if he, in good faith, believes the other person is experiencing an opioid drug overdose and he acts with reasonable care in administering the drug to the other person. It is strongly recommended that any person administering an opioid antagonist to another person immediately call for emergency medical services."<br><br>Lists guidelines for opioid agonist administration programs. Such programs must, among other things, have a program director and physician medical director. Each program must "promptly" notify local EMS of the "activation and existence" of the program and if it stops or cancels its operations. Defines "trained targeted responders." Must also keep certain records and submit an application for registration before beginning operations, and report any use of naloxone by trained responders, among other requirements. |
| NY | N.Y. Pub. Health Law § 3309 (2009) | Apr. 1, 2006 | Authorizes state health commissioner to establish standards for approval of any opioid overdose prevention program, which may include standards for program directors, appropriate clinical oversight and training, record keeping and reporting.<br><br>Notwithstanding other laws, the "purchase, acquisition, possession or use of an opioid antagonist pursuant to this section shall not constitute the unlawful practice of a profession or other violation under title eight of the education law or this article."<br><br>"Use of an opioid antagonist pursuant to this section shall be considered first aid or emergency treatment for the purpose of any statute relating to liability." |
| NY | N.Y. Comp. Codes R. & Regs. Tit. 10, § 80.138 (2007) | Feb. 1, 2007 | Defines relevant terms, including "Opioid Overdose Prevention Program," Opioid antagonist," "Trainer Overdose Responder, and "Registered provider." Permits registered providers to operate an Opioid Overdose Prevention Program if they obtain a certificate of approval from Health Department. Lists requirements for registered providers and Programs. Requires Programs to maintain record-keeping system and defines requirements for that system. Purports to limit protections of N.Y. Pub. Health Law § 3309 regarding the "purchase, acquisition, possession or use of an opioid antagonist" to approved programs and Trained Overdose Responders. |
| IL | 20 Ill. Comp. Stat. Ann. 301/5-23 (West 2010) | Jan. 1, 2010 | "A health care professional who, acting in good faith, directly or by standing order, prescribes or dispenses an opioid antidote to a patient who, in the judgment of the health care professional, is capable of administering the drug in an emergency, shall not, as a result of his or her acts or omissions, be subject to disciplinary or other adverse action under [any professional licensing statute].<br><br>"A person who is not otherwise licensed to administer an opioid antidote may in an emergency administer without fee an opioid antidote if the person has received certain patient information specified [in statute] and believes in good faith that another person is experiencing a drug overdose. The person shall not, as a result of his or her acts or omissions, be liable for any violation of [professional practice acts] or any other professional licensing statute, or subject to any criminal prosecution arising from or related to the unauthorized practice of medicine or the possession of an opioid antidote." |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
|---|---|---|---|
| WA | Wash. Rev. Code §18.130.345 (2010) | June 10, 2010 | "The administering, dispensing, prescribing, purchasing, acquisition, possession, or use of naloxone shall not constitute unprofessional conduct under chapter 18.130 RCW, or be in violation of any provisions under this chapter, by any practitioner or person, if the unprofessional conduct or violation results from a good faith effort to assist:<br>(1) A person experiencing, or likely to experience, an opiate-related overdose; or<br>(2) A family member, friend, or other person in a position to assist a person experiencing, or likely to experience, an opiate-related overdose." |
| CA | Cal. Civ. Code § 1714.22 (West 2011) | Jan. 1, 2011 (sunsets Jan 1, 2016) | This law applies only to the Counties of Alameda, Fresno, Humboldt, Los Angeles, Mendocino, San Francisco and Santa Cruz. It sunsets on January 1, 2016.<br><br>"A licensed health care provider who is permitted by law to prescribe an opioid antagonist may, if acting with reasonable care, prescribe and subsequently dispense or distribute an opioid antagonist in conjunction with an opioid overdose prevention and treatment training program, without being subject to civil liability or criminal prosecution. This immunity shall apply to the licensed health care provider even when the opioid antagonist is administered by and to someone other than the person to whom it is prescribed."<br><br>"A person who is not otherwise licensed to administer an opioid antagonist may administer an opioid antagonist in an emergency without fee if the person has received certain training information from any program operated by a local health jurisdiction or that is registered by a local health jurisdiction to train individuals to prevent, recognize and respond to an opiate overdose, and that provides, at a minimum, training in enumerated areas and believes in good faith that the other person is experiencing a drug overdose. The person shall not, as a result of his or her acts or omissions, be liable for any violation of any professional licensing statute, or subject to any criminal prosecution arising from or related to the unauthorized practice of medicine or the possession of an opioid antagonist."<br><br>Each local health jurisdiction that operates or registers an opioid overdose prevention and treatment training program shall, by January 1, 2015, collect, and report to the Senate and Assembly Committees on Judiciary, certain required information. |
| RI | R.I. Gen. Laws § 21-28.8-3 (2012) | June 18, 2012 | "(a) A person may administer an opioid antagonist to another person if:<br>(1) He or she, in good faith, believes the other person is experiencing a drug overdose; and<br>(2) He or she acts with reasonable care in administering the drug to the other person.<br><br>(b) A person who administers an opioid antagonist to another person pursuant to this section shall not be subject to civil liability or criminal prosecution as a result of the administration of the drug." |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| MA | Mass. Gen. Laws ch. 94c, § 19 (2012) | August 2, 2012 | "(d) Naloxone or other opioid antagonist may lawfully be prescribed and dispensed to a person at risk of experiencing an opiate-related overdose or a family member, friend or other person in a position to assist a person at risk of experiencing an opiate-related overdose. For purposes of this chapter and chapter 112 [governing professional licensing and registration], any such prescription shall be regarded as being issued for a legitimate medical purpose in the usual course of professional practice." |
| MA | Mass. Gen. Laws ch. 94c, § 34A (2012) | August 2, 2012 | "(e) A person acting in good faith may receive a naloxone prescription, possess naloxone and administer naloxone to an individual appearing to experience an opiate-related overdose." |
| CT | Conn. Gen. Stat. § 17a-714a (2012) | Oct 1, 2012 | "A licensed health care professional who is permitted by law to prescribe an opioid antagonist may, if acting with reasonable care, prescribe, dispense or administer an opioid antagonist to treat or prevent a drug overdose without being liable for damages in a civil action or subject to criminal prosecution for prescribing, dispensing or administering such opioid antagonist or for any subsequent use of such opioid antagonist. For purposes of this section, "opioid antagonist" means naloxone hydrochloride or any other similarly acting and equally safe drug approved by the federal Food and Drug Administration for the treatment of drug overdose."<br><br>The Commissioner of Mental Health and Addiction Services is required to report by Jan 15, 2013 the number of opioid antagonist prescriptions issued under programs administered by DMHAS to persons other than drug users for self-administration. |
| DC | Law L19-2043 (2012) | March 19, 2013 | "(f) Notwithstanding any other law, it shall not be considered a crime for a person to possess or administer an opioid antagonist, nor shall such person be subject to civil liability in the absence of gross negligence, if he or she administers the opioid antagonist:<br>(1) In good faith to treat a person who he or she reasonably believes is experiencing an overdose;<br>(2) Outside of a hospital or medical office; and<br>(3) Without the expectation of receiving or intending to seek compensation for such service and acts.<br><br>...<br>(i) For the purposes of this section, the term:<br>(1) "Good faith" under subsection (a) of this section does not include the seeking of health care as a result of using drugs or alcohol in connection with the execution of an arrest warrant or search warrant or a lawful<br>arrest or search.<br>(2) "Opioid antagonist" means a drug, such as Naloxone, that binds to the opioid receptors with higher affinity than agonists but does not activate the receptors, effectively blocking the receptor, preventing the human body from making use of opiates and endorphins.<br>(3) "Overdose" means an acute condition of physical illness, coma, mania, hysteria, seizure, |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| | | | cardiac arrest, cessation of breathing, or death, which is or reasonably appears to be the result of consumption or use of drugs or alcohol and relates to an adverse reaction to or the quantity ingested of the drugs or alcohol, or to a substance with which the drugs or alcohol was combined.<br>(4) "Supervision status" means probation or release pending trial, sentencing, appeal, or completion of sentence, for a violation of District law." |
| NC | S.B. 20 (2013) | April 9, 2013 | "(a) As used in this section, "opioid antagonist" means naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose.<br>(b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe an opioid antagonist to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. As an indicator of good faith, the practitioner, prior to prescribing an opioid under this subsection, may require receipt of a written communication that provides a factual basis for a reasonable conclusion as to either of the following:<br>(1) The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose.<br>(2) The person other than the person who is at risk of experiencing an opiate-related overdose, and who is seeking the opioid antagonist, is in relation to the person at risk of experiencing an opiate-related overdose:<br>a. A family member, friend, or other person.<br>b. In the position to assist a person at risk of experiencing an opiate-related overdose.<br>(c) A person who receives an opioid antagonist that was prescribed pursuant to subsection (b) of this section may administer an opioid antagonist to another person if (i) the person has a good faith belief that the other person is experiencing a drug-related overdose and (ii) the person exercises reasonable care in administering the drug to the other person. Evidence of the use of reasonable care in administering the drug shall include the receipt of basic instruction and information on how to administer the opioid antagonist.<br>(d) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section:<br>(1) Any practitioner who prescribes an opioid antagonist pursuant to subsection (b) of this section.<br>(2) Any person who administers an opioid antagonist pursuant to subsection (c) of this section." |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| CO | S.B. 13-014 (2013) | May 10, 2013 | [Legislative declaration, defines terms]<br><br>Provides criminal and civil immunity for "a person other than a health care provider or a health care facility who acts in good faith to administer an opiate antagonist to another person whom the person believes to be suffering an opiate-related drug overdose event"<br><br>Provides criminal and civil immunity to a person who is permitted by law to prescribe or dispense an opiate antagonist for such prescribing or dispensing, and any outcomes resulting from the eventual administration of the opiate antagonist. States that no standard of care is created. Encourages prescribers and dispensers to educate persons receiving the opiate antagonist on a number of items.<br><br>Provides that "the prescribing, dispensing or distribution of an opiate antagonist by a licensed health care practitioner, pharmacist or advanced practice nurse shall not constitute unprofessional conduct" if the action was taken in a good faith effort to assist a "person who is at increased risk of experiencing or likely to experience an opiate-related drug overdose event" or "a family member, friend or other person who is in a position to assist" such a person. |
| OR | S.B. 384 (2013) | June 6, 2013 | "(2) The Oregon Health Authority shall establish by rule protocols and criteria for training on lifesaving treatments for opiate overdose. The criteria must specify:<br>(a) the frequency of required retraining or refresher training; and<br>(b) The curriculum for the training, including:<br>(A) The recognition of symptoms and signs of opiate overdose;<br>(B) Nonpharmaceutical treatments for opiate overdose, including rescue breathing and proper positioning of the victim;<br>(C) Obtaining emergency medical services;<br>(D) The proper administration of naloxone to reverse opiate overdose; and<br>(E) The observation and follow-up that is necessary to avoid the recurrence of overdose symptoms"<br>[Section 3 states training must be subject to oversight by physician or certified nurse practitioner and may be conducted by health authorities or organizations that serve to individuals who take opiates]<br>"(4) Notwithstanding any other provision of law, a pharmacy, a health care professional with prescription and dispensing privileges or any other person designated by the State Board of Pharmacy by rule may distribute unit-of-use packages of naloxone, and the necessary medical supplies to administer the naloxone to a person who:<br>(a) Conducts training that meets the protocols and criteria established by the authority under subsection (2) of this section, so that the person may possess and distribute naloxone and necessary medical supplies to persons who successfully complete the training; or<br>(b) Has successfully completed training that meets the protocols and criteria established by the authority under subsection (2) of this section, so that the person may possess and administer naloxone to any individual who appears to be experiencing an opiate overdose.<br>(5) A person who has successfully completed the training described in this section is immune from civil liability for any act or omission committed during the course of providing the treatment pursuant to the authority granted by this section, if the person is acting in good faith and the act or omission does not constitute wanton misconduct." |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| KY | H.B. 366 (2013) | June 25, 2013 | "(1) A licensed health-care provider who, acting in good faith, directly or by standing order, prescribes or dispenses the drug naloxone to a patient who, in the judgment of the health-care provider, is capable of administering the drug for an emergency opioid overdose, shall not, as a result of his or her acts or omissions, be subject to disciplinary or other adverse action under KRS Chapter 311, 311A, 314, or 315 or any other professional licensing statute.<br>(2) A prescription for naloxone may include authorization for administration of the drug to the person for whom it is prescribed by a third party if the prescribing instructions indicate the need for the third party upon administering the drug to immediately notify a local public safety answering point of the situation necessitating the administration. A person acting in good faith who administers naloxone as the third party under this section shall be immune from criminal and civil liability for the administration, unless personal injury results from the gross negligence or willful or wanton misconduct of the person administering the drug." |
| VT | ACT075 (2013) | July 1, 2013 | Requires Department of Health to develop and implement a prevention, intervention and response strategy including educational materials, community-based prevention programs, increase timely access to treatment, the facilitation of overdose prevention, drug treatment and addiction recovery services, and develop a statewide opioid antagonist pilot program.<br><br>"(c)(1) A health care professional acting in good faith may directly or by standing order prescribe, dispense, and distribute an opioid antagonist to the following persons, provided the person has been educated about opioid-related overdose prevention and treatment in a manner approved by the Department:<br>(A) a person at risk of experiencing an opioid-related overdose; or<br>(B) a family member, friend, or other person in a position to assist a person at risk of experiencing an opioid-related overdose.<br>(2) A health care professional who prescribes, dispenses, or distributes an opioid antagonist in accordance with subdivision (1) of this subsection shall be immune from civil or criminal liability with regard to the subsequent use of the opioid antagonist, unless the health professional's actions with regard to prescribing, dispensing, or distributing the opioid antagonist constituted recklessness, gross negligence, or intentional misconduct. The immunity granted in this subdivision shall apply whether or not the opioid antagonist is administered by or to a person other than the person for whom it was prescribed.<br>(d)(1) A person may administer an opioid antagonist to a victim if he or she believes, in good faith, that the victim is experiencing an opioid-related overdose.<br>(2) After a person has administered an opioid antagonist pursuant to subdivision (1) of this subsection (d), he or she shall immediately call for emergency medical services if medical assistance has not yet been sought or is not yet present.<br>(3) A person shall be immune from civil or criminal liability for administering an opioid antagonist to a victim pursuant to subdivision (1) of this subsection unless the person's actions constituted recklessness, gross negligence, or intentional misconduct. The immunity granted in this subdivision shall apply whether or not the opioid antagonist is administered by or to a person other than the person for whom it was prescribed.<br>(e) A person acting on behalf of a community-based overdose prevention program shall be immune from |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| | | | civil or criminal liability for providing education on opioid-related overdose prevention or for purchasing, acquiring, distributing, or possessing an opioid antagonist unless the person's actions constituted recklessness, gross negligence, or intentional misconduct.<br>(f) Any health care professional who treats a victim and who has knowledge that the victim has been administered an opioid antagonist within the preceding 30 days shall refer the victim to professional substance abuse treatment services.<br><br>To be codified at 18 V.S.A. 4240. |
| VA | HB 1672 (2013) | July 1, 2013 | "A. Any person who: ...<br>11. In good faith and without compensation, administers naloxone in an emergency to an individual who is experiencing or is about to experience a life-threatening opiate overdose shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if such administering person is a participant in a pilot program conducted by the Department of Behavioral Health and Developmental Services on the administration of naloxone for the purpose of counteracting the effects of opiate overdose.<br>....<br>X. Notwithstanding the provisions of § 54.1-3303 and only for the purpose of participation in pilot programs conducted by the Department of Behavioral Health and Developmental Services, a person may obtain a prescription for a family member or a friend and may possess and administer naloxone for the purpose of counteracting the effects of opiate overdose.<br>...<br>2. That the Department of Behavioral Health and Developmental Services, in cooperation with the Department of Health, the Department of Health Professions, law-enforcement agencies, substance abuse recovery support organizations, and other stakeholders, shall conduct pilot programs on the administration of naloxone to counteract the effects of opiate overdose. The Department of Behavioral Health and Developmental Services shall evaluate, implement, and report results of such pilot programs to the General Assembly by December 1, 2014." |
| NJ | S.B. 2082 (2013) | July 1, 2013 | "(4) a. A health care professional or pharmacist who, acting in good faith, directly or through a standing order, prescribes or dispenses an opioid antidote to a patient capable, in the judgment of the health care professional, of administering the opioid antidote in an emergency, shall not, as a result of the professional's acts or omissions, be subject to any criminal or civil liability, or any professional disciplinary action under Title 45 of the Revised Statutes for prescribing or dispensing an opioid antidote in accordance with this act.<br>b. A person, other than a health care professional, may in an emergency administer, without fee, an opioid antidote, if the person has received patient overdose information pursuant to section 5 of this act and believes in good faith that another person is experiencing an opioid overdose. The person shall not, as a result of the person's acts or omissions, be subject to any criminal or liability for administering an opioid antidote in accordance with this act...<br>(5) a. A health care professional prescribing or dispensing an opioid antidote to a patient shall ensure that the patient receives patient overdose information. This information shall include, but is not limited to: opioid overdose prevention and recognition; how to perform rescue breathing and resuscitation; opioid antidote dosage and administration; the importance of calling 911 emergency telephone service for |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| | | | assistance with an opioid overdose; and care for an overdose victim after administration of the opioid antidote.<br>b. In order to fulfill the distribution of patient overdose information required by subsection a. of this section, the information may be provided by the health care professional, or a community-based organization, substance abuse organization, or other organization which addresses medical or social issues related to drug addiction that the health care professional maintains a written agreement with, and that includes: procedures for providing patient overdose information; information as to how employees or volunteers providing the information will be trained; and standards for documenting the provision of patient overdose information to patients.<br>c. The provision of patient overdose information shall be documented in the patient's medical record by a health care professional, or through similar means as determined by any written agreement between a health care professional and an organization as set forth in subsection b. of this section.<br>d. The Commissioner of Human Services, in consultation with Statewide organizations representing physicians, advanced practice nurses, or physician assistants, or community-based programs, substance abuse programs, syringe access programs, or other programs which address medical or social issues related to drug addiction, may develop and disseminate training materials in video, electronic, or other formats to health care professionals or organizations operating community-based programs, substance abuse programs, syringe access programs, or other programs which address medical or social issues related to drug addiction, to facilitate the provision of patient overdose information."<br>.. |
| MD | S.B. 160 (2013) | Oct. 1, 2013 | Creates an Overdose Response Program overseen by the Department of Health and Mental Hygiene. To be codified at MD HEALTH GEN 13-3101 et seq.<br><br>"13-3102.<br>An overdose response program is a program overseen by the Department for the purpose of providing a means of authorizing certain individuals to administer naloxone to an individual experiencing, or believed to be experiencing, opioid overdose to help prevent a fatality when medical services are not immediately available.<br>..<br>13-3104.<br>(A) To qualify for a certificate, an individual shall meet the requirements of this section.<br>(B) The application shall be at least 18 years old.<br>(C) The applicant shall have, or reasonably expect to have, as a result of the individual's occupation or volunteer, family, or social status, the ability to assist an individual who is experiencing an opioid overdose.<br>(D) (1) The applicant shall successfully complete an educational training program offered by a private or public entity authorized by the Department.<br>(2) An educational training program required under this subsection shall:<br>(I) [Be conducted by a licensed physician, nurse practitioner, or employee or volunteer of an entity that maintains a written agreement with a supervisory physician or NP that contains certain information, including training as described in statute]<br>..<br>13-3106. |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| | | | [Entities issue certificates to applicants who meet the requirements. Each certificate is valid for two years and may be renewed. It includes the name of the certificate holder, a serial number and a statement that the holder is authorized to administer naloxone in accordance with the law.]<br>13-3107.<br>An individual who is certified may [present the certificate to any licensed physician or NP and receive a prescription for naloxone and the supplies necessary for administering it; possess naloxone and necessary supplies; administer the naloxone in an emergency to a person experiencing or believed to be experiencing an opioid overdose]<br>..<br>13-3109.<br>[Certificate holder who administers naloxone not conducting unauthorized practice of medicine; physician who prescribes or dispenses naloxone to certificate holder not subject to disciplinary action for that action] |
| OK | H.B. 1782 (2013) | Nov. 1, 2013 | A. Upon request, a provider may prescribe an opiate antagonist to an individual for use by that individual when encountering a family member exhibiting signs of an opiate overdose.<br>B. When an opiate antagonist is prescribed in accordance with subsection A of this section, the provider shall provide:<br>1. Information on how to spot symptoms of an overdose;<br>2. Instruction in basic resuscitation techniques;<br>3. Instruction on proper naloxone administration; and<br>4. The importance of calling 911 for help.<br>C. Any family member administering an opiate antagonist in a manner consistent with addressing opiate overdose shall be covered under the Good Samaritan Act. |
| CA | A.B. 635 (2013) | Jan. 1, 2014 | (a) For purposes of this section, the following definitions shall apply:<br>(1) "Opioid antagonist" means naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of an opioid overdose.<br>(2) "Opioid overdose prevention and treatment training program" means any program operated by a local health jurisdiction or that is registered by a local health jurisdiction to train individuals to prevent, recognize, and respond to an opiate overdose, and that provides, at a minimum, training in all of the following:<br>(A) The causes of an opiate overdose.<br>(B) Mouth to mouth resuscitation.<br>(C) How to contact appropriate emergency medical services.<br>(D) How to administer an opioid antagonist.<br>(b) A licensed health care provider who is authorized by law to prescribe an opioid antagonist may, if acting with reasonable care, prescribe and subsequently dispense or distribute an opioid antagonist to a person at risk of an opioid-related overdose or to a family member, friend, or other person in a position to assist a person at risk of an opioid-related overdose.<br>(c) (1) A licensed health care provider who is authorized by law to prescribe an opioid antagonist may |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| | | | issue standing orders for the distribution of an opioid antagonist to a person at risk of an opioid-related overdose or to a family member, friend, or other person in a position to assist a person at risk of an opioid-related overdose.<br>(2) A licensed health care provider who is authorized by law to prescribe an opioid antagonist may issue standing orders for the administration of an opioid antagonist to a person at risk of an opioid-related overdose by a family member, friend, or other person in a position to assist a person experiencing or reasonably suspected of experiencing an opioid overdose.<br>(d) (1) A person who is prescribed or possesses an opioid antagonist pursuant to a standing order shall receive the training provided by an opioid overdose prevention and treatment training program.<br>(2) A person who is prescribed an opioid antagonist directly from a licensed prescriber shall not be required to receive training from an opioid prevention and treatment training program.<br>(e) A licensed health care provider who acts with reasonable care shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for issuing a prescription or order pursuant to subdivision (b) or (c).<br>(f) Notwithstanding any other law, a person who possesses or distributes an opioid antagonist pursuant to a prescription or standing order shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for this possession or distribution. Notwithstanding any other law, a person not otherwise licensed to administer an opioid antagonist, but trained as required under paragraph (1) of subdivision (d), who acts with reasonable care in administering an opioid antagonist, in good faith and not for compensation, to a person who is experiencing or is suspected of experiencing an overdose shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for this administration. |
| OH | H.B. 170 (2014) | Mar. 11, 2014 | **SECTION 1.** That sections 4723.482 and 4762.03 be amended and sections 2925.61, 4723.488, 4729.511, 4730.431, and 4731.94 of the Revised Code be enacted to read as follows:<br><br>**Sec. 2925.61.** (A) As used in this section:<br>(1) "Administer naloxone" means to give naloxone to a person by either of the following routes: (a) Using a device manufactured for the intranasal administration of liquid drugs;<br>(b) Using an auto-injector in a manufactured dosage form.<br>(2) "Law enforcement agency" means a government entity that employs peace officers to perform law enforcement duties.<br>(3) "Licensed health professional" means all of the following:<br>(a) A physician who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;<br>(b) A physician assistant who holds a certificate to prescribe issued under Chapter 4730. of the Revised Code;<br>(c) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under section 4723.48 of the Revised Code.<br>(4) "Peace officer" has the same meaning as in section 2921.51 of the Revised Code.<br>(B) A family member, friend, or other individual who is in a position to assist an individual who is apparently experiencing or at risk of experiencing an opioid-related overdose, is not subject to criminal prosecution for a violation of section 4731.41 of the Revised Code or criminal prosecution under this |

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| | | | chapter if the individual, acting in good faith, does all of the following:<br>(1) Obtains naloxone from a licensed health professional or a prescription for naloxone from a licensed health professional;<br>(2) Administers that naloxone to an individual who is apparently experiencing an opioid-related overdose;<br>(3) Attempts to summon emergency services either immediately before or immediately after administering the naloxone.<br>(C) Division (B) of this section does not apply to a peace officer or to an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, as defined in section 4765.01 of the Revised Code.<br>(D) A peace officer employed by a law enforcement agency licensed under Chapter 4729. of the Revised Code as a terminal distributor of dangerous drugs is not subject to administrative action, criminal prosecution for a violation of section 4731.41 of the Revised Code, or criminal prosecution under this chapter if the peace officer, acting in good faith, obtains naloxone from the peace officer's law enforcement agency and administers the naloxone to an individual who is apparently experiencing an opioid-related overdose.<br>...<br>**Sec. 4723.488.** (A) Notwithstanding any provision of this chapter or rule adopted by the board of nursing, a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under section 4723.48 of the Revised Code may personally furnish a supply of naloxone, or issue a prescription for naloxone, without having examined the individual to whom it may be administered if all of the following conditions are met:<br>(1) The naloxone supply is furnished to, or the prescription is issued to and in the name of, a family member, friend, or other individual in a position to assist an individual who there is reason to believe is at risk of experiencing an opioid-related overdose.<br>(2) The nurse instructs the individual receiving the naloxone supply or prescription to summon emergency services either immediately before or immediately after administering naloxone to an individual apparently experiencing an opioid-related overdose.<br>(3) The naloxone is personally furnished or prescribed in such a manner that it may be administered by only either of the following routes:<br>(a) Using a device manufactured for the intranasal administration of liquid drugs;<br>(b) Using an auto-injector in a manufactured dosage form.<br>(B) A nurse who under division (A) of this section in good faith furnishes a supply of naloxone or issues a prescription for naloxone is not liable for or subject to any of the following for any action or omission of the individual to whom the naloxone is furnished or the prescription is issued: damages in any civil action, prosecution in any criminal proceeding, or professional disciplinary action.<br><br>**Sec. 4729.511.** (A) As used in this section, "naloxone distributor" means either of the following:<br>(1) A wholesale distributor of dangerous drugs;<br>(2) A terminal distributor of dangerous drugs that supplies naloxone to any entity under division (B)(1) of this section.<br>(B)(1) A naloxone distributor shall prioritize the sale, distribution, and delivery of naloxone to all of the following: |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| | | | (a) A children's hospital, as defined in section 3727.01 of the Revised Code;<br>(b) A hospital, as defined in section 3727.01 of the Revised Code;<br>(c) An emergency medical service organization, as defined in section 4765.01 of the Revised Code;<br>(d) A facility that is operated as an urgent care center.<br>(2) The order in which the entities are listed in division (B)(1) of this section does not establish levels of priority among the listed entities.<br>(C) A naloxone distributor who in good faith complies with division (B) of this section is not liable for or subject to any of the following for an act or omission arising from that compliance: damages in any civil action, prosecution in any criminal proceeding, or professional disciplinary action.<br><br>**Sec. 4730.431.** (A) Notwithstanding any provision of this chapter or rule adopted by the state medical board, a physician assistant who holds a certificate to prescribe issued under this chapter may personally furnish a supply of naloxone, or issue a prescription for naloxone, without having examined the individual to whom it may be administered if all of the following conditions are met:<br>[identical to 4723.488]<br><br>...<br><br>**Sec. 4731.94.** (A) As used in this section, "physician" means an individual authorized under this chapter to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.<br>[identical to 4730.431]<br><br>...<br><br>**SECTION 2.** That existing sections 4723.482 and 4762.03 of the Revised Code are hereby repealed.<br><br>**SECTION 3.** This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to enhance the delivery of health services in this state by promptly increasing access to certain forms of care, including Oriental medicine, acupuncture, services of certain nurses with prescriptive authority, and emergency treatments for drug overdoses. Therefore, this act shall go into immediate effect. |

## Table 2: Characteristics of state overdose Good Samaritan laws

**As of March 15, 2014**

| State | Citation | Effective date | Samaritan must act in good faith | No charge – CS possession[79] | No prosecution – CS possession | No charge – paraphernalia | No prosecution – paraphernalia | Protection from other crimes | "Overdose" defined | Reporting as mitigating factor |
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| NM | N.M. Stat. Ann. § 30-31-27.1 (2007) | June 15, 2007 | Yes | Yes | Yes | - | - | - | No | Yes |
| AK | Alaska Stat. § 12.55.155 (2008) | September 8, 2008 | - | - | - | - | - | - | No | Yes |
| MD | Md. Code Ann., Crim. Proc. § 1-210 (LexisNexis 2009) | October 1, 2009 | - | - | - | - | - | - | No | Yes |
| WA | Wash. Rev. Code § 69.50.315 (2010) | June 10, 2010 | Yes | Yes | Yes | - | - | No[80] | No | No |
| WA | Wash. Rev. Code § 9.94A.535 (2010) | June 10, 2010 | - | - | - | - | - | - | No | Yes |
| NY | N.Y. Penal Law § 220.78 (Consol. 2011) | September 18, 2011 | Yes | Yes | Yes | Yes[81] | Yes[82] | Yes[83] | Yes | No |

| State | Citation | Effective date | Samaritan must act in good faith | No charge – CS possession[79] | No prosecution – CS possession | No charge – paraphernalia | No prosecution – paraphernalia | Protection from other crimes | "Overdose" defined | Reporting as mitigating factor |
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| NY | N.Y. Crim. Pro. § 390.40 (Consol. 2011) | September 18, 2011 | - | - | - | - | - | - | No | Yes |
| NY | N.Y. Penal Law § 220.03 (Consol. 2011) | September 18, 2011 | -- | - | Yes[84] | - | - | - | No | No |
| CT | Conn. Gen. Stat. § 21a-279 (2011); | October 1, 2011 | Yes | Yes[85] | Yes | - | - | - | No | - |
| CT | Conn. Gen. Stat. § 21a-267(d) (2011) | October 1, 2011 | - | - | - | Yes | Yes | - | No | - |
| IL | 20 Ill. Comp. Stat. Ann. 301/5-23 (West 2010) | January 1, 2010 | Yes | - | - | - | - | Yes[86] | Yes | - |
| IL | 720 Ill. Comp. Stat. Ann. 570/414 (West 2012) | February 6, 2012 | Yes | Yes[87] | Yes | - | - | - | Yes | - |
| IL | 720 Ill. Comp. Stat. Ann. 646/115 (West | February 6, 2012 | Yes | Yes | Yes | - | - | - | Yes | - |

| State | Citation | Effective date | Samaritan must act in good faith | No charge – CS possession[79] | No prosecution – CS possession | No charge – paraphernalia | No prosecution – paraphernalia | Protection from other crimes | "Overdose" defined | Reporting as mitigating factor |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2012) | | | | | | | | | |
| IL | 730 Ill. Comp. Stat. Ann. 5/5-5-3.1 (2012) | February 6, 2012 | - | - | - | - | - | - | No | Yes |
| CO | Colo. Rev. Stat. § 18-1-711 (2012) | May 29, 2012 | Yes | - | Yes | - | Yes | Yes[88] | Yes | - |
| RI | R.I. Gen. Laws §21-28.8-4 (2012) | June 18, 2012 (sunsets July 1, 2015) | Yes | Yes | Yes | Yes | Yes | Yes[89] | No | Yes |
| MA | Mass. Gen. Laws ch. 94c, § 34A (2012) | August 2, 2012 | Yes | Yes | Yes | - | - | - | No | Yes |
| FL | Fla. Stat. Ann. § 893.21 (2012) | October 1, 2012 | Yes | Yes | Yes | - | - | - | No | No |
| CA | CA Health & Safety Code 11376.5 (2012) | January 1, 2013 | Yes | Yes[90] | Yes | Yes | Yes | Yes[91] | Yes | No |
| DC | Law L19-0243 (2012) | March 19, 2013 | Yes | Yes[92] | Yes | Yes | Yes | Yes[93] | Yes | Yes |

| State | Citation | Effective date | Samaritan must act in good faith | No charge – CS possession[79] | No prosecution – CS possession | No charge – paraphernalia | No prosecution – paraphernalia | Protection from other crimes | "Overdose" defined | Reporting as mitigating factor |
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| NC | S.B. 20 (2013) | April 9, 2013 | Yes | - | Yes[94] | - | Yes | Yes[95] | Yes | No |
| VT | H0065 (2013) | June 5, 2013 | Yes | Yes | Yes | - | - | Yes[96] | Yes | Yes |
| NJ | S.B. 2082 (2013) | July 1, 2013 | Yes | Yes[97] | Yes | Yes | Yes | Yes[98] | Yes | No |
| DE | S.B. 116 (2013) | Aug. 31, 2013 | Yes[99] | Yes | Yes | Yes | Yes | Yes[100] | Yes | No |

# Table 2a: Summary of state overdose Good Samaritan laws

As of March 15, 2014

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
|---|---|---|---|
| NM | N.M. Stat. Ann. § 30-31-27.1 (2007) | June 15, 2007 | "A. A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to the provisions of [the state Controlled Substances Act] if the evidence for the charge of possession of a controlled substance was gained as a result of the seeking of medical assistance.<br><br>B. A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to the provisions of [the state Controlled Substances Act] if the evidence for the charge of possession of a controlled substance was gained as a result of the overdose and the need for medical assistance.<br><br>C. The act of seeking medical assistance for someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substances Act." |
| AK | Alaska Stat. § 12.55.155 (2008) | Sept. 8, 2008 | "The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence below the presumptive range set out in [relevant statute]…<br><br>[T]he defendant is convicted of an offense under [the state controlled substances law], and the defendant sought medical assistance for another person who was experiencing a drug overdose contemporaneously with the commission of the offense." |
| MD | Md. Code Ann., Crim. Proc. § 1-210 (LexisNexis 2009) | Oct. 1, 2009 | "The act of seeking medical assistance for another person who is experiencing a medical emergency after ingesting alcohol or drugs may be used as a mitigating factor in a criminal prosecution." |
| WA | Wash. Rev. Code § 69.50.315 (2010) | June 10, 2010 | "(1)(a) A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to [state law], if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance.<br>…<br>(2) A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to [state law], if the evidence for the charge of possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.<br><br>(3) The protection in this section from prosecution for possession crimes under [state law] shall not be grounds for suppression of evidence in other criminal charges." |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| WA | Wash. Rev. Code § 9.94A.535 (2010) | June 10, 2010 | "The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.<br>...<br>The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose." |
| NY | N.Y. Penal Law § 220.78 (Consol. 2011) | Sept. 18, 2011 | "1. A person who, in good faith, seeks health care for someone who is experiencing a drug or alcohol overdose or other life threatening medical emergency shall not be charged or prosecuted for a controlled substance offense other than an offense involving sale for consideration or other benefit or gain, or charged or prosecuted for possession of alcohol by a person under age twenty-one years. Or a marihuana offense...other than an offense involving sale...or for possession of drug paraphernalia... [with respect to physical evidence] that was obtained as a result of such seeking or receiving of health care.<br><br>2. A person who is experiencing a drug or alcohol overdose or other life threatening medical emergency and, in good faith, seeks health care for himself or herself or is the subject of such a good faith request for health care, shall not be charged or prosecuted for a controlled substance offense under this article or a marihuana offense.. other than an offense involving sale for consideration or other benefit or gain, or charged or prosecuted for possession of alcohol by a person under age twenty-one years.. or for possession of drug paraphernalia.. with respect to any substance, marihuana, alcohol or paraphernalia that was obtained as a result of such seeking or receiving of health care.<br>...<br>4. It shall be an affirmative defense to a criminal sale controlled substance offense... or a criminal sale of marihuana...with respect to any controlled substance or marihuana which was obtained as a result of such seeking or receiving of health care, that: (a) the defendant, in good faith, seeks health care for someone or for him or herself who is experiencing a drug or alcohol overdose or other life threatening medical emergency; and (b) the defendant has no prior conviction for the commission or attempted commission of a class A–I, A–II or B felony under this article.<br><br>...<br><br>6. The bar to prosecution described in subdivisions one and two of this section shall not apply to the prosecution of a class A–I felony under this article, and the affirmative defense described in subdivision four of this section shall not apply to the prosecution of a class A–I or A–II felony under this article." |
| NY | N.Y. Crim. Pro. § 390.40 (Consol. 2011) | Sep. 18, 2011 | "3. The act of seeking health care for someone who is experiencing a drug or alcohol overdose or other life threatening medical emergency shall be considered by the court when presented as a mitigating factor in any criminal prosecution for a controlled substance, marihuana, drug paraphernalia, or alcohol related offense." |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| NY | N.Y. Penal Law § 220.03 (2011) | Sept. 18, 2011 | "A person is guilty of criminal possession of a controlled substance in the seventh degree when he or she knowingly and unlawfully possesses a controlled substance;<br>...<br>[but it is not] a violation of this section when a person's unlawful possession of a controlled substance is discovered as a result of seeking immediate health care as defined in.220.78 of the penal law because such person is experiencing a drug or alcohol overdose or other life threatening medical emergency.." |
| CT | Conn. Gen. Stat. § 21a-279(g) (2011); | Oct. 1, 2011 | "(g) [Provisions relating to possession of a controlled substance] shall not apply to any person (1) who in good faith, seeks medical assistance for another person who such person reasonably believes is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, (2) for whom another person, in good faith, seeks medical assistance, reasonably believing such person is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, or (3) who reasonably believes he or she is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance and, in good faith, seeks medical assistance for himself or herself, if evidence of the possession or control of a controlled substance in violation of [possession law] was obtained as a result of the seeking of such medical assistance. For the purposes of this subsection, "good faith" does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search." |
| CT | Conn. Gen. Stat. § 21a-267(d) (2011) | Oct. 1, 2011 | "(d) The provisions of [the paraphernalia law] shall not apply to any person (1) who in good faith, seeks medical assistance for another person who such person reasonably believes is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, (2) for whom another person, in good faith, seeks medical assistance, reasonably believing such person is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, or (3) who reasonably believes he or she is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance and, in good faith, seeks medical assistance for himself or herself, if evidence of the use or possession of drug paraphernalia in violation of said subsection was obtained as a result of the seeking of such medical assistance. For the purposes of this subsection, "good faith" does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search." |
| IL | 20 Ill. Comp. Stat. Ann. 301/5-23 (2010) | Jan. 1, 2010 | "A person who is not otherwise licensed to administer an opioid antidote may in an emergency administer without fee an opioid antidote if the person has received certain patient information specified [in statute] and believes in good faith that another person is experiencing a drug overdose. The person shall not, as a result of his or her acts or omissions, be liable for any violation of [professional practice acts] or any other professional licensing statute, or subject to any criminal prosecution arising from or related to the unauthorized practice of medicine or the possession of an opioid antidote." |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| IL | 720 Ill. Comp. Stat. Ann. 570/414 (2012) | Feb. 6, 2012 | (a) [defines overdose]<br>"(b) A person who, in good faith, seeks or obtains emergency medical assistance for someone experiencing an overdose shall not be charged or prosecuted for Class 4 felony possession of a controlled, counterfeit, or look-alike substance or a controlled substance analog if evidence for the Class 4 felony possession charge was acquired as a result of the person seeking or obtaining emergency medical assistance and providing the amount of substance recovered is within the amount identified in subsection (d) of this Section.<br>(c) A person who is experiencing an overdose shall not be charged or prosecuted for [same as (b)]<br>(d) For the purposes of subsections (b) and (c), the limited immunity shall only apply to a person possessing the following amount: [limits on amounts]<br>(e) The limited immunity described in subsections (b) and (c) of this Section shall not be extended if law enforcement has reasonable suspicion or probable cause to detain, arrest, or search the person described in subsection (b) or (c)... for criminal activity and the reasonable suspicion or probable cause is based on information obtained prior to or independent of the individual...taking action to seek or obtain emergency medical assistance and not obtained as a direct result of the action of seeking or obtaining emergency medical assistance. Nothing in this Section is intended to interfere with or prevent the investigation, arrest, or prosecution of any person for the delivery or distribution of cannabis, methamphetamine or other controlled substances, drug-induced homicide, or any other crime." |
| IL | 720 Ill. Comp. Stat. Ann. 646/115 (2012) | Feb. 6, 2012 | (a) [defines overdose]<br>"(b) A person who, in good faith, seeks emergency medical assistance for someone experiencing an overdose shall not be charged or prosecuted for Class 3 felony possession of methamphetamine if evidence for the Class 3 felony possession charge was acquired as a result of the person seeking or obtaining emergency medical assistance and providing the amount of substance recovered is less than one gram of methamphetamine or a substance containing methamphetamine.<br>(c )A person who is experiencing an overdose shall not be charged or prosecuted for Class 3 felony possession of methamphetamine if evidence for the Class 3 felony possession charge was acquired as a result of the person seeking or obtaining emergency medical assistance and providing the amount of substance recovered is less than one gram of methamphetamine or a substance containing methamphetamine.<br>(d) [same exclusion as 570/414(e)]" |
| IL | 730 Ill. Comp. Stat. Ann. 5/5-5-3.1 (2012) | Feb. 6, 2012 | (c) The following grounds shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment:<br>.....<br>(14) The defendant sought or obtained emergency medical assistance for an overdose and was convicted of a Class 3 felony or higher possession, manufacture, or delivery of a controlled, counterfeit, or look-alike substance or a controlled substance analog under the Illinois Controlled Substances Act or a Class 2 felony or higher possession, manufacture or delivery of methamphetamine under the Methamphetamine Control and Community Protection Act. |
| CO | Colo. Rev. Stat. § 18-1-711 (2012) | May 29, 2012 | "(1) A person shall be immune from criminal prosecution for an offense described in subsection (3) of this section if:<br>(a) The person reports in good faith an emergency drug or alcohol overdose event to a law enforcement officer, to the 911 system, or to a medical provider;<br>(b) The person remains at the scene of the event until a law enforcement officer or an emergency medical responder arrives, or the person remains at the facilities of the medical provider until a law enforcement officer |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| | | | arrives;<br>(c) The person identifies himself or herself to, and cooperates with, the law enforcement officer, emergency medical responder, or medical provider; and<br>(d) The offense arises from the same course of events from which the emergency drug or alcohol overdose event arose.<br><br>(2) The immunity described in subsection (1) of this section also extends to the person who suffered the emergency drug or alcohol overdose event if all of the conditions of subsection (1) are satisfied.<br><br>(3) The immunity described in subsection (1) of this section shall apply to the following criminal offenses: [unlawful possession of a controlled substance, unlawful use of a controlled substance, unlawful possession of marijuana, open and public display, consumption or use of less than two ounces of marijuana, transferring or dispensing two ounces or less of marijuana from one person to another for no consideration, use or possession of synthetic cannabinoids or salvia divinorum, possession of drug paraphernalia, and illegal possession or consumption of ethyl alcohol by an underage person.]<br><br>(4) Nothing in this section shall be interpreted to prohibit the prosecution of a person for an offense other than an offense listed in subsection (3) of this section or to limit the ability of a district attorney or a law enforcement officer to obtain or use evidence obtained from a report, recording, or any other statement provided pursuant to subsection (1) of this section to investigate and prosecute an offense other than an offense listed in subsection (3) of this section.<br>..." |
| RI | R.I. Gen. Laws §21-28.8-4 (2012) | June 18, 2012<br><br>(sunsets July 1, 2015) | "(a) Any person who, in good faith, without malice and in the absence of evidence of an intent to defraud, seeks medical assistance for someone experiencing a drug overdose or other drug-related medical emergency shall not be charged or prosecuted for any crime under RIGL 21-28 or 21-28.5, except for a crime involving the manufacture or possession with the intent to manufacture a controlled substance or possession with intent to deliver a controlled substance, if the evidence for the charge was gained as a result of the seeking of medical assistance.<br>(b) A person who experiences a drug overdose or other drug-related medical emergency and is in need of medical assistance shall not be charged or prosecuted for any crime under RIGL 21-28 or 21-28.5, except for a crime involving the manufacture or possession with the intent to manufacture a controlled substance or possession with intent to deliver a controlled substance, if the evidence for the charge was gained as a result of the overdose and the need for medical assistance.<br>(c) The act of providing first aid or other medical assistance to someone who is experiencing a drug overdose or other drug-related medical emergency may be used as a mitigating factor in a criminal prosecution pursuant to the controlled substances act." |
| MA | Mass. Gen. Laws ch. 94c, § 34A (2012) | Aug. 2, 2012 | "(a) A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance under sections 34 or 35 if the evidence for the charge of possession of a controlled substance was gained as a result of the seeking of medical assistance. |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| | | | (b) A person who experiences a drug-related overdose and is in need of medical assistance and, in good faith, seeks such medical assistance, or is the subject of such a good faith request for medical assistance, shall not be charged or prosecuted for possession of a controlled substance under said sections 34 or 35 if the evidence for the charge of possession of a controlled substance was gained as a result of the overdose and the need for medical assistance.<br>(c) The act of seeking medical assistance for someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution under the Controlled Substance Act,1970 P.L. 91-513, 21 U.S.C. section 801, et seq.<br>(d) Nothing contained in this section shall prevent anyone from being charged with trafficking, distribution or possession of a controlled substance with intent to distribute. "<br><br>Also contains civil liability protections; please see Table 1. |
| FL | Fla. Stat. Ann. § 893.21 (2012) | Oct. 1, 2012 | "(1) A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized pursuant to this chapter for possession of a controlled substance if the evidence for possession of a controlled substance was obtained as a result of the person's seeking medical assistance.<br>(2) A person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized pursuant to this chapter for possession of a controlled substance if the evidence for possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.<br>(3) Protection in this section from prosecution for possession offenses under this chapter may not be grounds for suppression of evidence in other criminal prosecutions." |
| CA | CA Health & Safety Code 11376.5 (2012) | Jan 1, 2013 | "(a) Notwithstanding any other law, it shall not be a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person experiencing a drug-related overdose that is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.<br><br>(b) Notwithstanding any other law, it shall not be a crime for a person who experiences a drug-related overdose and who is in need of medical assistance to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.<br><br>(c) This section shall not affect laws prohibiting the selling, providing, giving, or exchanging of drugs, or laws prohibiting the forcible administration of drugs against a person's will.<br><br>(d) Nothing in this section shall affect liability for any offense that involves activities made dangerous by the consumption of a controlled substance or controlled substance analog, including, but not limited to, violations of Section 23103 of the Vehicle Code as specified in Section 23103.5 of the Vehicle Code, or violations of Section 23152 or 23153 of the Vehicle Code. |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| | | | (e) For the purposes of this section, "drug-related overdose" means an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury. An individual's condition shall be deemed to be a "drug-related overdose" if a reasonable person of ordinary knowledge would believe the condition to be a drug-related overdose that may result in death, disability, or serious injury." |
| DC | Law L19-2043 (2013) | March 19, 2013 | "(a) Notwithstanding any other law, the offenses listed in subsection (b) of this section shall not be considered crimes and shall not serve as the sole basis for revoking or modifying a person's supervision status:<br>(1) For a person who:<br>(A) Reasonably believes that he or she is experiencing a drug or alcohol-related overdose and in good faith seeks health care for himself or herself;<br>(B) Reasonably believes that another person is experiencing a drug or alcohol-related overdose and in good faith seeks healthcare for that person; or<br>(C) Is reasonably believed to be experiencing a drug or alcohol-related overdose and for whom health care is sought; and<br>(2) The offense listed in subsection (b) of this section arises from the same circumstances as the seeking of health care under paragraph (1) of this subsection.<br>(b) The following offenses apply to subsection (a) of this section:<br>...<br>(c) The seeking of health care under subsection (a) of this section, whether or not presented by the parties, may be considered by the court as a mitigating factor in any criminal prosecution or sentencing for a drug or alcohol-related offense that is not an offense listed in subsection (b) of this section.<br>(d) This section does not prohibit a person from being arrested, charged, or prosecuted, or from having his or her supervision status modified or revoked, based on an offense other than an offense listed in subsection (b) of this section, whether or not the offense arises from the same circumstances as the seeking of health care.<br>(e) A law enforcement officer who arrests an individual for an offense listed in subsection (b) of this section shall not be subject to criminal prosecution, or civil liability for false arrest or false imprisonment, if the officer made the arrest based on probable cause.<br>(f) Notwithstanding any other law, it shall not be considered a crime for a person to possess or administer an opioid antagonist, nor shall such person be subject to civil liability in the absence of gross negligence, if he or she administers the opioid antagonist:<br>(1) In good faith to treat a person who he or she reasonably believes is experiencing an overdose;<br>(2) Outside of a hospital or medical office; and<br>(3) Without the expectation of receiving or intending to seek compensation for such service and acts.<br>...<br>(i) For the purposes of this section, the term:<br>(1) "Good faith" under subsection (a) of this section does not include the seeking of health care as a result of using drugs or alcohol in connection with the execution of an arrest warrant or search warrant or a lawful<br>arrest or search.<br>(2) "Opioid antagonist" means a drug, such as Naloxone, that binds to the opioid receptors with higher |

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| | | | affinity than agonists but does not activate the receptors, effectively blocking the receptor, preventing the human body from making use of opiates and endorphins.<br>(3) "Overdose" means an acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death, which is or reasonably appears to be the result of consumption or use of drugs or alcohol and relates to an adverse reaction to or the quantity ingested of the drugs or alcohol, or to a substance with which the drugs or alcohol was combined.<br>(4) "Supervision status" means probation or release pending trial, sentencing, appeal, or completion of sentence, for a violation of District law." |
| NC | S.B. 20 (2013) | April 9, 2013 | (a) As used in this section, "drug-related overdose" means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.<br><br>(b) A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the person seeking medical assistance for the drug-related overdose.<br><br>(c) A person who experiences a drug-related overdose and is in need of medical assistance shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the drug-related overdose and need for medical assistance.<br><br>(d) Nothing in this section shall be construed to bar the admissibility of any evidence obtained in connection with the investigation and prosecution of other crimes committed by a person who otherwise qualifies for limited immunity under this section." |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| NJ | S.B. 2082 (2013) | May 2, 2013 | (7) a. A person who, in good faith, seeks medical assistance for someone experiencing a drug overdose shall not be:<br>(1) arrested, charged, prosecuted, or convicted for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of, a controlled dangerous substance or controlled substance analog pursuant to subsection a., b., or c. of N.J.S.2C:35-10;<br>(2) arrested, charged, prosecuted, or convicted for inhaling the fumes of or possessing any toxic chemical pursuant to subsection b. of section 7 of P.L.1999, c.90 (C.2C:35-10.4);<br>(3) arrested, charged, prosecuted, or convicted for using, obtaining, attempting to obtain, or possessing any prescription legend drug or stramonium preparation pursuant to subsection b., d., or e. of section 8 of P.L.1999, c.90 (C.2C:35-10.5);<br>(4) arrested, charged, prosecuted, or convicted for acquiring or obtaining possession of a controlled dangerous substance or controlled substance analog by fraud pursuant to N.J.S.2C:35-13;<br>(5) arrested, charged, prosecuted, or convicted for unlawfully possessing a controlled dangerous substance that was lawfully prescribed or dispensed pursuant to N.J.S.2C:35-24;<br>(6) arrested, charged, prosecuted, or convicted for using or possessing with intent to use drug paraphernalia pursuant to N.J.S.2C:36-2 or for having under his control or possessing a hypodermic syringe, hypodermic needle, or any other instrument adapted for the use of a controlled dangerous substance or a controlled substance analog pursuant to subsection a. of N.J.S.2C:36-6;<br>(7) subject to revocation of parole or probation based only upon a violation of offenses described in subsection a. (1) through (6) of this section, provided, however, this circumstance may be considered in establishing or modifying the conditions of parole or probation supervision.<br>b. The provisions of subsection a. of this section shall only apply if:<br>(1) the person seeks medical assistance for another person who is experiencing a drug overdose and is in need of medical assistance; and<br>(2) the evidence for an arrest, charge, prosecution, conviction, or revocation was obtained as a result of the seeking of medical assistance.<br>c. Nothing in this section shall be construed to limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of this act or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to this act. Nothing in this section shall be construed to limit any seizure of evidence or contraband otherwise permitted by law. Nothing herein shall be construed to limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection a. of this section. Nothing in this section shall be construed to limit, modify or remove any immunity from liability currently available to public entities or public employees by law.<br><br>[Section 8 provides Identical protections for the victim] |

| STATE | CITATION | EFFECTIVE DATE | SUMMARY |
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| VT | H0065 (2013) | June 5, 2013 | (a) As used in this section:<br>(1) "Drug overdose" means an acute condition resulting from or believed to be resulting from the use of a regulated drug which a layperson would reasonably believe requires medical assistance. For purposes of this section, "regulated drug" shall include alcohol.<br><br>(b) A person who, in good faith and in a timely manner, seeks medical assistance for someone who is experiencing a drug overdose shall not be cited, arrested, or prosecuted for a violation of this chapter or cited, arrested, or prosecuted for procuring, possessing, or consuming alcohol by someone under age 21 pursuant to 7 V.S.A §§ 656 and 657 or for providing to or enabling consumption of alcohol by someone under age 21 pursuant to 7 V.S.A. § 658(a)–(c).<br><br>[Section (c) provides identical protections for a person experiencing an overdose]<br><br>(d) A person who seeks medical assistance for a drug overdose pursuant to subsection (b) or (c) of this section shall not be subject to any of the penalties for violation of 13 V.S.A. § 1030 (violation of a protection order), for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.<br><br>(e) A person who seeks medical assistance for a drug overdose pursuant to subsection (b) or (c) of this section shall not be subject to any sanction for a violation of a condition of pretrial release, probation, furlough, or parole for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.<br><br>(f) The act of seeking medical assistance for or by someone who is experiencing a drug overdose shall be considered a mitigating circumstance at sentencing for a violation of any other offense. |
| DE | S.B. 116 (2013) | Aug. 31, 2013 | § 4769. Criminal immunity for persons who suffer or report an alcohol or drug overdose or other life threatening medical emergency.<br>(a) For purposes of this chapter:<br>(1) "Medical provider" means the person whose professional services are provided to a person experiencing an overdose or other life threatening medical emergency by a licensed, registered or certified health care professional who, acting within his or her lawful scope of practice, may provide diagnosis, treatment or emergency services.<br>(2) "Overdose" means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of an ethyl alcohol, a controlled substance, another substance with which a controlled substance was combined, a noncontrolled prescription drug, or any combination of these, including any illicit or licit substance; provided that a person's condition shall be deemed to be an overdose if a layperson could reasonably believe that the condition is in fact an overdose and requires medical assistance.<br>(b) A person who seeks medical attention for someone, including the person reporting, who is experiencing an overdose or other life threatening medical emergency shall not be arrested, charged or prosecuted for an offense described in subsection (c) of this section, or subject to |

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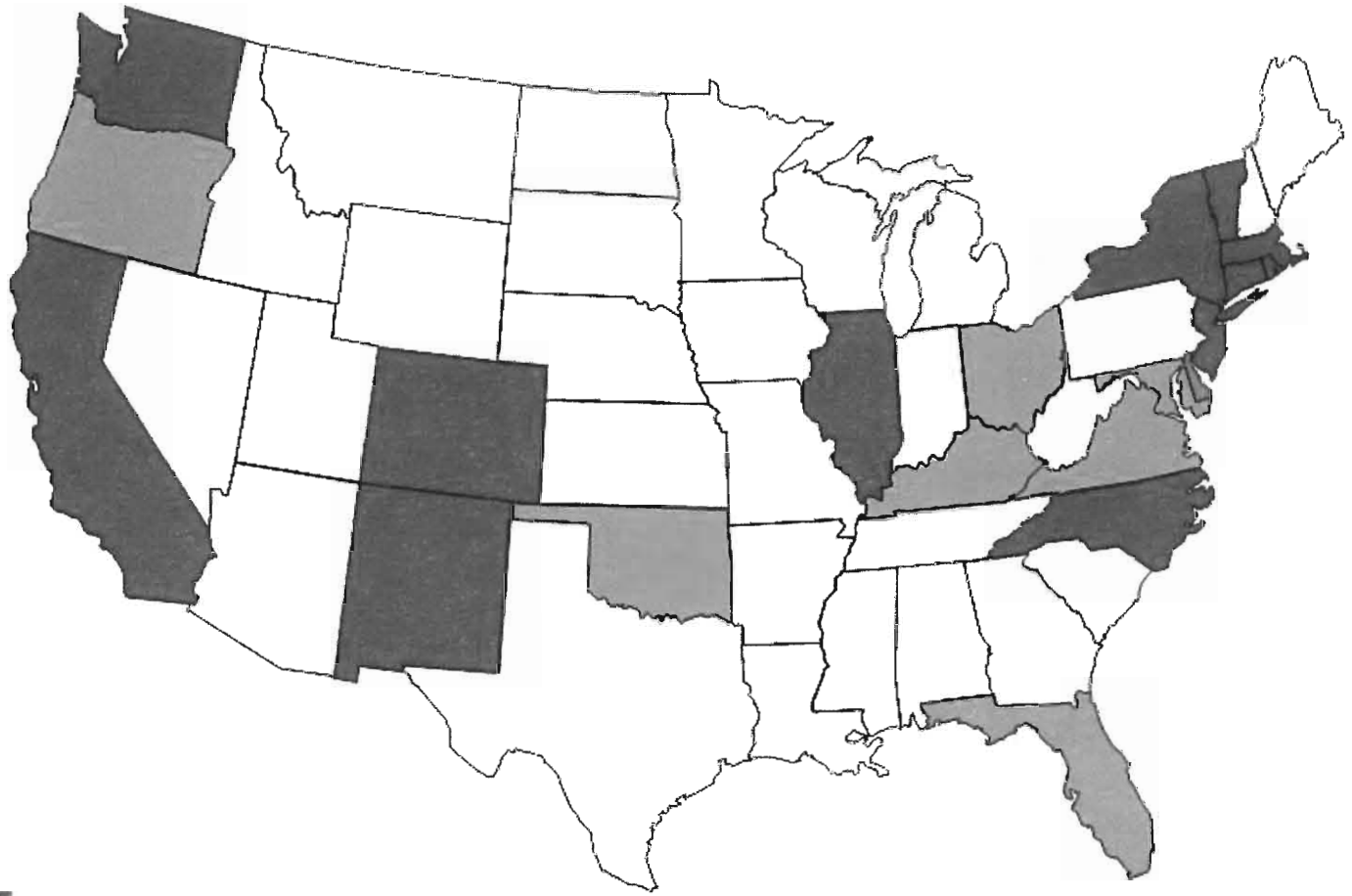
| | | | the revocation or modification of the conditions of probation, if:<br>(1) The person reports in good faith the emergency to law enforcement, the 911 system, a poison control center, or to a medical provider, or if the person in good faith assists someone so reporting; and<br>(2) The person provides all relevant medical information as to the cause of the overdose or other life threatening medical emergency that the person possesses at the scene of the event when a medical provider arrives, or when the person is at the facilities of the medical provider.<br>(c) The immunity described in this section shall apply to the following offenses:<br>(1) Miscellaneous drug crimes as described in § 4757 (a)(3), (6), and (7) of this Chapter;<br>(2) Illegal possession and delivery of noncontrolled prescription drugs as described in § 4761 of this Chapter;<br>(3) Possession of controlled substances or counterfeit controlled substances, as described in § 4763 of this Chapter;<br>(4) Possession of drug paraphernalia as described in §§ 4762 (c) and 4771 of this C hapter;<br>(5 ) Possession of marijuana as described in § 4764 of this Chapter; and<br>(6) Offenses concerning underage drinking as described in Title 4, § 904 (b), (c), (e), and (f).<br>(d) It shall be an affirmative defense to a drug dealing charge as defined in §§ 4752 and 4753 of this Chapter with respect to good faith seeking of health care for an emergency which arose proximate to the offense.<br>(e) Nothing in this section shall be interpreted to prohibit the prosecution of a person for an offense other than an offense listed in subsection (c) of this section or to limit the ability of the attorney general or a law enforcement officer to obtain or use evidence obtained from a report, recording, or any other statement provided pursuant to subsection (b) of this section to investigate and prosecute an offense other than an offense listed in subsection (c) of this section.<br>(f) Forfeiture of any alcohol, substance, or paraphernalia referenced in this section shall be allowed pursuant to § 4784 of this Title and Chapter 11 of Title 4. |



States with naloxone access and drug overdose Good Sam laws

States with drug overdose Good Sam laws only

States with naloxone access laws only

**The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.**

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Robert Wood Johnson Foundation

**References**

[1] MARGARET WARNER, ET AL., NAT'L CTR. FOR HEALTH STATISTICS, DRUG POISONING DEATHS IN THE UNITED STATES, 1980–2008 (2011).
[2] *Id.* (reporting that in 2008 14,800 drug poisoning deaths were known to be caused by opioid analgesics, with another 9,300 caused by unknown drug or drugs).
[3] Contrary to the common perception of non-medical users of opioids, the median opioid overdose victim is a 45-54 year old white male. *Id.*
[4] Opioid overdose is caused by excessive depression of the respiratory and central nervous systems. Naloxone, a κ- and δ, and μ-opioid receptor competitive antagonist, works by displacing opioids from these receptors, thereby reversing their depressant effect.
[5] *See* 21 U.S.C. § 801, 21 CFR § 1308.
[6] C. Baca, et al., *Take-home Naloxone to Reduce Heroin Death*, 100 ADDICTION 1823; Centers for Disease Control and Prevention, *Community-Based Opioid Overdose Prevention Programs Providing Naloxone – United States,* 2010, 61 MORBIDITY AND MORTALITY WEEKLY REPORT 61, 101 (2012).
[7] *See* Leo Beletsky, et al., *Physicians' knowledge of and willingness to prescribe naloxone to reverse accidental opiate overdose: challenges and opportunities,* 84 Journal of Urban Health 126 (2007).
[8] For an excellent review of the ways in which law and law enforcement hinder access to naloxone, *see* Scott Burris, et al, *Stopping An Invisible Epidemic: Legal Issues In The Provision Of Naloxone To Prevent Opioid Overdose*, 1 DREXEL LAW REVIEW 273 (2009).
[9] Karin Tobin, et al., *Calling emergency medical services during drug overdose: an examination of individual, social and setting correlates*, 100 ADDICTION 397 (2005); Robin A. Pollini, et al., *Response to Overdose Among Injection Drug Users*, 31 AMERICAN JOURNAL OF PREVENTIVE

MEDICINE 261 (2006). They may, of course, fear arrest for other reasons (such as existing warrants or non-drug crimes) as well, but the immunity in current bills is limited to drug (and in some cases, alcohol) crimes.

[10] See U.S. CONFERENCE OF MAYORS, 2008 ADOPTED RESOLUTIONS – SAVING LIVES, SAVING MONEY: CITY-COORDINATED DRUG OVERDOSE PREVENTION, *available at* http://www.usmayors.org/resolutions/76th_conference/chhs_16.asp; AMERICAN MEDICAL ASSOCIATION, AMA ADOPTS NEW POLICIES AT ANNUAL MEETING, *available at* http://www.ama-assn.org/ama/pub/news/news/2012-06-19-ama-adopts-new-policies.page; American Public Health Association, Prevention Overdose Through Education and Naloxone Distribution, *available at* http://www.apha.org/NR/rdonlyres/D13CCF7A-1E17-4954-BB28-EAEB7D6E261E/0/LB2Naloxone.pdf. A number of other organizations, including the National Association of Drug Diversion Investigators and the Office of National Drug Control Policy also support policy changes to increase access to naloxone. *See* NATIONAL ASSOCIATION OF DRUG DIVERSION INVESTIGATORS, NADDI SUPPORTS NASAL NALOXONE, *available at* http://naddi.org/aws/NADDI/pt/sd/news_article/62028/_PARENT/layout_details/false.

[11] Note that there is no legal reason that changes of both types cannot be made in the same piece of legislation, and indeed the trend appears to be in that direction.

[12] The provision of "take home" naloxone to reduce overdose risk was suggested as early as the mid-1990s. *See* Stang John Strang et al.,*Heroin Overdose: The Case for Take-Home Naloxone*, 312 BRIT. MED. J. 1435 (1996).

[13] For a graphical representation of these laws, please see the relevant LawAtlas map at http://www.lawatlas.org/preview?dataset=laws-regulating-administration-of-naloxone.

[14] Eliza Wheeler, et al., *Community-based opioid overdose prevention programs providing naloxone - United States*, 61 MORBIDITY & MORTALITY WKLY. REP 101 (2012).

[15] Alex Walley, et al., *Opioid overdose rates and implementation of overdose education and nasal naloxone distribution in Massachusetts: interrupted time series analysis*, 346 BMJ f174 (2013).

[16] For a graphical representation of these laws, please see the relevant LawAtlas map at http://www.lawatlas.org/preview?dataset=good-samaritan-overdose-laws.

[17] Alaska Stat. § 12.55.155; Md. Code Crim. Proc. § 1-210.

[18] Banta-Green, C. Washington's 911 Good Samaritan Overdose Law: Initial Evaluation Results (Nov. 2011), *available at* http://adai.uw.edu/pubs/infobriefs/ADAI-IB-2011-05.pdf

[19] *See* Su Albert, et al., *Project Lazarus: community-based overdose prevention in rural North Carolina*, 12 PAIN MEDICINE S77 (2011). The North Carolina Medical Board has endorsed Project Lazarus, but has not explicitly authorized third party prescription of naloxone. *See* NORTH CAROLINA MEDICAL BOARD, DRUG OVERDOSE PREVENTION, *available at* http://www.ncmedboard.org/position_statements/detail/drug_overdose_prevention/ .

[20] *See* Burris, et al., *supra* note 7.

[21] For additional thoughts on legal approaches to reducing opioid overdose deaths, *see* Davis CS, Webb D, Burris S. *Changing Law from Barrier to Facilitator of Opioid Overdose Prevention*, 41 J. of Law, Med. & Ethics 33-36 (2013).

[22] For example, existing laws typically do not include funding for education on the use and provision of naloxone. They also tend to limit criminal immunity to drug-related crimes, which may limit their effect.

[23] "UPM" means the Unauthorized Practice of Medicine.

[24] Some state laws authorize or create overdose prevention programs in addition to modifying other laws. Where these laws limit legal protections to those enrolled in or authorized by these programs, they may reduce the effectiveness of legal changes, particularly where insufficient funds are allocated for the programs to reach all those who would benefit from them.

[25] Under the statute, this protection is only available to a layperson "authorized under federal, state or local government regulations." However, N.M.A.C. 7.32.7 authorizes "any person other than a licensed health care professional permitted by law to administer an opioid antagonist when he, in good faith, believes the other person is experiencing an opioid drug overdose and he acts with reasonable care in administering the drug."
[26] *Id.*
[27] Implied by statutory text: "A person, other than a licensed health care professional permitted by law to administer an opioid antagonist, is authorized to administer an opioid antagonist to another person if he, in good faith, believes the other person is experiencing an opioid drug overdose and he acts with reasonable care in administering the drug to the other person."
[28] This protection is partial: "Use of an opioid antagonist pursuant to this section shall be considered first aid or emergency treatment for the purpose of any statute relating to liability."
[29] N.Y. Comp. Codes R. & Regs. Tit. 10, § 80.138 impliedly permits 3rd party prescribing to persons who have completed a state-approved overdose prevention program: "The opioid antagonist shall be dispensed to the trained overdose responder in accordance with all applicable laws, rules and regulations."
[30] Only for an "Opioid Overdose Prevention Program or a Trained Overdose Responder."
[31] Law applied only to the counties of Alameda, Fresno, Humboldt, Los Angeles, Mendocino, San Francisco and Santa Cruz.
[32] Only in conjunction with an "opioid overdose prevention and treatment training program."
[33] Statute removes civil liability "even when the opioid antagonist is administered by and to someone other than the person to whom it is prescribed" but does not specifically authorize 3rd party prescription.
[34] Only in conjunction with an "opioid overdose prevention and treatment training program."
[35] Impliedly authorized by statute: "A health care professional who.. prescribes or dispenses an opioid antidote to a patient who, in the judgment of the health care professional, is capable of administering the drug in an emergency, shall not, as a result of his or her acts or omissions, be subject to disciplinary or other adverse action under [relevant practice acts] or any other professional licensing statute." 20 ILCS 301/5-23(d)(1).
[36] Only if administrator has received information specified under statute.
[37] *Id.*
[38] Implied by statutory language: "A person acting in good faith may receive a naloxone prescription, possess naloxone, and administer naloxone to an individual suffering from an apparent opiate-related overdose."
[39] *Id.*
[40] *Id.*
[41] Law applied only to the counties of Alameda, Fresno, Humboldt, Los Angeles, Mendocino, San Francisco and Santa Cruz.
[42] Only in conjunction with an "opioid overdose prevention and treatment training program."
[43] Statute removes civil liability "even when the opioid antagonist is administered by and to someone other than the person to whom it is prescribed" but does not specifically authorize 3rd party prescription.
[44] Only in conjunction with an "opioid overdose prevention and treatment training program."
[45] Only if the person has received training information as specified in statute.
[46] *Id.*
[47] Implied by statutory language: "A person acting in good faith may receive a naloxone prescription, possess naloxone and administer naloxone to an individual appearing to experience an opiate-related overdose."
[48] *Id.*
[49] *Id.*

[50] Law states, "For purposes of this chapter and chapter 112, any such prescription shall be regarded as being issued for a legitimate medical purpose in the usual course of professional practice," which greatly reduces civil liability.
[51] This is a modification to CT LEGIS P.A. 03-159, noted above and effective October 1, 2003.
[52] UPM is a crime (see N.C.G.S. § 90-18), and law states that person who administers according to the law is "immune from any..criminal liability for actions authorized under this section."
[53] No state program created, but funds in the amount of $8,318 appropriated for implementation.
[54] Only if the person has received training prescribed by the act.
[55] Only if the person has received training prescribed by the act.
[56] Directs the Oregon Health Authority to design criteria for training on lifesaving treatment for opiate overdose, but training need not be conducted by the Authority.
[57] However, the bill does state that a licensed health care provider who "prescribes or dispenses the drug naloxone to a patient who, in the judgment of the health-care provider, is capable of administering the drug for an emergency opioid overdose, shall not, as a result of his or her acts or omissions, be subject to disciplinary or other adverse action under [any relevant professional licensing statute].
[58] "[U]nless personal injury results from the gross negligence or willful or wanton misconduct of the person administering the drug."
[59] Impliedly: "Notwithstanding the provisions of § 54.1-3303 and only for the purpose of participation in pilot programs conducted by the Department of Behavioral Health and Developmental Services, a person may obtain a prescription for a family member or a friend and may possess and administer naloxone for the purpose of counteracting the effects of opiate overdose."
[60] Only "if such administering person is a participant in a pilot program conducted by the Department of Behavioral Health and Developmental Services on the administration of naloxone for the purpose of counteracting the effects of opiate overdose."
[61] Impliedly: "Notwithstanding the provisions of § 54.1-3303 and only for the purpose of participation in pilot programs conducted by the Department of Behavioral Health and Developmental Services, a person may obtain a prescription for a family member or a friend and may possess and administer naloxone for the purpose of counteracting the effects of opiate overdose."
[62] Also removes liability for pharmacists who dispense in good faith, and provides for immunity from professional licensing statutes.
[63] Only if the person has received "patient overdose information" specified in the act.
[64] Id.
[65] Not explicitly covered, but the bill provides blanket criminal immunity for administering naloxone in good faith.
[66] No state programs created, but state given authority to award grants "to create or support local opioid overdose prevention, recognition and response projects."
[67] This protection went into effect immediately on approval of the bill on May 2, 2013.
[68] However, a physician who prescribes or dispenses naloxone to a certificate holder in a manner consistent with the law may not be subject to any disciplinary action under the relevant licensing act solely for that act.
[69] Statute states that a certificate holder may, "In an emergency situation when medical services are not immediately available, administer naloxone to an individual experiencing or believed by the certificate holder to be experiencing an opioid overdose," but does not explicitly provide immunity for that act.
[70] Implied by statutory language, which states that a certificate holder may, "In an emergency situation when medical services are not immediately available, administer naloxone to an individual experiencing or believed by the certificate holder to be experiencing an opioid overdose."
[71] Implied by statutory language, which states that a certificate holder may "possess prescribed naloxone and the necessary supplies for the administration of naloxone."

[72] Law states that "a provider may prescribe an opiate antagonist.." but does not provide explicit immunity for doing so.
[73] Only for use "when encountering a family member exhibiting signs of an opiate overdose."
[74] Permits first responders, as defined in the act, to administer naloxone, and states that such first responders "shall be covered under the Good Samaritan Act."
[75] Does not remove civil liability, but states that a person who administers naloxone to a family member "consistent with addressing opiate overdose shall be covered under the Good Samaritan Act."
[76] Law also explicitly permits licensed health care providers authorized to prescribe naloxone to issue standing orders for its administration (but not dispensing or delivery).
[77] However, the law does refer to "opioid overdose prevention and treatment training programs" operated or registered by local health jurisdictions, and premises some protections on the individual having received training from such a program.
[78] Prescriber is required to instruct "the individual receiving the naloxone supply or prescription to summon emergency services either immediately before or immediately after administering the naloxone to an individual apparently experiencing an opioid-related overdose." The Ohio law is limited to intranasal and auto-injector administration of naloxone.
[79] "CS" means "controlled substance."
[80] "The protection in this section from prosecution for possession crimes under RCW 69.50.4013 shall not be grounds for suppression of evidence in other criminal charges."
[81] While the text of the statute provides protection only for drug paraphernalia offenses found in "article thirty-nine of the general business law," which governs the sale and purchase of certain drug paraphernalia, under generally accepted legal principles the immunity from "controlled substance offense under article two hundred twenty" should apply to the paraphernalia-related offenses found there as well.
[82] Id.
[83] No charge or prosecution for possession of alcohol by a person under the age of twenty-one. Additionally, seeking health care in an emergency situation is an affirmative defense to criminal sale of a controlled substances for a person who acts in good faith and does not have prior convictions for the commission or attempted commission of a class A-I, A-II or B felony "under this article."
[84] Applies only to possession in the 7th degree. It is not clear why this law was enacted, since criminal possession in the 7th degree should also be covered by N.Y. Penal Law § 220.78.
[85] Under the relevant law, it is not a crime to possess controlled substances if the person seeks medical assistance in good faith during an overdose. Since there is no crime, there can be no lawful arrest, charge, or prosecution.
[86] Provides protection from "criminal prosecution arising from or related to the unauthorized practice of medicine or the possession of an opioid antidote."
[87] No charge or prosecution for a Class 4 felony possession of a controlled, counterfeit, or look-alike substance. The limited immunity only applies to possession of under certain quantities of drugs, and does not extend to delivery or distribution of drugs.
[88] Provides protection from prosecution for underage possession and consumption of alcohol.
[89] The law provides immunity for "any crime under RIGL 21-28 or 21-28.5, except for a crime involving the manufacture or possession with the intent to manufacture a controlled substance or possession with intent to deliver a controlled substance, if the evidence for the charge was gained as a result of the overdose and the need for medical assistance." RIGL 21-28 is the state controlled substances act, and governs a large number of offenses other than those listed here.
[90] Under the law, the listed actions "shall not be a crime." This precludes charge and prosecution as well as lawful arrest.
[91] Also states that "it shall not be a crime for a person to be under the influence of.. a controlled substance."

[92] The law states that the listed actions (described below) "shall not be considered crimes," which would prohibit arrest as well as charge and prosecution. However, the law also states that a law enforcement officer shall not be subject to criminal prosecution or civil liability for false arrest or imprisonment if he arrests a person for one of the listed offenses, so long as he does so based on probable cause.

[93] In addition to possession of certain drugs and drug paraphernalia, the law also declares that possession and administration of an opioid antagonist, possession of alcohol by a minor, providing alcohol to a minor of at least 16 years of age by a person 25 years of age or younger, and various other alcohol-related offenses "shall not be considered crimes" so long as the requirements of the law are met. Further, the bill states that "..the offenses listed in subsection (b) of this section.. shall not serve as the sole basis for revoking or modifying a person's supervision status.."

[94] Immunity is limited to misdemeanor possession, and possession of less than one gram of cocaine or heroin.

[95] Provides protection from prosecution for underage possession or consumption of alcohol for a person who acts in good faith, upon a reasonable belief that he or she was the first to call for assistance, provides his or her own name when contacting authorities, and remains with the person needing medical assistance until help arrives. This alcohol-related immunity applies only to the person who seeks help, not the person needing medical assistance.

[96] The law also provides protection for "procuring, possessing or consuming alcohol by someone under 21 or providing or enabling consumption of alcohol

by someone under 21," and a person who seeks medical assistance "shall not be subject to any of the penalties for violation of 13 V.S.A. § 1030 (violation of a protection order) for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose." Additionally, a person who seeks medical assistance for a drug overdose "shall not be subject to any sanction for a violation of a condition of pretrial release, probation, furlough, or parole for a violation of this chapter or 7 V.S.A. 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose."

[97] Under the law, neither the Good Samaritan nor the victim may be "arrested, charged, prosecuted or convicted" of the listed crimes, so long as the required conditions are met.

[98] The law also provides protection from a number of other drug crimes, including "obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of, a controlled dangerous substance or controlled substance analog," "inhaling the fumes of or possessing any toxic chemical," "obtaining, attempting to obtain, or possessing any prescription legend drug or stramonium preparation," and "acquiring or obtaining possession of a controlled dangerous substance or controlled substance analog by fraud" as otherwise prohibited by law. The law also states that a person may not be "subject to revocation of parole or probation based only upon a violation of offenses described in" the law, "provided, however, this circumstance may be considered in establishing or modifying the conditions of parole or probation supervision."

[99] The person must also provide "all relevant medical information as to the cause of the overdose or other life threatening medical emergency that the person possesses at the scene of the event when a medical provider arrives, or when the person is at the facilities of the medical provider."

[100] The law protects from arrest, charge and prosecution for possession of controlled substances, drug paraphernalia, and marijuana; certain underage drinking offenses; possession and delivery of noncontrolled prescription drugs; and certain "miscellaneous drug crimes." Also notes that "It shall be an affirmative defense to a drug dealing charge as defined in §§ 4752 and 4753 of this Chapter with respect to good faith seeking of health care for an emergency which arose proximate to the offense."

**NRS 41.500 General rule; volunteers; members of search and rescue organization; persons rendering cardiopulmonary resuscitation or using defibrillator; presumptions relating to emergency care rendered on public school grounds or in connection with public school activities; business or organization that has defibrillator for use on premises.**

1. Except as otherwise provided in NRS 41.505, any person in this State who renders emergency care or assistance in an emergency, gratuitously and in good faith, except for a person who is performing community service as a result of disciplinary action pursuant to any provision in title 54 of NRS, is not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by that person in rendering the emergency care or assistance or as a result of any act or failure to act, not amounting to gross negligence, to provide or arrange for further medical treatment for the injured person.

2. Any person in this State who acts as a driver of an ambulance or attendant on an ambulance operated by a volunteer service or as a volunteer driver or attendant on an ambulance operated by a political subdivision of this State, or owned by the Federal Government and operated by a contractor of the Federal Government, and who in good faith renders emergency care or assistance to any injured or ill person, whether at the scene of an emergency or while transporting an injured or ill person to or from any clinic, doctor's office or other medical facility, is not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by that person in rendering the emergency care or assistance, or as a result of any act or failure to act, not amounting to gross negligence, to provide or arrange for further medical treatment for the injured or ill person.

3. Any person who is an appointed member of a volunteer service operating an ambulance or an appointed volunteer serving on an ambulance operated by a political subdivision of this State, other than a driver or attendant of an ambulance, is not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by that person whenever the person is performing his or her duties in good faith.

4. Any person who is a member of a search and rescue organization in this State under the direct supervision of any county sheriff who in good faith renders care or assistance in an emergency to any injured or ill person, whether at the scene of an emergency or while transporting an injured or ill person to or from any clinic, doctor's office or other medical facility, is not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by that person in rendering the emergency care or assistance, or as a result of any act or failure to act, not amounting to gross negligence, to provide or arrange for further medical treatment for the injured or ill person.

5. Any person who is employed by or serves as a volunteer for a public fire-fighting agency and who is authorized pursuant to chapter 450B of NRS to render emergency medical care at the scene of an emergency is not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by that person in rendering that care or as a result of any act or failure to act, not amounting to gross negligence, to provide or arrange for further medical treatment for the injured or ill person.

6. Any person who:

(a) Has successfully completed a course in cardiopulmonary resuscitation according to the guidelines of the American National Red Cross or American Heart Association;

(b) Has successfully completed the training requirements of a course in basic emergency care of a person in cardiac arrest conducted in accordance with the standards of the American Heart Association; or

(c) Is directed by the instructions of a dispatcher for an ambulance, air ambulance or other agency that provides emergency medical services before its arrival at the scene of the emergency,

➥ and who in good faith renders cardiopulmonary resuscitation in accordance with the person's training or the direction, other than in the course of the person's regular employment or profession, is not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by that person in rendering that care.

7. For the purposes of subsection 6, a person who:

(a) Is required to be certified in the administration of cardiopulmonary resuscitation pursuant to NRS 391.092; and

(b) In good faith renders cardiopulmonary resuscitation on the property of a public school or in connection with a

transportation of pupils to or from a public school or while on activities that are part of the program of a public school,

➥ shall be presumed to have acted other than in the course of the person's regular employment or profession.

8. Any person who gratuitously and in good faith renders emergency medical care involving the use of an automated external defibrillator is not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by that person in rendering that care.

9. A business or organization that has placed an automated external defibrillator for use on its premises is not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by the person rendering such care or for providing the automated external defibrillator to the person for the purpose of rendering such care if the business or organization:

(a) Complies with all current federal and state regulations governing the use and placement of an automated external defibrillator;

(b) Ensures that the automated external defibrillator is maintained and tested according to the operational guidelines established by the manufacturer; and

(c) Establishes requirements for the notification of emergency medical assistance and guidelines for the maintenance of the equipment.

10. As used in this section, "gratuitously" means that the person receiving care or assistance is not required or expected to pay any compensation or other remuneration for receiving the care or assistance.

(Added to NRS by 1963, 359; A 1965, 674; 1973, 433, 1432; 1975, 403; 1985, 1702, 1753; 1991, 2165; 1997, 1716, 1790; 1999, 484, 934; 2005, 2558; 2009, 871)

**NEVADA CASES.**

Elements of "emergency." Provisions of NRS 41.500, exempting from personal liability for ordinary negligence persons who render emergency care or assistance in an emergency to injured persons, apply only if an emergency exists. Critical elements of "emergency" include suddenness, unexpectedness, necessity for immediate action, and lack of time for a measured evaluation of alternative courses of action, their respective efficacy and priority. Buck v. Greyhound Lines, Inc., 105 Nev. 756, 783 P.2d 437 (1989)

Error to instruct jury on statute where emergency did not exist. Where appellant's car stalled on the highway, a citizen stopped to help but did not push the car off the road, and a bus hit the car, injuring appellant and his minor children, appellate court held that: (1) trial court erred in giving the jury instruction on NRS 41.500, Nevada's "Good Samaritan" statute because, as a matter of law, there was no emergency when the citizen stopped to assist appellant; and (2) pursuant to former provisions of NRS 41.141, the liability of defendants as to adult appellants was several because their contributory negligence could be properly asserted as a bona fide issue, but liability as to minor children was joint and several. Buck v. Greyhound Lines, Inc., 105 Nev. 756, 783 P.2d 437 (1989), cited, Stapp v. Hilton Hotels Corp., 108 Nev. 209, at 211, 826 P.2d 954 (1992), Hogle v. Hall, 112 Nev. 599, at 606, 916 P.2d 814 (1996)

Immunity from civil liability applies only where rescuer was not already under duty to act. The provision of NRS 41.500 which provides immunity from civil liability for a person who renders emergency care gratuitously and in good faith applies only in those situations where the person was not already under a duty to act. Sims v. General Tel. & Elecs., 107 Nev. 516, 815 P.2d 151 (1991), cited, Lee v. GNLV Corp., 117 Nev. 291, at 297, 22 P.3d 209 (2001)

**NRS 453.521 Unlawful possession or sale of nasal inhaler; exception.** It is unlawful for any person within this State to possess, sell, offer to sell or hold for the purpose of sale or resale any nasal inhaler which contains any controlled substance capable of causing stimulation to the central nervous system unless:

1. The product contains a denaturant in sufficient quantity to render it unfit for internal use; and
2. The product is among such products listed as approved by the Board in the regulations officially adopted by the Board.

(Added to NRS by 1971, 2025; A 1973, 1217)

**NRS 125.480 Best interests of child; preferences; presumptions when court determines parent or person seeking custody is perpetrator of domestic violence or has committed act of abduction against child or any other child.**

4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody.

(b) Any nomination by a parent or a guardian for the child.

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

(d) The level of conflict between the parents.

(e) The ability of the parents to cooperate to meet the needs of the child.

(f) The mental and physical health of the parents, **including the abuse of alcohol, prescriptions and other legal or illegal substances. The court may require independent corroboration of an allegation that a parent is habitually or continually using controlled substances or illegal drugs.**

(g) The physical, developmental and emotional needs of the child.

(h) The nature of the relationship of the child with each parent.

(i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the child.

(k) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

(l) Whether either parent or any other person seeking custody has committed any act of abduction against the child or any other child.

**NRS 484C.400 Penalties for first, second and third offenses; segregation of offender; intermittent confinement; consecutive sentences; aggravating factor.**

1. Unless a greater penalty is provided pursuant to NRS 484C.430 or 484C.440, and except as otherwise provided in NRS 484C.410, a person who violates the provisions of NRS 484C.110 or 484C.120:

(a) For the first offense within 7 years, is guilty of a misdemeanor. Unless the person is allowed to undergo treatment as provided in NRS 484C.320, the court shall:

(1) Except as otherwise provided in subparagraph (4) of this paragraph or subsection 2 of NRS 484C.420, order the person to pay tuition for an educational course on the abuse of alcohol and controlled substances approved by the Department and complete the course within the time specified in the order, and the court shall notify the Department if the person fails to complete the course within the specified time;

(2) Unless the sentence is reduced pursuant to NRS 484C.320, sentence the person to imprisonment for not less than 2 days nor more than 6 months in jail, or to perform not less than 48 hours, but not more than 96 hours, of community service while dressed in distinctive garb that identifies the person as having violated the provisions of NRS 484C.110 or 484C.120;

(3) Fine the person not less than $400 nor more than $1,000; and

(4) If the person is found to have a concentration of alcohol of 0.18 or more in his or her blood or breath, order the person to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484C.360.

(b) For a second offense within 7 years, is guilty of a misdemeanor. Unless the sentence is reduced pursuant to NRS 484C.330, the court shall:

(1) Sentence the person to:

(I) Imprisonment for not less than 10 days nor more than 6 months in jail; or

(II) Residential confinement for not less than 10 days nor more than 6 months, in the manner provided in NRS 4.376 to 4.3766, inclusive, or 5.0755 to 5.078, inclusive;

(2) Fine the person not less than $750 nor more than $1,000, or order the person to perform an equivalent number of hours of community service while dressed in distinctive garb that identifies the person as having violated the provisions of NRS 484C.110 or 484C.120; and

(3) Order the person to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484C.360.

➥ A person who willfully fails or refuses to complete successfully a term of residential confinement or a program of treatment ordered pursuant to this paragraph is guilty of a misdemeanor.

(c) Except as otherwise provided in NRS 484C.340, for a third offense within 7 years, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and shall be further punished by a fine of not less than $2,000 nor more than $5,000. An offender who is imprisoned pursuant to the provisions of this paragraph must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

2. An offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

3. A term of confinement imposed pursuant to the provisions of this section may be served intermittently at the discretion of the judge or justice of the peace, except that a person who is convicted of a second or subsequent offense within 7 years must be confined for at least one segment of not less than 48 consecutive hours. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and

employment of the offender, but any sentence of 30 days or less must be served within 6 months after the date of conviction or, if the offender was sentenced pursuant to NRS 484C.320 or 484C.330 and the suspension of his or her sentence was revoked, within 6 months after the date of revocation. Any time for which the offender is confined must consist of not less than 24 consecutive hours.

4. Jail sentences simultaneously imposed pursuant to this section and NRS 482.456, 483.560, 484C.410 or 485.330 must run consecutively.

5. If the defendant was transporting a person who is less than 15 years of age in the motor vehicle at the time of the violation, the court shall consider that fact as an aggravating factor in determining the sentence of the defendant.

6. For the purpose of determining whether one offense occurs within 7 years of another offense, any period of time between the two offenses during which, for any such offense, the offender is imprisoned, serving a term of residential confinement, confined in a treatment facility, on parole or on probation must be excluded.

7. As used in this section, unless the context otherwise requires, "offense" means:

(a) A violation of NRS 484C.110, 484C.120 or 484C.430;

(b) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430; or

(c) A violation of a law of any other jurisdiction that prohibits the same or similar conduct as set forth in paragraph (a) or (b).

(Added to NRS by 1983, 1070; A 1985, 1946; 1987, 907, 1136; 1989, 195, 2046; 1991, 218, 836; 1993, 2262, 2892; 1995, 1298, 2471; 1997, 38, 642, 1746; 1999, 52, 2138, 3110, 3416, 3438; 2001, 220, 223, 1884, 2392; 2001 Special Session, 147; 2003, 277, 446, 1490; 2005, 139, 607, 2039; 2005, 22nd Special Session, 102; 2007, 1060, 1450, 2795; 2009, 1867)—(Substituted in revision for part of NRS 484.3792)

**NRS CROSS REFERENCES.**

Driving while license cancelled, revoked or suspended, NRS 483.560, 485.330

Suspension of registration, prohibited acts following, penalties, NRS 482.456, 485.330

**REVISER'S NOTE.**

The definitions of "concentration of alcohol of 0.18 or more in his blood or breath" and "treatment facility" that were previously contained in this section were moved in revision to NRS 484C.030 and 484C.100, respectively. Other provisions previously contained in this section were moved in revision to NRS 484C.410 and 484C.420.

**NEVADA CASES.**

Error for court to refer to prior convictions of defendant; error harmless where evidence of guilt overwhelming. In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, in violation of the former provisions of NRS 484.379 (cf. former NRS 484.3792; cf. NRS 484C.400 and 484C.410), where defendant had previously been convicted of same or similar offenses, it was error for the trial court to mention that the defendant had two or more prior convictions but this reference did not constitute reversible error since the evidence of guilt was overwhelming. Koenig v. State, 99 Nev. 780, 672 P.2d 37 (1983)

Prior misdemeanor convictions in which the right to counsel was waived may be used to enhance a penalty. Where defendant had waived any right to counsel in prior misdemeanor proceedings, the convictions could be used as a basis to enhance the penalty under former provisions of NRS 484.379 (cf. former NRS 484.3792; cf. NRS 484C.400 and 484C.410). Koenig v. State, 99 Nev. 780, 672 P.2d 37 (1983), cited, Dixon v. State, 103 Nev. 272, at 274, 737 P.2d 1162 (1987), Pettipas v. State, 106 Nev. 377, at 380, 794 P.2d 705 (1990)

No statutory right to trial by jury in a prosecution for driving under the influence. In a prosecution under the former provisions of NRS 484.379 (cf. former NRS 484.3792; cf. NRS 484C.400 and 484C.410) for driving a motor vehicle while under the influence of intoxicating liquor, the district court erred in holding that NRS 175.011(2) created a statutory right to trial by jury upon demand in every case because the statute does not express in plain, explicit language a legislative intention to grant a substantive right to trial by jury, but is intended to establish only procedural requirements related thereto. State v. Smith, 99 Nev. 806, 672 P.2d 631 (1983)

No constitutional right to jury trial in a misdemeanor prosecution for driving under the influence. In a prosecution under the former provisions of NRS 484.379 (cf. former NRS 484.3792; cf. NRS 484C.400) for driving a motor vehicle while under the influence of intoxicating liquor, defendant was not entitled to a trial by jury under the U.S. Constitution or Nev. Art. 1, § 3, because, as the maximum possible penalty for the offense charged was not more than 6 months imprisonment, the offense was a petty offense for which no constitutional right to trial by jury has been conferred. State v. Smith, 99 Nev. 806, 672 P.2d 631 (1983), cited, Blanton v. North Las Vegas Mun. Court, 103 Nev. 623, at 631, 748 P.2d 494 (1987), State v. Ninth Judicial Dist. Court (Douglass), 104 Nev. 91, at 92, 752 P.2d 238 (1988), Aftercare of Clark County v. Justice Court, 120 Nev. 1, at 12, 82 P.3d 931 (2004) (dissenting opinion), see also Cheung v. Eighth Judicial Dist. Court, 121

**NRS 453.336 Unlawful possession not for purpose of sale: Prohibition; penalties; exception.**

1. Except as otherwise provided in subsection 5, a person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, physician assistant licensed pursuant to chapter 630 or 633 of NRS, dentist, podiatric physician, optometrist, advanced practice registered nurse or veterinarian while acting in the course of his or her professional practice, or except as otherwise authorized by the provisions of NRS 453.005 to 453.552, inclusive.

2. Except as otherwise provided in subsections 3 and 4 and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or 453.3395, a person who violates this section shall be punished:

(a) For the first or second offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.

(b) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, for a category D felony as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.

(c) For the first offense, if the controlled substance is listed in schedule V, for a category E felony as provided in NRS 193.130.

(d) For a second or subsequent offense, if the controlled substance is listed in schedule V, for a category D felony as provided in NRS 193.130.

3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years.

4. Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of 1 ounce or less of marijuana:

(a) For the first offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $600; or

(2) Examined by an approved facility for the treatment of abuse of drugs to determine whether the person is a drug addict and is likely to be rehabilitated through treatment and, if the examination reveals that the person is a drug addict and is likely to be rehabilitated through treatment, assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(b) For the second offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $1,000; or

(2) Assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(c) For the third offense, is guilty of a gross misdemeanor and shall be punished as provided in NRS 193.140.

(d) For a fourth or subsequent offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

5. It is not a violation of this section if a person possesses a trace amount of a controlled substance and that trace amount is in or on a hypodermic device obtained from a sterile hypodermic device program pursuant to NRS 439.985 to 439.994, inclusive.

6. As used in this section:

(a) "Controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.

(b) "Sterile hypodermic device program" has the meaning ascribed to it in NRS 439.943.

(Added to NRS by 1971, 2019; A 1973, 1214; 1977, 1413; 1979, 1473; 1981, 740, 1210, 1962; 1983, 289; 1987, 759; 1991, 1660; 1993, 2234; 1995, 1285, 1719; 1997, 521, 525, 903; 1999, 1917; 2001, 410, 785, 797, 3067; 2007,