ADVISORY COMMISSION
on the
ADMINISTRATION of JUSTICE

WORK SESSION

Tuesday, October 21, 2014, 9:00 A.M.

Grant Sawyer State Office Building
555 East Washington Street, Room 4401
Las Vegas, Nevada

With video-conference to

Legislative Building
401 South Carson Street, Room 3137
Carson City, Nevada

WORK SESSION DOCUMENT

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

October 21, 2014

The following "Work Session Document" was prepared by staff of the Advisory Commission on the Administration of Justice ("Advisory Commission"). (NRS 176.0123) The document contains recommendations that were presented during hearings or submitted in writing during the course of the 2013-2014 interim.

The possible recommendations listed in the document do not necessarily have the support or opposition of the Advisory Commission. Rather, the recommendations are compiled and organized to assist the members for voting purposes during the work session. The Advisory Commission may adopt, change, reject or further consider any recommendation. The individual proposer or joint proposers of each recommendation are referenced in parentheses after each recommendation.

Pursuant to NRS 176.0125, the Advisory Commission is charged with examining various aspects of the 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. The Advisory Commission does not have any bill draft requests specifically allocated by statute; however, individual legislators or the Chair of any standing committee may choose to sponsor any Advisory Commission recommendation for legislation.

By way of background, the Advisory Commission previously approved the drafting of two letters on behalf of the Advisory Commission. On November 6, 2013, the Advisory Commission voted to approve the drafting of a letter to the Interim Finance Committee to highlight the issue of increased funding needed by the Division of Parole and Probation for additional writers of presentence investigation reports. Also at that meeting, and again at

subsequent meetings, the Advisory Commission voted upon a recommendation directing staff to draft a letter to Bureau of Justice Assistance/Pew Charitable Trusts/Council of State Governments seeking technical assistance to review justice reinvestment initiatives and Nevada's current sentencing scheme. These recommendations do not require any further action, but have been referenced herein. Both recommendations, along with the supporting letters, will be included in the final report.

For purposes of this work session document, the recommendations have been organized chronologically by topic and are not listed in any preferential order. It should also be noted that any potential policy recommendations listed may or may not have a fiscal impact. Any potential fiscal impacts have not been determined by staff at this time. Finally, although possible actions may be identified within each recommendation, the Advisory Commission may choose to recommend any of the following actions: (1) draft legislation to amend the Nevada Revised Statutes; (2) draft a resolution; (3) draft a letter; or (4) include a policy statement of support in the final report.

RECOMMENDATION NO. 1 — **Draft legislation requiring the Department of Corrections to issue recognizable and useable photo identification for offenders.** (Commissioner Hardesty)

Background Information for Recommendation No. 1

Tab A – Senate Bill No. 423 (2013) (enrolled).

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. (**Tab A**) 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. The Advisory Commission may consider making 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.

RECOMMENDATION NO. 2 — **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.** (Justice Douglas)

Background Information for Recommendation No. 2

Tab B – Draft Nevada State Court Language Access Plan (w/o appendices).

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.

This recommendation would include a policy statement in support of the Nevada State Court Language Access Plan in the final report of the Advisory Commission to be issued to the 2015 Legislature.

RECOMMENDATION NO. 3 — **Draft legislation to establish a uniform pretrial risk assessment tool.** (Advisory Commission)

Background Information for Recommendation No. 3

Tab C - LJAF Research Summary; Ohio Risk Assessment System Pretrial Assessment Tool (ORAS-PAT); Memorandum from Nicolas Anthony dated July 3, 2014; Carson City and Washoe County Pretrial Risk Assessment forms.

During the Advisory Commission meeting held on May 1, 2014, the Advisory Commission heard from Matt Alsdorf, Director of Criminal Justice, Arnold Foundation, who provided testimony regarding the use of pretrial risk assessments. Mr. Alsdorf discussed measuring and managing risk at the earliest stages of the criminal justice process. Mr. Alsdorf spoke of 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. (**Tab C**) 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. A copy of the Ohio Risk Assessment System Pretrial Assessment Tool is attached. **(Tab C)**

Additionally, during the Advisory Commission meeting on May 1, 2014, Commissioner Hardesty requested that staff procure the current pretrial risk assessments in use by each judicial jurisdiction. The Administrative Office of the Courts submitted copies of the pretrial risk assessments from Carson City and Washoe Counties. **(Tab C)**

RECOMMENDATION NO. 4 — **Draft a letter requesting the Arnold Foundation to consider establishing a pilot program for pretrial risk assessments in Clark County.** (Commissioner Barker)

Background Information for Recommendation No. 4

During the Advisory Commission meeting held on May 1, 2014, Matt Alsdorf indicated that the Arnold Foundation is seeking to establish pilot programs (based on available funding) in various communities. Commissioner Barker suggested that the Arnold Foundation consider Clark County for a pilot project for pretrial risk assessments. This recommendation would direct staff to draft a letter to the Arnold Foundation requesting such consideration.

RECOMMENDATION NO. 5 — **Draft legislation to establish a Legislative Corrections Ombudsman for offenders.** (John Witherow)

Background Information for Recommendation No. 4

Tab D - Letter to the Advisory Commission, dated February 24, 2014; Michigan Compiled Laws 4.351-4.364; Michigan Department of Corrections Policy Directive.

During the Advisory Commission meeting held on May 1, 2014, John Witherow, President, NV-CURE, presented evidence of the State of Michigan's Legislative Corrections Ombudsman. This recommendation would establish an independent office to review the actions of prison officials. Mr. Witherow testified that the current grievance process for inmates is not working, and that there needs to be an independent review process. At the meeting, several members of the Advisory Commission questioned the proposed cost for an Ombudsman system.

RECOMMENDATION NO. 6 — **Draft legislation to: (1) establish a Naloxone access law; (2) amend NRS 41.500 (the good samaritan law) to allow for the assistance to a victim of overdose; (3) amend NRS 453.521 to remove liability for possession of nasal inhaler for certain purposes; (4) amend NRS 125.480 "best interest" of the child determination to include alcohol/substance abuse; (5) amend NRS 484C.400 to remove the provision that failure to complete treatment is another crime; (6) and amend NRS 453.336 for second offense of possession of less than one ounce of marijuana to authorize, rather than require, a program of treatment and rehabilitation.** (Judge Dorothy Nash Holmes)

Background Information for Recommendation No. 6

Tab E - 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.

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.

RECOMMENDATION NO. 7 — **Draft legislation to require a review of the risk assessment tool used by the Division of Parole and Probation, and further require the availability of scores and restitution/collection reports.** (Commissioner Hardesty)

Background Information for Recommendation No. 7

Tab F - Division of Parole and Probation's Offender Assessment Overview

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. (**Tab F**) 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.

During the meeting, Commissioner Hardesty 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. Commissioner Hardesty was also concerned with the reporting and availability of scores.

During the meeting, Commissioner Hardesty also indicated that he suspected that most of the dishonorable discharges were associated with unpaid restitution. He said it would be helpful if that was broken out. He wanted to know the status of the Division's ability and effort to collect restitution and how many of the dishonorable discharges were related to unpaid restitution. Justice Hardesty stated that when he was a district court 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. Kim Madris, Deputy Chief, Division of Parole and Probation, testified that they did not distribute that type of report to the district judges. Commissioner 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.

Commissioner 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. This recommendation would require the information to be collected and provided by the Division of Parole and Probation.

RECOMMENDATION NO. 8 — **Draft legislation or include a policy statement encouraging law enforcement agencies to adopt uniform evidence-based practices for eyewitness suspect identification.** (Rebecca Brown)

Background Information for Recommendation No. 8

Tab G – Innocence Project Fact Sheet; Model legislation on Eyewitness Identification from the Innocence Project; NRS 171.1237.

During the Advisory Commission meeting held on July 8, 2014, Rebecca Brown, Director of State Policy Reform, Innocence Project, testified that eyewitness misidentification was a contributing cause in 73 percent of wrongful convictions.

NRS 171.1237 currently requires each law enforcement agency in the State to adopt policies and procedures governing the identification of a suspect by an eyewitness. As part of her recommendation, Ms. Brown suggested a uniform statewide implementation (including the possibility of non-legislative reforms), which may include the following:

1. A requirement that all agencies have a written policy that minimally comports with best practices;
2. Statewide model policy (perhaps modeled after updated LVMPD policy)
3. Training in best practices;
4. Effort to assure law enforcement appreciation for reform;
5. Implementation through the Advisory Commission; and
6. A plan to ensure goals are met.

RECOMMENDATION NO. 9 — **Draft legislation to make traffic violations a civil infraction rather than a criminal offense.** (Assemblywoman Fiore)

Background Information for Recommendation No. 9

Tab H – Assembly Bill No. 248 (2013), as introduced.

During the meeting held on July 8, 2014, Assemblywoman Fiore testified about the importance of Assembly Bill No. 248 (2013), which did not pass. Ms. Fiore said the bill moved minor traffic violations from a criminal violation and treated them as a civil fine.

Existing law provides that a violation of any traffic law or ordinance is a misdemeanor, unless a different penalty is prescribed by a different statute. (NRS 484A.900) Assembly Bill No. 248 sought to enact provisions based on Arizona law to provide for the imposition of civil penalties rather than criminal penalties for violations of certain traffic laws and ordinances. During the meeting, Assemblyman Frierson commented that the Assembly Committee on Judiciary has already submitted a bill draft request (BDR 93) for the 2015 Legislative Session, which may address the issue of civil traffic violations.

RECOMMENDATION NO. 10 — **Draft a letter to the Governor and Legislature to request additional funding for the Division of Parole and Probation, Department of Corrections and the Board of Parole Commissioners.** (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 10

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. As such, while the Advisory Commission is a policy committee, this recommendation would urge the Governor and the Legislature to consider the pressing need for additional funding for the Division of Parole and Probation, Department of Corrections and Board of Parole Commissioners. For efficiency purposes, staff has combined all three agencies into a recommendation for a single letter.

RECOMMENDATION NO. 11 — **Draft legislation to extend sentence credits for category B felonies; raise the threshold amounts for certain trafficking in controlled substances offenses; and statutorily differentiate between residential and commercial burglary.** (Office of Justice Programs Diagnostic Center)

Background Information for Recommendation No. 11

Tab I – Penalties for Category B Felonies prepared by the Research Division; Assembly Bill No. 136 (enrolled/vetoed 2011); Diagnostic Center Status Report; NRS 453.3385; NRS 205.060; NRS 205.067.

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, the Diagnostic Center conducted numerous site visits and conference calls with interested stakeholders.

Jessica Herbert and Steve Rickman of the Diagnostic Center 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 to date, the Diagnostic Center preliminarily supports three legislative policy recommendations for the Advisory Commission's review. The Advisory Commission may consider any and/or all of the three recommendations, which may be combined into a single bill draft request.

Recommendation I, is to draft legislation to extend the current so-called "A.B. 510 credits" to all category B felons with the exception of crimes including physical harm. In addition, while there is the presumption for the eligibility for good time credits, a judge may use discretion to exclude other category B felons from eligibility of good time credits based on aggravating factors such as threat of physical harm, significant financial harm and extensive criminal history. The proposed legislation would also allow both the prosecution and defense to participate in those good time credit decisions by the sentencing judge.

Recommendation II, is to draft legislation to increase the threshold amounts for certain Schedule I drug trafficking offenses. According to the Diagnostic Center's research, Nevada's category B drug trafficking offenses have low weight thresholds and conflict with national trends for addressing high-level traffickers. NRS 453.3385 currently provides that a person who sells, manufactures, delivers, brings into this State or possesses certain substances is guilty of a category B felony if the quantity involved is 4 grams or more, but less than 28 grams. If the amount is greater than 28 grams, the person is guilty of a category A felony. This recommendation would repeal the lower threshold amounts, thereby raising the minimum threshold amount for trafficking of Schedule I controlled substances (other than marijuana) to a quantity of 28 grams or more. It would also revise the penalty for such an offense from a category A to a category B felony. (NRS 453.3385)

Recommendation III, is to draft legislation to statutorily differentiate between residential and commercial burglary. Existing law provides that a person who enters certain structures with the intent to commit grand or certain petit larcenies, assault or

battery, any felony or to obtain money by false pretenses is guilty of the crime of burglary. (NRS 205.060) Existing law also provides that a person who, by day or night, forcibly enters an inhabited dwelling without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry, is guilty of invasion of the home. (NRS 205.067) Currently, the crimes of burglary and invasion of the home are both punishable as a category B felony, with 1 to 10 years imprisonment and/or a fine of not more than $10,000. This recommendation seeks to draft legislation to differentiate between a burglary and a theft, where no forced entry is committed, in a commercial location.

RECOMMENDATION NO. 12 — **Draft legislation to enact reforms similar to the justice reinvestment initiatives passed in Oregon House Bill No. 3194 (2013).** (Commissioner Hardesty)

Background Information for Recommendation No. 12

Tab J – Oregon House Bill No. 3194 (2013); Memorandum on Oregon Public Safety Reforms dated June 6, 2014.

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 Trust to seek funding 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 meeting held on March 5, 2014, Craig Prins, Executive Director of the Oregon Criminal Justice Commission, gave a presentation on the public safety reforms that Oregon was able to accomplish through the assistance of the Pew Charitable Trusts. The overarching goal of the Oregon legislation was to use an evidence based approach to reduce prison costs and to reinvest those savings in programs like specialty courts and victims services. In summary, some of the Oregon reforms that the Advisory Commission may wish to consider include:

A. Sentencing Reforms
    1. Probation for Marijuana Offenses
    2. Probation for Felony Driving with a Suspended License
    3. Sentence Reduction for Robbery in the Third and Identity Theft Offenses

4. Revising the crime of misdemeanor harassment to include distributing a visual recording of sexually explicit material of another person when the other person is under 18 years of age.

B. Transitional Leave, Earned Discharge and Downward Disposition for Drug Delivery/Manufacturing Sentences

C. Probation Reforms

D. Establishing a Task Force on Public Safety

E. Measuring Outcomes

F. Establishing a Center for Policing Excellence

G. Establishing a Justice Reinvestment Grant Program and Reentry Courts

H. Making Various Reinvestment Appropriations (including Specialty Courts, Community Corrections and Victims Services)

RECOMMENDATION NO. 13 — Draft legislation to revise various provisions relating to medical marijuana. (Subcommittee on the Medical Use of Marijuana)

Background Information for Recommendation No. 13

Tab K – Report of the Advisory Commission's Subcommittee on the Medical Use of Marijuana.

The Subcommittee on the Medical Use of Marijuana (NRS 176.01247) held two meetings during the interim. At the Subcommittee's 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. For purposes of this recommendation, staff has listed below the 10 recommendations of the Subcommittee on the Medical Use of Marijuana. As you will note, some recommendations contain multiple parts. Because the subject matter relates to a single subject, some or all of the recommendations may be combined into a single bill draft request or they may be submitted as multiple bill draft requests.

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

B. 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.

C. 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.).

D. 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.

E. 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.

F. Draft legislation to require the University system (NSHE) 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.

G. 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 State Board of Pharmacy to reschedule marijuana from a Schedule I to a Schedule II controlled substance.

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

I. 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)

J. 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.

RECOMMENDATION NO. 14 — **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 utilize automatic expungement for arrestee DNA records and to further develop best practices should Nevada choose to proceed with automatic expungement in the future.** (Subcommittee to Review Arrestee DNA)

Background Information for Recommendation No. 14

Tab L – Report of the Advisory Commission's Subcommittee to Review Arrestee DNA.

The Advisory Commission on the Administration of Justice's Subcommittee to Review Arrestee DNA (NRS 176.01246) held two meetings. 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.

RECOMMENDATION NO. 15 — **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.** (Subcommittee to Review Arrestee DNA)

Background Information for Recommendation No. 15

At the Subcommittee's final meeting held on August 25, 2014, the Subcommittee voted upon and approved this 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 assist in identifying and expunging DNA records. Currently there is no statewide system to accurately track offender records from arrest through release from custody.

RECOMMENDATION NO. 16 — **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.** (Subcommittee on Arrestee DNA)

Background Information for Recommendation No. 16

During the course of two Subcommittee 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 this recommendation to include a policy statement encouraging all interested stakeholders to work together to develop a statewide criminal justice computer database.

RECOMMENDATION NO. 17 — **Draft legislation authorizing the Department of Corrections to provide certain confidential information to the Office of the Attorney General.** (Subcommittee on Victims of Crime)

Background Information for Recommendation No. 17

Tab M – Proposed draft legislation authorizing the release of certain confidential information as recommended by the Advisory Commission's Subcommittee on Victims of Crime.

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. The Subcommittee was chaired by Commissioner Masto and included 13 members from various criminal justice backgrounds. Upon its conclusion of business, the Subcommittee advanced three recommendations to the full Advisory Commission.

This proposed draft legislation seeks to amend NRS 209.521 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. 18 — **Draft legislation relating to the enforcement of restitution.** (Subcommittee on Victims of Crime)

Background Information for Recommendation No. 18

Tab N – Proposed draft legislation relating to restitution as recommended by the Advisory Commission's Subcommittee on Victims of Crime.

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, NRS 176A.870) 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.

RECOMMENDATION NO. 19 — **Draft legislation authorizing the Victims of Crime Compensation Fund to be used for the reimbursement of counties for the cost of sexual assault examinations.** (Subcommittee on Victims of Crime)

Background Information for Recommendation No. 19

Tab O – Proposed draft legislation relating to reimbursement for the cost of sexual assault examinations as recommended by the Subcommittee on 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'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.

RECOMMENDATION NO. 20 — **Draft legislation to require testing of inmates for the hepatitis C virus.** (John Witherow)

Background Information for Recommendation No. 20

Tab P – Proposed draft legislation to amend NRS 209.385 as provided by John Witherow.

During the Advisory Commission meeting held on September 12, 2014, John Witherow, President, NV-CURE, testified as to the need to test all offenders committed to the custody of the Department of Corrections for the hepatitis C virus. The proposed bill draft language would mirror the current statutory language for testing of offenders for the human immunodeficiency virus, and provide that any incarcerated offenders not already tested, would be tested with 12 months of the passage of the legislation.

RECOMMENDATION NO. 21 — **Draft legislation relating to solitary confinement.** (Vanessa Spinazola)

Background Information for Recommendation No. 21

Tab Q – Senate Bill No. 107 (2013) (enrolled); Draft recommendations for legislation proposed by Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties.

Senate Bill No. 107 (2013) required the Advisory Commission to conduct a study concerning certain aspects of detention and incarceration in this State. (**Tab Q**) During the Advisory Commission meetings held on March 5, 2014, and September 12, 2014, the Advisory Commission heard from national policy experts and agencies charged with housing offenders, on the general topic of solitary confinement including: protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction and solitary confinement. Martin Horn, Distinguished Lecturer, John Jay College of Criminal Justice, and Terry Kupers, MD, MSP, Professor, The Wright Institute testified about national trends,

including a recent settlement between the ACLU and the State of New York and recommendations from the American Bar Association. Much of the testimony centered on the current policies for jails and prisons in Nevada, and the need to classify and safely segregate offender populations. The Department of Corrections and local law enforcement officials also testified as to the use of voluntary and involuntary protective segregation.

During the meeting held on September 12, 2014, Vanessa Spinazola proposed draft legislation relating to the use of solitary confinement, including the following:

1. Use of alternatives to segregation in prisons and jails;
2. Prohibition of the placement of the mentally ill in solitary confinement;
3. Guarantees of sanitary conditions and access to hygiene products while segregated;
4. Clear parameters on which violations may lead to placement in segregation;
5. Due process guarantees for placement into segregation;
6. Regular status checks during all types of segregation;
7. Access to programming while segregated;
8. Written procedures on earning early release; and
9. 30-day limitation on most types of segregation.

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

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.

B

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

Supreme Court of Nevada
201 South Carson Street,
Suite 250
Carson City, NV 89701

ROBIN SWEET
Director and
State Court Administrator

Certified Court Interpreters Program

NEVADA STATE COURT LANGUAGE ACCESS PLAN

Revised on 12/24/2013

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Table of Contents

1. INTRODUCTION

Interpreting in Nevada has a long and documented presence. In the mid-1800s, Sarah Winnemucca–the daughter of Chief Winnemucca and granddaughter of Chief Truckee–served as an interpreter and negotiator between her Paiute people and the U.S. Army, and made interpreting easily recognizable. However, the professionalization of court interpreting in the 'Battle Born State' did not occur until the beginning of the 21st century when the Nevada Legislature provided funding to establish the Certified Court Interpreter Program.

Limited English and non-English speakers have a strong-rooted presence in Nevada. In recognition of this diversity and to ensure competent interpretive services in legal proceedings, the Supreme Court of Nevada, specifically Justice Cliff Young, pioneered a Court Interpreter Program initiative, by requesting the State Bar Board of Governors to look at existing practices concerning court interpreter services in Nevada Courts. A study committee on certification of court interpreters was created in 1990. The objectives of the committee were to find out what services were available, what services were mandated by law to determine whether or not existing services were sufficient and, if so, what was needed to bring the services up to the level that was required by law[1].

A few attempts to sponsor legislation were aimed at implementing the above mentioned Committee's recommendations during the 1990s. Even though the legislators recognized the need for statutory regulation of court interpreters, they put it on hold due to the fiscal impact. Finally, the 2001 Legislative Session opened the door by enabling the creation of the Nevada Certified Court Interpreter Program within the Administrative Office of the Courts.

The Nevada Certified Court Interpreter Program was established in 2002 through Nevada Revised Statutes (NRS) 1.510. N.R.S. 1.510 charged the Court Administrator with establishing a program for the certification of court interpreters for witnesses, defendants and litigants who speak a language other than English and do not know the English language.

The Advisory Committee for Certified Court Interpreter Program was created pursuant to NRS 1.530 to advise the State Court Administrator regarding regulations related to certification. The Committee members fully accepted and executed that role and have provided a competent guidance in other court interpreter related matters when requested.

Recent Assembly Bill No. 365, effective as of July 1, 2013 revises certain provisions relating to court interpreters. Section I and 2 of this bill require and authorize the State Court Administrator to adopt regulations which, subject to availability of funding, establish criteria and procedures for the appointment of alternate court interpreters

[1] Committee Concerning Statewide Court Interpreter Services, 01/11/1991, Summary of Report to the State Bar Board of Governors.

under certain circumstances. Sections 4-6 of this bill require a certified court interpreter or alternate court interpreter to be provided in various judicial proceedings for a person with a language barrier. Section 10 of this bill requires the Advisory Commission on the Administration of Justice to appoint a subcommittee to conduct an interim study concerning language access in the courts.
This Language Access Plan (LAP) 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 (LEP) individuals; and
3) To inform LEP individuals about available language resources.

Furthermore, the LAP 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.

2. DEFINITIONS[2]

Bilingual – Using or knowing two languages proficiently.

Bilingual Staff – Individuals who are proficient in English and another language and who communicate directly with a limited English proficient (LEP) individual in their common language. This term is intended to be read broadly to include individuals who are proficient in multiple languages.

Certification – The determination, through standardized testing, that an individual possesses certain knowledge, skills, and abilities.

Court – Any federal, state, local, tribal, military, or territorial tribunal within an adjudicatory system, whether judicial or administrative.

Code of Professional Responsibility – The minimum standard of conduct for interpreters working in a court. This is also referred to as the interpreter's ethical code.

Credentialing – The process of establishing, through training and testing programs, the qualifications of an individual to provide a particular language access service, which designates the individual as certified, registered, or otherwise proficient and capable.

Cultural Competence – A set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations.

[2] Taken largely from American Bar Association Standards for Language Access in Courts http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/language_access.html.

Interpreter – A person who is fluent in both English and another language, who listens to a communication in one language and orally converts it into another language while retaining the same meaning. (See also Translator.)

Interpretation – The unrehearsed transmitting of a spoken or signed message from one language to another.

Language Access Plan (LAP) – The strategy for the provision of the necessary services for limited English proficient (LEP) persons to access the service or program in a language they can understand and to the same extent as non-LEP persons.

Legal Proceeding – Court or court-annexed proceedings under or by the authority of a judicial officer, including proceedings handled by judges, magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers within the judicial branch.

Limited English Proficient (LEP) Person – A limited English proficient (LEP) person is someone who speaks a language other than English as his or her primary language and has a limited ability to read, write, speak, or understand English.

Machine Translation – Software that automatically translates written material from one language to another without the involvement of a human translator or reviewer.

Meaningful Access – The provision of services in a manner that allows a meaningful opportunity to participate in the service or program free from intentional and unintentional discriminatory practices.

Recipient of Federal Financial Assistance – Recipients of federal funds range from state and local agencies, to nonprofits and other organizations. A list of the types of recipients and the agencies funding them can be found at Executive Order 12250 Coordination of Grant-Related Civil Rights Statutes. Sub-recipients are also covered, when federal funds are passed from one recipient to a sub-recipient. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

Register – The level and complexity of vocabulary and sentence construction. Not to be confused with the level of certification in Nevada.

Translation – Converting written text from one language into written text in another language. The source of the text being converted is always a written language.

Translator – An individual who is fluent in both English and another language and who possesses the necessary skill set to render written text from one language into an equivalent written text in another language. (See also Interpreter.)

3. HISTORICAL BACKGROUND

Linguists estimate that about 6,000-7,000 different languages are spoken in the world today. According to the Ethnologue language database, 364 languages are spoken in the United States at first language level; of those, 176 are indigenous languages, and 188 are immigrant languages.[3]

Although the U.S. Constitution does not specifically guarantee the right to an interpreter for court proceedings, this right has been established in criminal proceedings by construing the **Sixth Amendment** (defendant's right to confront adverse witnesses and his/her right to participate in his own defense, including the assistance of counsel) as well as the **Fifth Amendment** (due process clause), as applied to the states through the **Fourteenth Amendment** (equal protection). The interpreter protects those rights by ensuring the defendant's "presence" when his case is heard, providing a complete interpretation of everything that is said in court. The defendant's right to be present at all stages of the proceedings has long been recognized in case law (*Lewis v. United States* 1892), and the notion of "linguistic presence" was established in *Arizona v. Natividad* (1974). A California case, *People v. Chavez* (1981), declared that appointing a bilingual defense attorney is not enough to guarantee a defendant's right to interpretation. The Court Interpreters Act of 1978 established a certification program to ensure the competency of interpreters working in federal courts, and numerous states have enacted laws or regulations concerning the quality of interpreting in the state courts[4].

On the other hand, in civil proceedings the constitutional right to the interpreter is less settled. Some states and federal cases have recognized that interpreters are necessary to ensure meaningful participation, however, courts have not uniformly held that civil litigants are entitled to an interpreter under Constitution.[5]

The Nevada Certified Court Interpreter Program was established in 2002 through Nevada Revised Statutes (NRS) 1.510. The Program's primary function is to administer certification of spoken language interpreters for courts to use with defendants, witnesses, and litigants who speak a language other than English and do not know or have limited knowledge of the English language. The Certified Court Interpreter Program Advisory Committee established pursuant to NRS 1.530 has been instrumental from the Program's inception in advising the State Court Administrator regarding establishing and modifying regulations related to certification as well as providing guidance in other court interpreter related matters. The Administrative Office of the Courts with the Advisory Committee formulated and adopted a comprehensive policy known as the *State Court Administrator Guidelines for the Nevada Certified Court*

[3] A table with a comparative overview of languages spoken throughout the world can be found at http://www.ethnologue.com/ethno_docs/distribution.asp?by=country. A descriptive overview of the more common living languages spoken in the United States can be found at http://www.ethnologue.com/show_country.asp?name=US.

[4] Mikkelson, Holly, 2000, *Introduction to Court Interpreting*: St. Jerome Publishing, pages 12-13.

[5] National Center for State Courts, 2013, *A National Call to Action*, page 38.

Interpreter Program, which has functioned and continues to function as the foundation of the Program.
Nevada became an official member of the Council of Language Access Coordinators (CLAC), in 2001[6]. Thanks to its affiliation with this national body, the Program receives invaluable access to testing instruments, training modules, and technical information.

The first Orientation Workshop for Prospective Nevada Court Interpreters was held in Northern and Southern Nevada in August 2002. The first interpreter oral examination was administered in the Spanish language in June 2003. Nevada had its own certified court interpreters (all in Spanish) when 15 participants passed the oral examination in 2003. Currently, the Certified Court Interpreters Program annually tests and qualifies interpreters of many foreign spoken languages.

4. LEGAL BASIS

The need to provide services to persons with limited English proficiency (LEP) in the court system (civil context) arises from the U.S. Department of Justice reading of constitutional requirements of equal protection and due process of law, as well as Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq. Title VI[7]), and the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3789d(c) Safe Streets Act[8]), both of which prohibit national origin discrimination by recipients of federal financial assistance (recipient). Regulations under Title VI and Safe Streets Act further prohibit recipients from administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin.

In order to comply with the Title VI prohibition against national origin discrimination, recipients of federal financial assistance must take reasonable steps to ensure meaningful access to their programs. If there appears to be a failure or threatened failure to comply with the regulations and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible official may suspend or terminate, or refuse to grant or continue, Federal financial assistance, or use any other means authorized by law, to induce compliance with these requirements. See id. §§42.108, 42.210.

On August 11, 2000, President Bill Clinton issued Executive Order 13166, titled "Improving Access to Services by Persons with Limited English Proficiency." The Order requires federal agencies to assess and address the needs of otherwise eligible persons seeking access to federally conducted programs and activities who, due to limited English proficiency (LEP), cannot fully and equally participate in or benefit from those

[6] Council of Language Access Coordinators (CLAC), formerly known as the Consortium for Language Access in the Courts' web page available at http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access.aspx.

[7] Title VI of the 1964 Civil Rights Act available at http://www.justice.gov/crt/about/cor/coord/titlevistat.php.

[8] Omnibus Crime Control and Safe Streets Act available at www.fcc.gov/Bureaus/OSEC/library/legislative_histories/1615.pdf.

programs and activities. In other words, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP individuals[9].

On June 18, 2002, the Department of Justice issued final guidance[10] to its recipients regarding the requirement under Title VI and the Title VI regulations, as well as under the Safe Streets Act, to take reasonable steps to provide meaningful access to LEP individuals. See 67 Fed. Reg. 41,455 (DOJ Guidance).

According to the DOJ guidance, recipients have two main ways to provide language services and therefore ensure meaningful access by LEP person: oral (interpretation) and written (translation). Interpretation is the oral or signed transfer of meaning from one language into another language. The interpretation should conserve the meaning, tone, style, and register of the original message without additions or omissions. Translation is rendering written material from one language into written form in another language. The quality and accuracy of the language services are critical to avoid serious consequences to the LEP person and to the recipient. DOJ Guidance further deals with the issue of what constitutes reasonable steps to ensure meaningful access. DOJ Guidance emphasizes the importance of the following **four-factor balancing test** for identifying and addressing the language assistance needs of LEP persons:

i. ***the number or proportion of LEP persons in the eligible service population;***
ii. ***the frequency with which LEP individuals come in contact with the program;***
iii. ***the importance of the service provided by the program; and***
iv. ***the resources available to the recipient.***

In response to the above mentioned DOJ Guidance, the Certified Court Interpreters' Program in the State of Nevada has developed and implemented this Language Access Plan (LAP), which is intended to be a practical and usable tool for the Nevada judiciary.

Two cases involving limited English proficient individuals have been decided by the Supreme Court of Nevada in 2007 and 2009. In case 123 Nev. 316 (2007) Caballero *v. White Pine County District Court* dealt with original proper person petition for a *Writ of Mandamus* challenging a district court order that affirmed a justice court order, which dismissed petitioner's small claim action.

Petitioner, an indigent inmate who could not speak English, filed petition for *Writ of Mandamus*, seeking to compel district court to require justice court to appoint an

[9] LEP individuals are persons whose first language is other than English and who have a limited ability to read, write, speak, or understand English.

[10] Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons available at http://www.justice.gov/crt/about/cor/lep/DOJFinLEPFRJun182002.php.

interpreter in underlying small claims action for return of lost property. The Supreme Court held that: (1) statute requiring appointment of interpreters for persons with disabilities did not entitle inmate to an interpreter, (2) courts are vested with the inherent authority in civil proceedings to appoint interpreters, (3) court was expressly authorized to appoint an interpreter under justice court rule, and (4) case would be remanded to allow justice court to consider appointing interpreter. Petition was granted.

In case 125 Nev. 763 (2009), *Ouanbengboune v. State* involved a Laotian-speaking individual who appealed a judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon.

The Supreme Court held that: (1) court-appointed interpreter's errors in interpreting non-English speaking defendant's testimony fundamentally altered context of defendant's testimony, (2) court-appointed interpreter's errors in interpreting non-English speaking defendant's testimony did not prejudice defendant, (3) defendant was entitled to afterthought robbery instruction relative to felony-murder charge, (4) defendant's failure to object to trial court's failure to administer afterthought robbery instruction rendered the issue subject to review for plain error, and (5) trial court's failure to administer afterthought robbery instruction was not plain error. Judgment of conviction was affirmed.

5. LEP POPULATION NEEDS ASSESSMENT

The U.S. Constitution requires a census every 10 years to determine how many seats each state will have in the U.S. House of Representatives. The Census Bureau's Population Estimates Program (PEP) on July 1 of each year estimates populations for future years after the last published decennial census (2010). Existing data series such as births, deaths, and domestic and international immigration, are used to update the decennial census base counts.

Nevada covers 110,567 square miles, making it the 7th largest of the 50 states. The majority of the population is concentrated in the Reno and Las Vegas areas with the remainder spread throughout the rural areas. In 2012, Nevada ranked 35th in population in the United States (up from 39th in 1990) with an estimated total of 2,758,931. Between 1990 and 2000, Nevada's population grew from 1,201,833 to 1,998,257, an increase of 66.3 percent, the decade's largest increase by far among the 50 states (followed by 40 percent for Arizona). The 1990s were also the fourth consecutive decade in which Nevada was the country's fastest-growing state and had a population growth rate more than 50 percent. With a population density of 24.6 persons per square mile in 2010 (density rank 44), Nevada remains one of the most sparsely populated states. There are 17 Counties in Nevada. The largest Nevada County by size is Nye County, which is 18,147 square miles. The largest Nevada County by population is Clark County, which had a population of 1,951,269 in 2010.

The following data reflects the U.S. Census[11] quick facts pertaining to Nevada:

Population, 2012 estimate	***2,758,931***
Persons under 5 years, percent, 2011	*6.8%*
Persons under 18 years, percent, 2011	*24.4%*
Persons 65 years and over, percent, 2011	*12.5%*
White persons, percent, 2011 (a)[12]	*77.7%*
Black persons, percent, 2011 (a)	*8.6%*
American Indian and Alaska Native persons, percent, 2011 (a)	*1.6%*
Asian persons, percent, 2011 (a)	*7.7%*
Native Hawaiian and Other Pacific Islander, percent, 2011 (a)	*0.7%*
Persons reporting two or more races, percent, 2011	*3.7%*
Persons of Hispanic or Latino origin, percent, 2011 (b)[13]	***27.1%***
White persons not Hispanic, percent, 2011	*53.6%*
Foreign born persons, percent, 2007-2011	***19.2%***
Language other than English spoken at home, pct. age 5+, 2007-2011	***28.5%***

According to the U.S. Census Bureau information released on September 22, 2009, one in three Hispanic households in Nevada continues to be linguistically isolated. Nevada ranks fifth nationally, with 33.7 percent of Hispanic households not having anyone over 14 fluent in English[14].

Spanish language is by far the most commonly spoken language at home (population 5 years and over) besides English in the Silver State (9.4 percent) – *see* Table 1. on the page 13. Interestingly, there are 26 additional foreign languages (e. g. Tagalog, Chinese, Korean, Vietnamese, African languages, other Pacific Island Languages etc.) for which more than 500 person or more reside in the state and speak language other than English.

Nevada's Judiciary is a non-unified court system, meaning it has no centralized funding structure. While the Nevada Constitution gives the Chief Justice of the Supreme Court administrative authority over all courts, many responsibilities for the daily operation of the courts fall to local governments.

The courts are currently not mandated to report the frequency of contact with LEP persons to the AOC. Using data from the Eighth Judicial District Court in Clark County (FY 2011) provided voluntarily by the Court's Administration for demonstrative purposes only, the Spanish speakers are being assisted the most[15]. Furthermore, the Judges'

[11] A recent press release from the Census website suggests that only certain information has been released so far for Nevada – see http://quickfacts.census.gov/qfd/states/32000.html.

[12] (a) Includes persons reporting only one race.

[13] (b) Hispanics may be of any race, so also are included in applicable race categories.

[14] Originally published in the September 22, 2009, online edition of the Reno Gazette-Journal (http://www.rgj.com/).

[15] Assistance includes, but is not limited to: District Courts, Justice Courts, District Attorney's Office, Public Defender's Office, Family Courts, Family Support. Juvenile Justice Services, Family Mediation Center, Temporary Protective Order (TPO) Courts, TPO Office, Juvenile Probation/Intake, DFS (CPS/SAINT Clinic & Foster Program), Pro Bono, and Court/Clerk Public Inquiry Telephone Calls Court/Clerk Public Inquiry Telephone Calls.

Survey Results Report (May 2011) corroborates this observation. Spanish language court interpreter services are the most solicited according to the survey's respondents, followed by some languages of Asia (i.e., Mandarin, Vietnamese, and Tagalog), Middle-Eastern languages (i.e., Arabic, Farsi, Urdu), the languages of India (Punjabi, Hindi), and Russian Federation's languages, for instance[16]

[16] Evaluation Survey Report on Court Interpreter Services in Nevada, Section 3 available at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/6667/.

Table 1. *Languages Spoken by Limited English Proficient (LEP) Individuals in Nevada, 2009-2011*[17]

LANGUAGE	LEP TOTAL POPULATION[18]	PERCENT[19]
Spanish	236,100	9.4%
Tagalog	21,400	
Chinese	15,500	
Korean	6,500	
Vietnamese	4,600	
African languages	4,400	
Other Pacific Island Languages	3,500	
Thai	3,000	
Japanese	2,300	
Arabic	2,100	
Other Indic Languages	2,100	
Serbo-Croatian	1,800	
Other Indo-Euro. Languages	1,800	
Russian	1,700	
French	1,600	
Persian	1,600	
Other Slavic Languages	1,500	
German	1,300	
Italian	1,200	
Armenian	900	
Hindi	900	
Gujarati	800	
Laotian	700	
Hungarian	600	
Other Asian Languages	600	
Polish	600	
Portuguese	600	
Total LEP Population in Nevada	**322,600**	

[17] Source: Migration Policy Tabulations from the U.S. Census Bureau's pooled 2009-11 American Community Survey (for the United States and states, except Wyoming and Puerto Rico) and 2007-11 ACS (for counties, plus Wyoming and Puerto Rico) available at http://www.migrationinformation.org/integration/LEPstate-countyData.xlsx.

[18] LEP number estimates are included if 500 persons or more reside in the state.

[19] LEP percentage estimates by language are displayed only if 5 percent or more.

Table 2. *Number of Interpreter Related Requests (Sign and Spoken Languages) Tracked by the 8th Judicial District Court Interpreter Office in Clark County during FY 2010*

LANGUAGE	REGIONAL JUSTICE CENTER	FAMILY COURT
Spanish or Spanish Creole	50,114	17,172
Tagalog	490	n/a[20]
Chinese	840	79
Korean	385	n/a
Vietnamese	270	54

Nevada courts may use census data and other available data to track demographic changes that may indicate changes in the need for interpretation in a particular language. Additionally, trial courts should consider keeping records regarding:

a) the frequency with which interpreters are requested for different languages,
b) the extent to which certified interpreters are provided in response to the requests, and
c) any delays in providing interpreters[21].

6. COURT INTERPRETER PROGRAM

The current testing process in Nevada provides an objective assessment of linguistic sophistication as well as interpretation skills of those with ambition to serve as interpreters. Only individuals who prove themselves through language testing measures, who have a clean background check, and comply with other requirements, will obtain a proper interpreter certification credential[22]. Their professional skills are crucial to help to protect the constitutional rights of court participants with limited English proficiency.

The Certified Court Interpreters Program's main focus has been on ensuring that spoken language court interpreters in Nevada are competent, as indicated by objective measure, to provide high level language assistance services in those courts.

The Program is managed by the AOC with input to the regulations from the Nevada Certified Court Interpreters Advisory Committee. The purpose of the Committee is to conduct an ongoing assessment of Nevada's Certified Court Interpreter Program in order

[20] The 8th Judicial District Court Interpreters' Office statistical data does not include information on frequency of Tagalog and Korean interpreters' requests at the Family Court settings.

[21] Brennan Center For Justice, Language Access in State Courts Publications available at http://www.brennancenter.org/content/resource/language_access_in_state_courts/.

[22] Upon conclusion of the credentialing process, each interpreter receives a *"Certificate of Appointment"* and official *"Nevada Court Interpreter Identification Badge."*

to make recommendations to the Court Administrator for improvements to the program, and changes to policy. The committee was created by the legislature. is codified within the Nevada Revised Statutes (NRS), and subsequently became a standing committee of the Judicial Council of the State of Nevada (JCSN).

The Advisory Committee consists of a district judge, a justice of the peace or municipal judge in a county whose population is less than 100,000, an administrator of a district court, an administrator of a justice's court or municipal court in a county whose population is less than 100,000, a representative of the University and Community College System of Nevada, a representative of a non-profit organization for persons who speak a language other than English, and a person certified to act as an interpreter for a federal court. In addition to the above statutorily prescribed positions, the committee also includes two members of JCSN, one from a district court, and one from a limited jurisdiction court, and person certified as an interpreter in Nevada. The AOC's State Court Administrator is the ex officio Chairman of the committee[23].

The State Court Administrator oversees the certified court interpreter program for Nevada. As with many programs under the purview of the State Court Administrator, staff is largely responsible for the day-to-day efforts. The Program Coordinator identifies policy issues, develops procedures in reference to court interpreters, enforces those policies and procedures, and monitors interpreter compliance. The Coordinator administers testing for credentialing foreign language court interpreters, coordination and training on the use of foreign language interpreters and ethics, and regularly updates a Court Interpreter Roster for the Nevada Judiciary, which lists all Nevada credentialed (certified and registered) court interpreters.

Only the Nevada Administrative Office of the Courts can award the "Certified/Registered Court Interpreter" credential for use in Nevada. The use of the term "certified" in any other situation is not "certification" as provided in the statutes for Court Interpreters (NRS 1.510). *"It is unlawful for a person to act as a certified court interpreter or advertise or put out any sign or card or other device which might indicate to the public that he is entitled to practice as a certified court interpreter without a certificate as an interpreter issued by the court administrator pursuant to NRS 1.510 and 1.520."* **(NRS 1.540)**

The Coordinator also collaborates with staff from federal, state, local and non-profit agencies on various projects that impact the judicial branch, and represents Nevada at the Council of Language Access Coordinators (CLAC).

[23] Certified Court Interpreters Advisory Committee Bylaws.

7. COURT INTERPRETER QUALIFICATIONS

There are two categories of foreign spoken language court interpreters in Nevada: *Certified* and *Registered*.

Current basic requirements for a Foreign Language Certification/Registration in Nevada include the following[24]:

1. Complete the Orientation Workshop for Interpreters in the Nevada Courts. The workshop covers fundamentals of court interpretation (modes, ethics, and role of the interpreter) as well as an introduction to Nevada's court system. The written exam provided by the Council of Language Access Coordinators (CLAC) is administered at the conclusion of the workshop.

2. Pass the Nevada Certified Court Interpreter Written Test consisting of four sections (General English Language Vocabulary, Court Related Terms and Usage, Ethics, and Professional Conduct) with a minimum score of 80 percent.

3. Pass the Nevada Certified Court Interpreter Oral Examination if the working language is a language for which the Council of Language Access Coordinators (CLAC) developed oral performance examination (consecutive skills interpreting test, simultaneous skills interpreting test, and a two-part sight translation skills test) with a minimum score of 70 percent. Or undergo the oral proficiency interview (OPI) with ALTA Language Services, Inc. ("ALTA") or Language Testing International ("LTI") and receive a score of 12 on ALTA's testing scale or a rating of "Superior" according to the American Council for Testing of a Foreign Language ("ACTFL") Proficiency Guidelines by the LTI.

4. Provide verification of Nevada courtroom observation or work (40 hours in total for the last 12 months).

5. Submit two (2) fingerprint cards and pass the requisite background check.

According to the State Court Administrator Guidelines, item 4.3.1.5 *' a candidate must pass the oral exam within 2 years of passing the written exam, or s/he will be required to retake the written exam.'*

A description and related credentialing requirements for each Nevada court interpreter category are highlighted below.

[24] State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program available at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/9410/.

❖ ***Nevada Certified Court Interpreter***

An interpreter who holds the Nevada Certified Court Interpreter Certification and the Nevada certified interpreter identification card issued by the Nevada Supreme Court, Administrative Office of the Courts. S/he possesses all of the requirements noted above, and additionally has sworn to the oath set forth in NRS 50.054 and the Canons set forth in the Code of Professional Responsibility for Interpreters in Nevada Courts, administered by a judge holding office within the State of Nevada, an officer of the court, or judge's designee.

Among the Nevada Certified Court Interpreters are a few individuals who are designated as Nevada Master Level Court Interpreters.

Nevada Master Level Certified Court Interpreter is an interpreter who holds the Nevada Certified Court Interpreter Certification and the Nevada certified interpreter identification card issued by the Nevada Supreme Court, Administrative Office of the Courts. A *'Master Level'* designation is given to Nevada Certified Court Interpreters who complied with all mandatory requirements concerning certification status and additionally:

- Achieved a successful score of 80 percent or higher on the Written Test as well as on all three parts of the oral exam, or
- Passed the federal certification examination.

❖ ***Nevada Registered Court Interpreter***

A Nevada Registered Court Interpreter is an interpreter for whom no oral examination has been developed by the CLAC or offered in his/her particular language. The applicant has successfully satisfied requirements mentioned above. If the interpreter's language of expertise has not been available for oral testing by way of the Consortium oral performance examination, the applicant must have undergone the oral proficiency interview (OPI) by ALTA Language Services, Inc. ("ALTA") or Language Testing International ("LTI") and received a score of 12 on ALTA's testing scale or a rating of "Superior" according to the American Council for Testing of a Foreign Language ("ACTFL") Proficiency Guidelines by the LTI. The Nevada Certified Court Interpreter Program will allow an interpreter to take the OPI twice in a language within a 3-year period. Furthermore, an interpreter has sworn to the oath set forth in NRS 50.054 and the Canons set forth in the Code of Professional Responsibility for Interpreters in Nevada Courts, administered by a judge holding office within the State of Nevada, an officer of the court, or judge's designee.

The Guidelines (Appendix IV) provide specific directions concerning the continuing education (CE) policies established for all credentialed interpreters (certified and registered) in Nevada. Pursuant to Guidelines' provision 3 entitled "Required Credits, Minimum and Maximum by Type of Education," to satisfy the requirements for retaining the Nevada Certified Court Interpreter credential, each certified or registered interpreter must earn 40 CE credits every 3 years, as a condition of

renewal. The 40 CE credits must include a minimum of 3 credits on Ethics. These requirements are mandatory to assist the interpreter in fulfilling Canon 10 of the Code of Professional Responsibility for Interpreters in the Nevada Courts regarding professional development.

The Program works closely with a variety of educational providers whose educational activities are subject to approval for credits. These activities are offered in several spoken languages either in person via traditional types of classroom lectures and/or online via distance learning, which not only includes independent study, but which can include videotaped/CD-ROM material, broadcast programming, online/Internet delivery, and online Interactive Courses. In addition to being posted online, all Nevada credentialed interpreters receive e-mail notifications about approved CE activities on a regular basis[25]. The use of conference-type group study, which can include study networks as well as different types of seminars/workshops, can be used to facilitate learning. The Guidelines permit court interpreters to obtain CE credits for alternative-study courses/programs as well as for teaching and/or facilitating approved CE programs.

The AOC Certified Court Interpreter Program compiles and maintains a list of Nevada Certified and Registered Court Interpreters. This list is routinely updated and available on our website at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/6429/. Included in this roster is the interpreter's name, identification number, working language, telephone number, email address, information on interpreter's availability to assist rural courts as well as interpreter's active/inactive status. Furthermore, the roster contains information as to whether or not the interpreter has achieved the "master level" (*see* Section 5, subsection "A" titled 'Court Interpreter Qualifications').

Nevada courts should make every effort to schedule those court interpreters who possess a certified or registered court interpreter credential. If there are no credentialed court interpreters in Nevada for certain languages, the AOC will, upon request, assist the courts by facilitating contact information on interpreters who possess appropriate credentials in other Consortium member states.

[25] Certified Court Interpreter Continuing Education Activities Approved by the Administrative Office of the Courts available at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/6275.

8. CODE OF PROFESSIONAL RESPONSIBILITY[26]

The court interpreter is a skilled professional, who fulfills an essential role in the administration of justice. The Nevada Code of Professional Responsibility shall guide all persons, agencies, and organizations who administer, supervise the use of, or deliver interpreting services to the courts. Ensuring equal access to the communication, however, may on occasion conflict with this code. When unique situations necessitate an exception to the code in order to ensure effective communication, the court may so allow.

Violations of the Nevada Code of Professional Responsibility may result in the interpreter being removed from a court's list of qualified, registered, master level, and/or certified interpreters.

Canon 1. ***ACCURACY AND COMPLETENESS***
The interpreter shall render a complete and accurate interpretation or sight translation, without altering, omitting anything from, or adding anything to what is stated or written, and without explanation.

Canon 2. ***REPRESENTATIONS OF QUALIFICATIONS***
The interpreter shall accurately and completely represent his or her certifications, training, and pertinent experience. The court should reassess the interpreter's qualifications each time the interpreter is engaged to interpret in court for a non-English speaking party or witness.

Canon 3. ***IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST***
An interpreter shall refrain from conduct that may give an appearance of personal bias or conflict of interest. The interpreter shall disclose to the court, or attorney, any real bias or interest in the parties or witnesses in a case, or any situation or relationship that may be perceived by the court, any of the parties, or any witnesses as a personal bias or interest in the parties or witnesses in a case. This disclosure shall not include privileged or confidential information. The court shall then determine if appointment of a different interpreter is necessary, thereby releasing the interpreter from the interpreter's obligation in the case. If the court and all of the parties agree that the interpreter may serve on the case, the interpreter may remain appointed to the case.

Canon 4. ***PROFESSIONAL DEMEANOR***
Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

[26] See the State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program, Appendices I and II available at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/9410/.

Canon 5. ***CONFIDENTIALITY***
Interpreters shall understand the rules of privileged and other confidential information and shall protect the confidentiality of all privileged and other confidential information.

Canon 6. ***RESTRICTION OF PUBLIC COMMENT***
Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

Canon 7. ***SCOPE OF PRACTICE***
Interpreters shall limit themselves to interpreting or performing sight translation and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities that may be construed to constitute a service other than interpreting or translating.

Canon 8. ***ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE***
Interpreters shall, at all times, assess their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the court.

Canon 9. ***DUTY TO REPORT ETHICAL VIOLATIONS***
Interpreters shall report to the court any actions by the persons that may impede their compliance with any law, any provision of this code, or any other official policy governing court interpretation and sight translation.

Canon 10. ***PROFESSIONAL DEVELOPMENT***
Interpreters shall continually improve their skills, increase their knowledge and advance the profession through activities such as professional training, education and interaction with colleagues and specialists in related fields.

9. DISCIPLINARY POLICY[27]

In accordance with Nevada Revised Statutes (NRS) 1.510, the State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program address disciplinary action for violations of the Code of Professional Responsibility for Nevada Court Interpreters. These policies and procedures were developed with assistance from the Advisory Committee. Detailed procedures are outlined within the State Court

[27] State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program, Appendix III available at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/finc-standown/9410/.

Administrator Guidelines for the Nevada Certified Court Interpreter Program (Guidelines).

10. SERVICES PROVIDED

The Nevada Judiciary is highly cognizant of the LEP community and its needs, and it is committed to ensure that persons with limited English proficiency have equal access to the courts, available court services, and justice. The courts–district, justice, and municipal, be it in a rural or urban setting–are responsible for ensuring that prompt, accurate, complete, and consistent oral interpretation and translation are provided in a manner that complies with the policies and procedures described in this Plan.

A) Interpreter Assistance during Court Proceedings and Court-Sponsored Programs

- ***In-Person Interpretation Assistance***

The Nevada courts are responsible for securing and scheduling interpreters for all judicial and related proceedings. The courts are free to contact the interpreter directly.

No statutory mandate requires the exclusive use of certified court interpreters; however, the Guidelines enumerate scenarios when certified interpreters should be used. The more complex, difficult, or legally significant assignments (e.g., capital trials, criminal trials where potential penalties include significant terms of incarceration, criminal or civil trials with highly technical terminology by witnesses) should be served by certified interpreters. The judge has the discretion to consider the gravity of the offense involved and the abilities of the person available to interpret[28].

As a general rule, Nevada courts should first seek language assistance from in-person interpreters possessing the appropriate credential from the AOC Certified Court Interpreters Program. If no in-person Nevada credentialed court interpreter is available and all due diligent efforts to secure one have been exhausted, the court may for good cause appoint an interpreter who does not yet possess a court interpreter credential. In that case, the courts should undertake the voir dire[29] process, which will assist in determining if the prospective interpreter is sufficiently qualified to provide services.

[28] State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program, provision 4.1 available at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/9410/.

[29] See Attachment I – *Voir Dire* Samples.

Team interpreting[30] is recommended for all lengthy legal proceedings and is an effective tool in the administration of justice. Interpreting is cognitively demanding and stressful. It requires many mental processes to occur simultaneously: the interpreter listens, analyzes, comprehends, and uses contextual clues to convert thought from one language to another in order to immediately render a reproduction in another language of each speaker's original utterances. In courtrooms with imperfect acoustics, cramped seating, security issues, miscellaneous noise, mumbled diction, interruptions, tense litigation, and lawyers or clients who may need the interpreter at any moment for a private consultation, interpreters need to channel dozens of stimuli and effectively sort them in order to fulfill the task at hand. Even 30 to 60 minutes of continuous interpreting leads to significant processing fatigue. Thus, simultaneous interpretation can be seen as a "cognitive management problem." After a certain amount of time on task, an interpreter inevitably reaches a saturation point, at which time errors cannot be avoided because mental circuits get overloaded[31]. Team interpreting is a quality control mechanism, implemented to preserve the accuracy of the interpretation process in any circumstance.

- ***Remote Interpreting***

Telephone and video-conference interpreting are becoming an attractive option for court administrators who want to save travel costs, gain access to qualified interpreters in languages of limited diffusion, and enhance security (especially in the case of criminal defendants who are in custody). Also important, however, are the disadvantages of impeded communication. It is widely recognized that interpreters must see faces of the speakers they are interpreting in order to receive both the linguistic and paralinguistic aspects of the source message as reliably as possible (Seleskovitch, 1968; Jones, 1998)[32].

- *Telephonic Interpretation Assistance*

  Federal law requires courts to provide qualified interpreters for non-English speakers to protect all parties' civil rights. Telephonic interpreting is one way to protect these rights and ensure equal access in instances where no in-person interpreter is available. Nevada courts should consider this alternative as a viable communication source for a LEP individual.

[30] In court settings, team interpreting refers to the practice of using two or more rotating interpreters to provide simultaneous or consecutive interpretation for one or more individuals with limited English proficiency.

[31] NAJIT (National Association of Judiciary Interpreters and Translators) POSITION PAPER – Team Interpreting In the Courtroom found at http://www.najit.org/publications/positions.php.

[32] Mikkelson, Holly, 2000, *Introduction to Court Interpreting*: St. Jerome Publishing, page 80.

Telephone interpreting is best suited when:

- *no certified, qualified, or language-skilled interpreter is available in person;*
- *protecting the interpreter's anonymity is necessary; and/or*
- *the proceedings are of short duration*[33].

Courts should either create their own telephone interpreter bank using Nevada certified and registered court interpreters listed on the Court Interpreters' Roster (Telephone Interpreter Line) or establish a contact via subscription to telephonic language assistance providers. The Nevada State Purchasing Division has awarded contracts for telephone based interpreter services – the vendors include CTS Language Link, Language Line Services, and Pacific Interpreters[34].

- *Remote Video Interpreting Assistance*
  Distance video interpreting, also known as video remote interpreting, is a process that allows interpreting services without the face-to-face interaction. Video remote interpreting uses videoconferencing technology and the internet, e.g., an interpreter from a remote location appears on a screen using cameras to help multiple parties to communicate.

B) Other Resources

The interpreter assistance described above can be complemented or in special instances augmented with additional resources. These include, but are not limited to, the use of language identification cards and bilingual staff. Courts need to consider the importance of the information, encounter, or service involved, and the consequence to the LEP person of not having the information in question provided accurately or timely.

- ***"I SPEAK" Cards***
  The first two factors in the Department of Justice four-factor analysis requires an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients/courts to identify LEP persons with whom they have contact.

  One way to determine the primary language of communication is to use language identification cards or "I speak cards", which invite LEP persons to

[33] NAJIT (National Association of Judiciary Interpreters and Translators) POSITION PAPER - Telephone Interpreting In Legal Setting available at http://www.najit.org/publications/positions.php.

[34] State of Nevada, Department of Administration, Purchasing Division available at http://purchasing.state.nv.us/Translations/Translation_Services.htm.

identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese. etc. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at www.justice.gov/crt/cor/Pubs/ISpeakCards.pdf.

- ***Bilingual Employee Assistance***
  Bilingual court staff can assist in meeting the Title VI and Executive Order 13166 requirement for federally conducted and federally assisted programs and activities to ensure meaningful access to LEP persons. One of the primary ways that bilingual staff can be used is to have them conduct daily out-of-court business with the LEP clients directly in the clients' primary language. For instance, at the clerk's office counters and self-help centers, the courts should seek to employ bilingual employees and/or volunteers who can communicate directly with a LEP individual in a particular language and/or use a telephonic interpreter service. These employees will be able to provide self-represented litigants with assistance in understanding court processes and completing necessary forms. This type of assistance does not involve interpretation or the translation between languages. However, it does require fluency in the non-English language, including fluency in court/legal terminology. Such fluency should be assessed prior to relying on the bilingual employee for the provision of specific court-related services.

  Additionally, courts should implement the following best practices regarding the use of bilingual employees:
  - develop and maintain an internal phone list of existing bilingual employees who may provide assistance to LEP customers when necessary and when no staff person is available to provide that assistance in person;
  - identify those positions in which employees may be called upon to use foreign language in dealing with the public;
  - hire employees with foreign language reading, writing, and speaking skills;
  - facilitate language training to bilingual employees;
  - provide monolingual and bilingual legal dictionaries to bilingual court staff who regularly interact with the public;
  - equip the court staff with "I Speak" cards that represent more than 60 languages to help identify the LEP individual's primary language;
  - annually review *Breaking Down the Language Barrier*, a video training tool provided by the Department of Justice, which can be streamed at http://www.justice.gov/crt/pressroom/videos.php?group=2 in five spoken languages; and
  - ensure that court staff is familiar with the Nevada Model Code of Conduct for Court Employees.

11. TRANSLATION OF DOCUMENTS AND SIGNAGE

Nevada courts should also evaluate the need for written materials routinely provided in English to be provided in regularly encountered languages other than English. It is important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity. A document will be considered *vital* if it contains information that is critical for obtaining federal and/or state services and/or benefits, or is required by law. The Nevada courts will be able to determine which documents are 'vital' by applying the four-factor analysis. Vital documents include, for example: applications, consent and complaint forms; notices of rights and disciplinary action; and notices advising LEP persons of the availability of free language assistance. The courts should translate all the key forms used in their judicial setting. *Non-vital* information includes documents that are not critical to access such benefits and services[35] or if are not required by law; the extent of the obligation to provide written translations should be determined on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis.

❖ *SAFE HARBOR FOR WRITTEN TRANSLATION OBLIGATIONS*

Under the "Safe Harbor" guidance, all recipients of federal funds are required to provide written translations, free of cost to the customer, for all documents identified as vital. These written translations must be provided for each eligible language group that constitutes at least 5% or 1,000 LEP individuals, whichever is less, of the population of persons served or likely to be served by programs in the service area (*see* U.S. Census Bureau American Fact Finder web link[36]).

Safe harbor provisions apply to the translation of written documents only. The following actions will be considered as "strong evidence" that a practice has complied with its written translation obligations:

Written translations of vital documents are provided for each eligible LEP language group that *constitutes 5% or 1,000, whichever is less*, of the population of persons eligible to be served or likely to be affected or encountered; or if there are *fewer than 50 persons in a language group that reaches the 5% trigger*, the practice may, as an alternative to translating vital written materials, provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation (sight translation) of the written materials without cost.

The intent of the safe harbor provisions is to provide a guide that offers a greater degree of certainty of compliance than that offered by applying the fact-intensive,

[35] Limited English Proficiency – A Federal Interagency Website available at http://www.lep.gov/faqs/faqs.html#OneQ9).

[36] U.S. Census Bureau, American Fact Finder available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

four-factor analysis. However, failure to provide written translations under the safe harbor provisions does not necessarily mean there is non-compliance.

Due to the current budgetary restrictions, it may be extremely challenging for the Nevada courts to provide translations with traditional human based resources. The courts may explore the idea of machine translation, even though such translation is not an ideal solution due to the lack of accuracy. Online tools[37] should be used only as a first step in translating simple sentences, words, and concepts. Though they can be of help in communicating with LEP customers, they should not be the only means of providing this assistance and should be reviewed and corrected by a speaker of the target language.

Furthermore, it is important for each Nevada court to let LEP persons know that its services are available to them and that they are free of charge. This notice should be provided in a language LEP persons will understand. Examples of notification that courts should consider include posting signs in intake areas and other entry points. For instance, signs could state that free language assistance is available. The signs should be translated into the most common languages encountered, and they should explain how to get the language help.

12. TRAINING AND TECHNICAL ASSISTANCE

A) Information Provided to Judges and Court Personnel

The Certified Court Interpreter Program initiates regular communications with Nevada judges, court administrators, and other court personnel in order to inform and provide them with resources regarding the delivery of language services, as well as recent and significant updates associated with the issue of language access in the courts. The Program utilizes a variety of ways to deliver the message including: official letters, Program Coordinator's personal visits to courts, training sessions during judicial conferences and seminars, Judicial Bench Card, and web site.

Since 2008, the Program Coordinator has frequently visited courts and met with judges from limited and general jurisdictions, court administrators as well as clerks, and other court personnel to discuss concerns and challenges (i.e., the issue of last minute interpreter requests and coverage in remote areas) and answer any questions that the courts had about language assistance. The Program Coordinator supplies the courts with informational binders and other

[37] a) Google Translator Toolkit – tool for document translation, managing translation projects, online collaboration, and including features such as multi-lingual glossaries, and translation memories;
b) http://www.freetranslation.com/ – translation available between English and Italian, Dutch, Portuguese, Russian, Spanish and Chinese
c) http://translation2.paralink.com/ – translation available between English and French, German, Portuguese, Russian and Spanish;
d) http://www.worldlingo.com/en/products_services/worldlingo_translator.html – translation available between English and all languages listed in AltaVista above.

helpful material during her visits. Understandably, the rural courts, especially, have to tackle the issue being able to provide interpreter coverage that is sufficiently abundant and properly trained. Remote video interpreting technology may be a positive solution to this problem.

The Program coordinator also presented a session about the court interpreter profession and how to effectively work with interpreters in Nevada courtrooms at the Clark Regional Judicial Council meeting in 2008. The document entitled *'Useful Tips for Judges and Court Personnel'* (*see* Attachment III) was created and distributed. Additionally, the '*Languages by Countries*' document (*see* Attachment IV) has been produced and both of these documents have been posted on the Supreme Court's web page[38].

The AOC June 2008 email newsletter distributed to all Nevada judges and court personnel featured the subject matter of court interpreting as well as useful tips for judges and court personnel when working with interpreters.

In November 2008, the Program Coordinator was invited to deliver training to new District Court Judges on the topic of how to work with the court interpreters. The presentation included items such as the overview of the program, specific tips concerning how to achieve a quality interaction in the courtroom with those who have Limited English Proficiency (LEP), and several practical exercises on the shadowing technique for simultaneous and the consecutive mode of interpretation.

A seminar course "Court Interpreters and Cultural Competence" was presented by the Program Coordinator and other faculty at the Limited Jurisdiction Judges Winter Seminar in January 2009. The keys to assessing interpreter performance plus some of the cultural issues that may hinder equal access to justice for LEP persons were highlighted.

A newly redesigned Court Interpreters' Web Page was officially launched in January 2010. This launch has improved the Program's visibility and interaction with its consumers. The web page (http://www.nevadajudiciary.us/index.php/courtinterpreterprogram) is simple and concise, user-friendly, and addresses three major groups of users: interpreters, judges and court administrators, and public.

One of interactions between the Program and the Nevada judicial community was a letter addressed to all Nevada judges and court administrators that was sent in the fall of 2010. The basis of the letter was two-fold: to ensure awareness of the existence of federal mandates, as well as guiding principles when servicing the LEP community in our state judicial setting, and the obligation of Nevada courts that receive federal financial assistance to provide oral interpretation, written

[38] 'For Judges and Court Administrators' web link available at http://www.nevadajudiciary.us/index.php/forjudges.

translation, and other language services to people who are LEP. A copy of the '*Language Access in State Courts*'[39] publication authored by Laura Abel from the Brennan Center for Justice at New York University School of Law, the *United States v. Bailon-Santana*[40] case decided by a Panel of the Ninth Circuit Court of Appeals, the Nevada Supreme Court case *Ouanbengboune v. State*[41], a copy of the *letter sent by Thomas E. Perez*, Assistant Attorney General for the Civil Rights Division at the United States Department of Justice addressed to members of the Conference of Chief Justices and the Conference of State Court Administrators[42], the *"Language Identification Guide"*[43] known as "I speak" cards have been appended to the above mentioned letter as practical and usable resources.

The Certified Court Interpreter Program Coordinator, in conjunction with members of the Advisory Committee and other AOC staff, developed a survey in the fall of 2010, which queried Nevada judges regarding a variety of subjects pertaining to court interpreter issues. The survey was opened on November 8, 2010, and 73 judges provided their feedback. Data was confidentially collected and analyzed, and a Survey Evaluation Report was prepared and is available on the court interpreter program website.

The survey also asked about interest in a Judicial Bench Card (Card), which could contain the Court Interpreters Code of Professional Ethics cannons, sample interpreter oath, sample voir dire questions or other related information. A large number of respondents, 84 percent, indicated that they would welcome such a tool and the '*Judicial Bench Card – Working with Foreign Language Interpreters in Courts*'[44] was created and distributed (*See* Attachment II).

Another result of the aforementioned survey was the creation and implementation of a *Rural Court Interpreter Scholarship*[45] (*See* Attachment V).

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[39] Brennan Center For Justice, Language Access in State Courts Publications available at http://www.brennancenter.org/content/resource/language_access_in_state_courts/.

[40] Online publication available at http://www.ca9.uscourts.gov/datastore/opinions/2005/12/05/0450079.pdf.

[41] Online information available at http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=12614.

[42] Limited English Proficiency, A Federal Interagency Website available at http://www.justice.gov/crt/lep/guidance/guidance_index.html.

[43] Online version available at www.justice.gov/crt/cor/Pubs/ISpeakCards.pdf.

[44] Publications such as "Model Guides for Policy and Practice in the State Courts" issued by the National Center for State Courts, "Fundamentals of Court Interpretation – Theory, Policy and Practice" authored by Roseann Dueñas Gonzalez, as well as the Department of Justice's (DOJ) and National Association of Judiciary Interpreters and Translators (NAJIT) web page resources were carefully reviewed. Furthermore, several member states of the Council of Language Access Coordinators (CLAC), such as Minnesota, Washington State, Ohio, and New York have already developed their Judicial Bench Cards, and these were consulted as well.

[45] 'For Judges and Court Administrators' web link on the Court Interpreters' Program web page available at http://www.nevadajudiciary.us/index.php/forjudges.

The scholarship program requires that applicant interpreter candidates have a pre-existing relationship with their sponsoring rural court, and that the sponsoring rural court collaborate on submitting the application for a scholarship to AOC. An interpreter candidate who accepts this scholarship makes a commitment to continue to develop a positive working relationship with his or her sponsoring rural court in order to provide appropriate language services to the limited English proficient litigants who appear before that court. Additionally, an interpreter candidate who accepts said scholarship will commit to undergoing the certification process to its full extent, including the oral performance exam, if it is available in the candidate's chosen language. The Certified Court Interpreter Orientation Workshop and Written Examination/Oral Exam Scholarship Form has been disseminated to all NV rural courts administrators/judges.

The survey also found that one of the ways to improve judges' understanding of court interpreting and its complexities is by educational outreach. Respondents were queried on their preference as to the frequency of training on court interpreter related topics. More than one-half of the respondents expressed a desire to be exposed to court interpreters' education every 2 years. Several respondents underscored the importance of providing training to newly appointed and elected Nevada judges. They indicated that the AOC has organized much useful training in the past[46] that would be beneficial again in the future. The Court Interpreter Program Coordinator has partnered with the Judicial Education Unit and nationally recognized experts on Title VI compliance to design a curriculum for judges and court personnel on language access issues. The content will include the approved and recommended sources of interpretation: certified/registered in-person interpreters and/or remote telephonic interpretation, materials created for the judges on interpreting, the role of bilingual employees, and the role of family members or friends as interpreters.

In April 2012, the Program Coordinator was invited to present the topic "Working with Court Interpreters" at the National Association of Administrative Law Judiciary and the National Judicial College Mid-Year Conference in Reno, Nev. Additionally, Judge Valorie Vega and Andrea Krlickova gave a presentation entitled "Training of Judicial Personnel," which focused on previous efforts in Nevada for in-person judicial trainings, the judges' survey on language assistance issues, written communications, and web page updates at the National Summit on Language Access in the Courts, October 1-3, 2012, in Houston[47], Texas.

46 Past judge's geared educational trainings included topics such as "You are in Control: The Role of Interpreters in the Courts" (September 2003), "Hispanic Culture and Nevada Courts" (June 2005), "Defining Roles and Assuring Justice: The Judge and the Court Interpreter" (June 2005), "Meeting the Needs of Limited English Proficiency – Individuals in Your Courts" (March 2006).

47 http://www.ncsc.org/Newsroom/News-Releases/2012/Leaders-Conclude-National-Summit-on-Language-Access-in-the-Courts.aspx.

Additionally, the Administrative Office of the Courts works to maintain lines of communication regarding the provision of language services with the County Clerks[48] by providing information about the purpose of the Program, the Nevada Court Interpreters' Roster, and other language providers in case no in-person interpreter is available (e.g. Language Line Services), as well as other resources available for their use. Additional potential educational opportunities are being considered in order to aid Nevada court clerks and staff to effectively interact with LEP individuals in their courts.

B) Information Provided to Attorneys/Other Stakeholders

In 2008, ACTION organized a court interpreter training class for the Clark County District Attorney's Office where the Program Coordinator spoke about the certification/registration process, what it entails, and the strategies for successful interaction with court interpreters.

The State of Nevada Foreclosure Mediation Program (FMP)[49] was created during the 2009 session of the Nevada Legislature. The FMP applies to residential properties located in Nevada that are owner-occupied primary residences. The Certified Court Interpreter Program has been involved with the FMP's efforts to become accessible to all LEP individuals in Nevada. FMP informational flyers and other pertinent information were translated into Spanish. Pursuant to Rule 13 titled Interpreter Services *"Any party requiring interpreter services is responsible for contacting, scheduling, and ensuring an interpreter is present for mediation."* The Certified Court Interpreter Program Coordinator collaborates with the FMP management regularly. A few practical outcomes were a direct result: the 2010 Mediator Training event featuring topics such as culture and cultural differences, skills and abilities necessary for court interpreting, the NV Code of Professional Responsibility and practical tips when working with language interpreters and the *Bench Card for Mediators – Working with Interpreters*[50].

The list of resources helpful to Nevada legal community has been compiled and posted online at http://www.nevadajudiciary.us/index.php/for-attorneys-and-other-legal-practitioners. These resources provide ideas about successful communication when services of a court interpreter are needed. They have been carefully selected from a wide array of publically available sources, including but not limited to, the American Bar Association (ABA), the U.S. Department of Justice – Federal Coordination and Compliance Section, the National Association

[48] The county clerks serve as the district court clerks in most of Nevada's counties.

[49] Nevada Foreclosure Mediation Program (FMP) available at http://foreclosure.nevadajudiciary.us/.

[50] The *Bench Card for Mediators – Working with Interpreters* is available at http://foreclosure.nevadajudiciary.us/index.php/documents-and-forms/general-documents.

of Judiciary Interpreters and Translators (NAJIT), the State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program, etc., to effectively assist the Nevada legal community when working with a growing LEP population in Nevada.

New types of educational forums will continue to be explored; the Program will encourage existing and potential users of court interpreter services to seek ways to mutually interact to better understand needs and communication complexities with LEP individuals and communities in Nevada.

13. COMMUNITY OUTREACH

Community outreach is important to the continued success of the Certified Court Interpreters' Program. The Program's effort to connect with Nevada interpreters, judiciary, and immigrant communities has increased in past years. The Program Coordinator plans not only to maintain an established course of engagement and interaction with agencies/entities such as the Council of Language Access Coordinators (CLAC)[51], Nevada Interpreters and Translators Association (NITA)[52], Human Rights Campaign – "Ya Es Hora – ¡Ciudadanía!"[53], Truckee Meadows Community College (TMCC), University of Nevada Las Vegas (UNLV), College of Southern Nevada (CSN), Hispanic-American Partnership, Inc. (HAPI), Office of Fair Housing and Equal Opportunity[54], and Nevada Spanish language Radio Stations, but to also seek new opportunities to expand the Program's visibility and its educational outreach to new levels.

In November 2009 and April 2011, the Nevada Certified Court Interpreters' Program hosted the CLAC Professional Interpreter Workshops. Both events drew participants from across the nation. The sessions were language-neutral and language-specific, opened to both sign and spoken language interpreters, and appropriate for all skill levels. For instance, the presentations included *"Beyond Negron: Interpreted Cases and Appellate Decisions"*, and *"Terminology: Foreclosure Mediation"*.

The Nevada Interpreters and Translators Association (NITA) is a non-profit organization, officially founded in 2008. The membership consists of an enthusiastic and diverse group of language professionals, all working together in pursuit of the highest language service standards for all stakeholders involved. The Program partnered with NITA in December 2009 and in September 2010. The purpose of these two collaborative efforts was to educate interpreters by offering an overview of the recent history of court

[51] Council of Language Access Coordinators (CLAC)' web page available at http://www.ncsc.org/Education-and-Careers/State-Interpreter-Certification.aspx.

[52] Nevada Interpreters and Translators Association (NITA) available at http://www.nitaonline.org/.

[53] http://ciudadania.yaeshora.info/english

[54] http://portal.hud.gov/hudportal/HUD?src=/states/nevada

interpreting, centering on the Nuremberg Trials and by informing potential court interpreters about the steps required for the credentialing process. Additionally, the Program Coordinator is one of the regular contributors of "e-NITA Newsletter" publication where articles about the court interpreter credentialing process and the art of legal translation were featured.

The Program Coordinator has been closely involved with the "Ya Es Hora – ¡Ciudadanía!" civic engagement and continuing partnerships with the Latino/a community since 2010. The central idea of this outreach is to help legal permanent residents fill out their N-400 applications for citizenship where experienced organizers, volunteer attorneys, and credentialed court interpreters are present to assist.

One of the latest forms of community outreach in Southern Nevada was an interaction with the students of the UNLV (Department of Foreign Languages) and CSN as well as appearances at the Las Vegas radio station KRLV 1340 AM. The students were interested in knowing about how to pursue the profession of court interpreting, what type of courses to take in order to succeed with certification testing, what is the career's job market, and what kind of compensation a prospective interpreter may expect. The Spanish-language listeners were interested in knowing details regarding the Program's credentialing process, and what type of knowledge, skills, and abilities are necessary to successfully pass the required examinations to become a Spanish language certified court interpreter.

Table 3. *List of Certified Court Interpreter Program Educational Activities and Outreach*

DATE	CERTIFIED COURT INTERPRETER PROGRAM EDUCATIONAL EVENTS & OUTREACH
September 2003	*"You Are in Control: The Role of Interpreters in the Courts"*
June 2005	• *"Hispanic Culture and Nevada Courts"* • *"Defining Roles and Assuring Justice: The Judge and The Court Interpreter"*
March 2006	*"Meeting the Needs of Limited English Proficiency (LEP) – Individuals in Your Courts"*
April 2008	*5-day Northern Nevada Courts Visit*
May 2008	*"Working With Court Interpreters" – Clark County Regional Council*
June 2008	*"Voice of Understanding" – Clark County District Attorney's Office*
November 2008	*"New Judge Orientation – Overview of Nevada Certified Court Interpreter Program and How to Work with Court Interpreters"*
January 2009	*"Court Interpreters and Cultural Competency"*
October 2009	*"Nevada Welcomes The Kazakhstani Judges Delegation"*
December 2009	*"Modern History of Court Interpretation: the Nuremburg Trial of Nazi War Criminals"*
March 2010	*"Foreclosure Mediation Program – New Mediator Orientation"*
April 2010	*NITA Newsletter*
May 2010	*Thai Judges Visit of Nevada Supreme Court – Educational Newsletter*
June 2010	*5-day Southern Nevada Courts Visit*
June 2010	*NITA Newsletter*
September 2010	*Nevada Certified Court Interpreter Program Overview for NITA*
October 2010	*NITA Newsletter*
April 2011	• *"BEYOND NEGRON: Interpreted Cases and Appellate Decisions"* • *"Foreclosure Mediation Terminology for Court Interpreters"*
April 2011	*5-day Rural Nevada Courts Visit*
October 2011	*NITA Newsletter*
February 2012	*"Ya Es Hora – ¡Ciudadanía!"*
April 2012	*"Working with Court Interpreters" – National Judicial College*
April 2012	*"Ya Es Hora – ¡Ciudadanía!"*
May 2012	*"How to Become an Interpreter for Nevada Courts" – CSN, Department of Spanish*
October 2012	*"Training Judges and Court Personnel" – National Summit on Language Access in the Courts*
December 2012	*"New Judges Orientation – Working with Spoken Language Interpreters"*

DATE	CERTIFIED COURT INTERPRETER PROGRAM EDUCATIONAL EVENTS & OUTREACH
December 2012	*Spanish language radio station (KRLV1340 AM) appearance regarding Nevada court interpreter credentialing process*
January 2013	*NITA Newsletter*
March 2013	*"Overview of the Nevada Certified Court Interpreter Program" – UNLV Department of Foreign Languages*
March 2013	*"Court performance survey on Accessibility and Fairness"*
April 2013	*"Ya Es Hora – ¡Ciudadanía!"*
May 2013	• *Webinar for Court Staff - "Federal Language Assistance Mandate and How it Impacts Nevada State Courts"* • *Webinar for Judges - "Federal Language Assistance Mandate and How it Impacts Nevada State Courts"*
August 2013	*NITA Newsletter*
August 2013	*"Introduction to Court Interpreter Profession" –Meeting with Prospective Interpreters of African Languages*
October 2013	*Spanish language radio station (KRLV1340 AM) appearance regarding Nevada court interpreter credentialing process and language access services in Nevada*
October 2013	*"Introduction to Court Interpreter Profession" – presentation given to prospective interpreters at NITA's educational event*

14. COMMENT/COMPLAINT PROCESS

A) General Comments/Complaints

Any comments or complaints regarding language access and services may be directed to the Office of the State Court Administrator located at 201 South Carson Street, Suite 250, Carson City, Nevada 89701 for review.
Similarly, the Office of the State Court Administrator shall maintain a record of feedback received and any resolution based on LEP individual's comments or suggestions.

B) Formal Comments/Complaints

Complaints about Nevada credentialed court interpreters (certified/registered) who have allegedly engaged in unethical or unprofessional conduct in the course of performing their interpreter duties should be similarly reported.

A form for filing complaints against Nevada credentialed court interpreters is available on the Supreme Court's website at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/9409/.

Pursuant to the State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program, Appendix III, disciplinary complaints may be filed against interpreters who have been credentialed (certified/registered) by the State of Nevada through the Court Interpreter Certification Program for the reasons enumerated in the provision [55].

'Any person may initiate a complaint by filing it with the Administrative Office of the Courts (AOC). All complaints shall be directed to the State Court Administrator or the administrator's designee. All complaints must be in writing on a Complaint Form provided by the AOC[56], must be signed, must be submitted within 180 days from the date of the alleged disciplinary breach, and must describe the alleged inappropriate conduct. Upon receipt of a complaint, the State Court Administrator or the administrator's designee will review the complaint to determine its merit.'

Additional procedural guidelines pertaining to the Disciplinary Process are clearly delineated in the State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program, Appendix III.

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[55] State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program available at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/9410/.

[56] The Form is available at http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/9409/.

15. REVISIONS

This LAP shall be revised when deemed appropriate and necessary by the Supreme Court, State Court Administrator, Certified Court Interpreter Advisory Committee, and/or the Program Coordinator.

EFFECTIVE DATE: *December 6, 2013*

16. STATE CONTACT PERSON:

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ljaf RESEARCH SUMMARY

DEVELOPING A NATIONAL MODEL FOR PRETRIAL RISK ASSESSMENT

Every day in America, judges have to answer a critical question again and again: What are the chances that a recently arrested defendant, if released before trial, will commit a new crime, a new violent crime, or fail to appear for court?

This may be the single most important decision made in the criminal justice system because it impacts everything that follows: whether or not a defendant is sentenced to jail or prison, how long he is incarcerated, and most importantly, how likely he is to commit violence or other crimes in the future. Yet most of these decisions are made in a subjective manner, without the benefit of data-driven, objective assessments of the risks individual defendants pose to public safety.

Today, in many jurisdictions, judges do their best to apply their experience and instinct to the information they have about a defendant to make a subjective determination of whether he will commit a new crime or fail to return to court if he is released. In other jurisdictions, judges may follow court guidelines that require that all defendants arrested for a specific crime receive the same conditions of release (such as supervision, bail, or drug testing), regardless of risk. But neither method of deciding whether a defendant should be detained or released – a subjective evaluation, or an offense-specific one-size-fits-all approach – provides a reliable measure of the risk that a defendant poses. And yet this decision – whether to release or detain a defendant – is far too important to be left to chance.

Each year, 12 million people are booked into local jails across the country, the vast majority for nonviolent crimes. More than 60% of inmates in our jails today are awaiting trial, and we spend more than $9 billion annually to incarcerate them. The goal of most criminal justice decisionmakers is to detain defendants who pose a risk to public safety – particularly those who appear likely to commit crimes of violence – and to release those who do not.

Yet data collected by the Laura and John Arnold Foundation (LJAF) during the past two years shows that although this may be our goal, it is far from being a reality. Indeed, our research has shown that defendants who are high-risk and/or violent are often released. In two large jurisdictions that LJAF examined in detail, nearly half of the highest-risk defendants were released pending trial. And, at the

other end of the spectrum, our data shows that low-risk, non-violent defendants are frequently detained. Moreover, soon-to-be-released LJAF research on low-risk defendants shows that when they are detained pretrial, they are more likely to commit new crimes in both the near and long term, more likely to miss their day in court, more likely to be sentenced to jail and prison, and more likely to receive longer sentences. In other words, failing to appropriately determine the level of risk that a defendant poses impacts future crime and violence, and carries enormous costs – both human and financial.

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AN OPPORTUNITY FOR TRANSFORMATIONAL CHANGE

Two years ago, LJAF decided to use data, analytics, and technology to promote transformational change in criminal justice. With the goal of making the system safer, fairer, and less costly, we set out to improve how decisions are made during the earliest part of the criminal justice process, from the time a defendant is arrested until the case is resolved. (Criminal justice professionals refer to this as the "pretrial" period.)

From the beginning, we believed that an easy-to-use, data-driven risk assessment could greatly assist judges in determining whether to release or detain defendants who appear before them. And that this could be transformative. In particular, we believed that switching from a system based solely on instinct and experience to one in which judges have access to scientific, objective risk assessment tools could further our central goals of increasing public safety, reducing crime, and making the most effective, fair, and efficient use of public resources. We understood that judges already consider many of the most critical factors related to a defendant's risk of committing a new crime or failing to return to court; however, we also knew that it is extremely difficult for judges to know how to accurately and objectively weigh these factors, or to know which factors, when combined with one another, increase the risk of failure exponentially. We were also able to see the impact that risk assessments have had in the limited number of U.S. jurisdictions in which they are presently used: although less than 10% of jurisdictions use data-driven pretrial risk assessments, these jurisdictions have been able to spend less on pretrial incarceration, while at the same time enhancing public safety.

We initially looked for an existing pretrial risk assessment that could be used by any judge throughout the country. This sort of universal risk assessment has been used effectively for probation and parole. However, we quickly found that there was nothing equivalent for the pretrial release/detention decision.

Moreover, there appeared to be no risk assessment instrument that could be scaled to provide data-driven risk analysis to courts across America. In large part, this is because existing pretrial risk assessments are often costly and resource-intensive to administer, since they rely on data that can only be gathered through defendant interviews. These interviews are time-consuming and expensive to conduct and cannot be completed when a defendant refuses to cooperate or provides information that cannot be verified. (For these and other reasons, 40% of all defendants in one jurisdiction we studied were not evaluated for risk.) Further, most existing pretrial risk assessments were developed using data from a single jurisdiction, and other states and counties did not believe they could adopt a tool that was based on case records from

somewhere else. In addition, existing tools also present a single risk level for each defendant, combining – and assigning equal weight to – the risk that a defendant will fail to appear and the risk that he will reoffend. And none of the existing tools determine risk of new violent criminal activity, which is perhaps judges' greatest concern.

Our challenge was to figure out how to provide objective, scientific, data-driven risk assessments to the more than 90% of jurisdictions that did not use them. No existing model did what we wanted it to do: separately analyze risk of new crime, new violent crime, and failure to appear; be useable by every judge in the country; be applicable to every defendant; and be highly predictive of the most important risks. In short, what we needed was an instrument that would be accurate, inexpensive to administer, easy to use, and scalable nationally. So we decided to try to create a new, second-generation risk assessment that could be adopted by judges and jurisdictions anywhere in America.

When judges can easily, cheaply, and reliably quantify defendant risk, they will be much better able to identify the high-risk defendants who must be detained and the low-risk defendants who can safely be released.

DEVELOPING THE RISK ASSESSMENT

The first step was a study to assess the feasibility of eliminating the costly and time-consuming defendant interviews from the risk assessment process. LJAF's research team – led by two of the country's top criminal justice researchers, Dr. Marie VanNostrand and Dr. Christopher Lowenkamp – began its work in Kentucky, which was already using an interview-based risk assessment, and has long been a national leader in the pretrial field. An initial study focused on the core question of whether eliminating the interview would decrease the predictive power of the tool. To test this, the research team looked at the existing Kentucky risk assessment, which consisted of 12 total factors: nine that were drawn from the defendant's criminal history and three that were elicited during the interview process. The team created a new tool, relying solely on criminal history factors from the state's original instrument. We then used this non-interview tool to evaluate more than 190,000 Kentucky defendants who had already gone through the existing interview-based assessment. The study compared the risk prediction of the new tool – the one without an interview – to the existing interview-dependent tool, and found that the non-interview risk assessment was just as predictive as the existing one.

That finding led us to the next step: to gather the most comprehensive dataset of pretrial cases ever assembled in the United States with the goal of developing a universal risk assessment. Researchers started with 1.5 million cases drawn from more than 300 U.S. jurisdictions. From the initial dataset, the research team was able to study 746,525 cases, since these defendants had been released at some point in the pretrial process. The researchers had two primary objectives. First, to determine the best predictors across jurisdictions of new criminal activity, failure to appear, and, for the first time, new violent criminal activity. Second, to develop a risk-assessment tool based on these predictors. Although we believed that the interview could likely be eliminated, we considered both interview and non-interview factors in an effort to build the most predictive risk assessment possible.

The study identified and tested hundreds of risk factors, which fell into broad categories, including prior arrests and convictions, prior failures to appear, drug and alcohol use, mental health, family situation, employment, residence, and more. The researchers identified nine factors that

were the most predictive – across jurisdictions – for new crime, new violence, and failure to appear. These factors were drawn from the existing case (e.g., whether or not the current offense is violent) and from the defendant's prior criminal history. The researchers looked at numerous interview-based factors, including employment, drug use, and residence, and found that, when the nine administrative data factors were present, none of the interview-based factors improved the predictive analytics of the risk assessment. In other words, for all three categories – new criminal activity, new violent crime, or failure to appear – the addition of interview-dependent variables did not improve the risk assessment's performance.

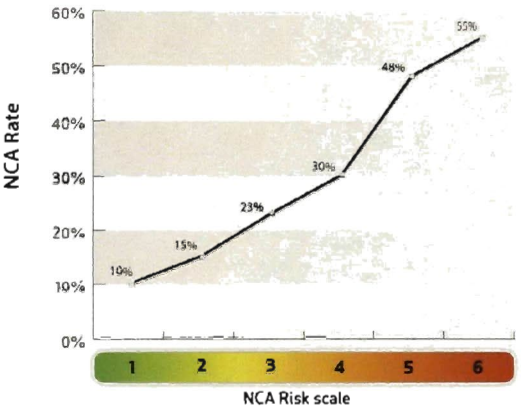
The resulting product is the Public Safety Assessment-Court (PSA-Court), a tool that reliably predicts the risk a given defendant will reoffend, commit violent acts, or fail to come back to court with just nine readily available data points. What this means is that there are no time-consuming interviews, no extra staff, and very minimal expense. And it can be applied to every defendant in every case.

PROMISING RESULTS

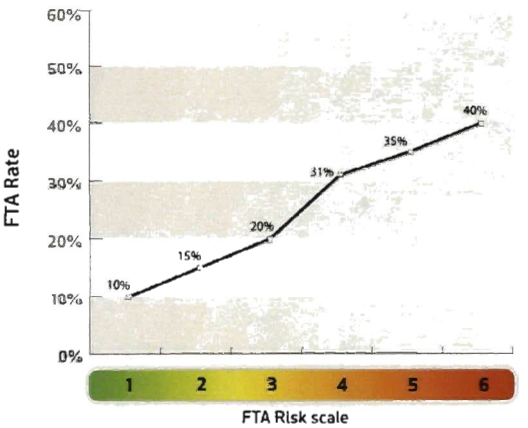
The PSA-Court's three six-point scales – one each for new crime, new violence, and failure to appear – do a remarkable job distinguishing among defendants of different risk levels. As the charts demonstrate, the likelihood of a negative pretrial outcome increases with each successive point on the scale. Each scale begins with the lowest level of risk, identified by the number one, and increases point-by-point until reaching the highest level of risk, identified by the number six.

PSA-Court Failure Rates by Risk Level

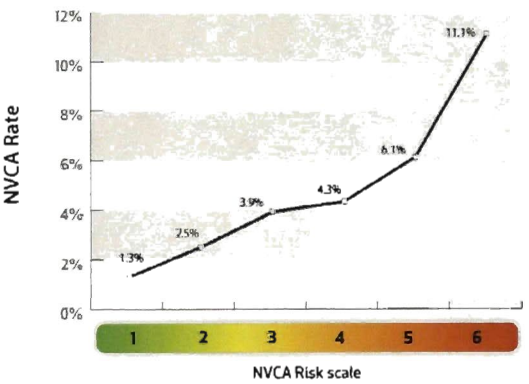
New Criminal Activity



Failure to Appear



New Violent Criminal Activity



The promise of the PSA-Court was further validated using historical data from one state and one major city. Moreover, researchers found that defendants in each category failed at similar rates, regardless of their race or gender. The results confirmed that the assessment does not over-classify non-whites' risk levels, which has been a concern in some other areas of risk assessment.

failures put the public in danger and place unnecessary strain on budgets, jails, law enforcement, families, and communities. The PSA-Court, and instruments like it, can help recalibrate the equation. When judges can easily, cheaply, and reliably quantify defendant risk, they will be much better able to identify the high-risk defendants who must be detained and the low-risk

Our goal is that every judge in America will use a data-driven, objective risk assessment within the next five years. We believe that this one change can make our communities safer and stronger, our corrections budgets smaller, and our system fairer.

All of Kentucky's 120 counties began using the instrument in July of 2013. Preliminary analysis shows that the PSA-Court is, thus far, successfully predicting criminal reoffending and failing to return to court.

LJAF plans to roll out the PSA-Court in additional pilot sites soon and then to make the tool widely available. We will also continue to collect more data, as this will allow us to rigorously evaluate whether we can improve upon the existing universal risk assessment. LJAF also plans to create data-driven risk assessments for police and prosecutors; and to evaluate or create tools that will specifically predict the likelihood of repeat domestic violence and driving under the influence.

LOOKING AHEAD

Under the current system, we make decisions based on gut and intuition instead of using rigorous, scientific, data-driven risk assessments. This has led to a public safety crisis nationally, where too many high-risk defendants go free, and too many low-risk defendants remain locked up for long periods. These systemic

defendants who can safely be released. They will also be able to better identify what conditions can be imposed on defendants to minimize risk.

It is critically important to note that tools such as this are not meant to replace the independent discretion of judges; rather, they are meant to be one part of the equation. We expect that judges who use these instruments will look at the facts of a case, and at the risk a defendant poses, and will then make the best decision possible using their judgment and experience.

Our goal is that every judge in America will use a data-driven, objective risk assessment within the next five years. We believe that this one change can make our communities safer and stronger, our corrections budgets smaller, and our system fairer. The Laura and John Arnold Foundation is dedicated to bringing transformational change to criminal justice through advanced data analysis and technology. Getting the PSA-Court in the hands of judges across America is one of our first major steps in that effort.

About Laura and John Arnold Foundation

Laura and John Arnold Foundation is a private foundation that currently focuses its strategic investments on criminal justice, education, public accountability, and research integrity. LJAF has offices in Houston and New York City.

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

MEMORANDUM

DATE: July 3, 2014

TO: Members of the Advisory Commission on the Administration of Justice

FROM: Nicolas Anthony, Senior Principal Deputy Legislative Counsel

SUBJECT: Materials Requested During the Advisory Commission on the Administration of Justice Meeting held on May 1, 2014

This memorandum responds to several requests for information made by members of the Advisory Commission on the Administration of Justice during the meeting held on May 1, 2014.

CATEGORY B FELONIES

Justice Hardesty requested that staff provide a list of all current category B felonies in Nevada. Attached for your review is a draft list of category B felonies (including any new crimes or increased penalties added during the 2013 Legislative Session), as prepared by the Research Division of the Legislative Counsel Bureau.

PRETRIAL RISK ASSESSMENTS

Justice Hardesty also requested information as to what type of instrument each judicial district uses for pretrial risk assessments. In researching this request, I contacted John McCormick, Assistant Court Administrator, Administrative Office of the Courts.

According to Mr. McCormick, generally courts that have departments of alternative sentencing/pretrial services/court services use assessment tools, while courts that do not have such services available do not use assessment tools. In a list provided by the Administrative Office of the Courts, the following courts (which include only those courts with jurisdiction over felonies) have departments:

- Carson City Justice/Municipal and First Judicial District Court (Carson and Storey)

- Reno, Sparks, Incline Village, and Gerlach/Wadsworth Justice Courts and the Second Judicial District (Washoe)

- Canal Township (Fernley), Dayton, and Walker River (Yerington) Justice Courts and the Third Judicial District Court (Lyon)

- Clark County Justice Courts and the Eighth Judicial District Court (Clark)

- East Fork and Tahoe Justice Courts and the Ninth Judicial District Court (Douglas)

- New River Township Justice Court and the Tenth Judicial District Court (Churchill)

As for the specific tools used by each court, according to Mr. McCormick the tools vary widely and are all over the map. Some courts use standard recognized models, while others employ locally developed tools. As provided by the Administrative Office of the Courts, attached are copies of the assessment tools used by Carson City and Washoe County. Additional assessment tools will be provided as they are received.

OFFENDER SUPERVISION

During the Division of Parole and Probation's presentation relating to risk assessments, Justice Hardesty asked the Division to provide the following information:

- Nevada's 68% probation success rate as that compares to other states
- Dishonorable discharge statistics broken down by failure to pay restitution
- Parole and Probation restitution collection statistics
- Status of Parole and Probation's collections of restitution, fines and fees
- A report on whether Parole and Probation still provides quarterly restitution reports to the district court judges, and whether or not such reports could be made (if not currently)

Attached for your information is a letter, with responses to these questions, from Chief Natalie Wood, Division of Parole and Probation, Department of Public Safety, dated June 27, 2014.

CONCLUDING REMARKS

I hope this information is helpful. Should you have any questions on the information provided, please do not hesitate to contact me at (775) 684-6830 or nanthony@lcb.state.nv.us.

Washoe County Pretrial Services
Assessment Report

Case Filing

Filed Name

Arrest

Booked Name	Arresting Agency	Booking Number	Arrest Date
			02/07/2013

Case Number	NOC	Type	Description	Counts	Court	Bail Amt/Type
	51127	F	POSS SCH I, II, III, IV C/S, (1ST/2ND)	1	RJC	5,000 B
	54455	F	ARREST FOR VIOL OF COND OF PAROLE	1	OJ	0
	54455	F	ARREST FOR VIOL OF COND OF PAROLE	1	OJ	0

Defendant Information

Sex	Race	Birthdate	Age	Height	Weight	SS Number
M	WHITE		51	6' 00"	180	On File

Address	Residence	Born
	County: 09 Yr 00 Mo	LEON, FRANCE
Telephone (775) 337-1888	**Time at Current Address** 00 Yr 03 Mo	**Primary Language** ENGLISH
Lives With	**Relationship** MOTHER	**ID Number** / **Type** / **Expiration Date**

Marital Status	How Long	Military Service	Discharge
DIVORCED		NONE	

Employment/Support Status	Employer	How Long
Employed		00/01
Occupation DATA ENTRY		**Employer Telephone** (775) -

Defendant Justice Identifier Codes/Criminal History

FBI Number	SID Number	

Arrests	Violent Fels	Felonies	Violent Misd	Misdemeanors	MMSD	Traffic	DUI	Pending

Comments

UNSUCCESSFUL WITH DRUG COURT IN 2006.
MR. HAS BEEN BACK IN THE RENO SINCE HIS RELEASE FROM PRISON IN OCTOBER OF 2012. HE RESIDES WITH HIS MOTHER, AND HAS BEEN WORKING PART-TIME FOR THE PAST MONTH. NO INFO WAS VERIFIED AS THE DEFENDANT IS NOT ELIGIBLE FOR O/R.

Assessment Status

Risk Score	Assessment	Initials
22	PROB/PAROLE VIOLATION	

Washoe County Pretrial Services
Risk Assessment Report

Arrest

Booking Name	Agency	Booking Number	Arrest Date
	GCB		02/07/2013

Risk Factor	Score	Points
TIME IN COMMUNITY: RENO OR GSA - LESS THAN 1 YEAR	B	1
RESIDENTIAL STABILTY: MAINTAINS RES - LESS THAN 1 YEAR	B	1
FAMILY TIES: OUTSIDE GSA - CONTACT	B	1
SOURCE OF SUPPORT: F/T - LESS THAN 1 YEAR	B	1
CRIMINAL HISTORY - MISDO.: 1-3 MISDO. ARRESTS/CONVICTIONS	B	1
CRIMINAL HISTORY - FELONY: 1 FELONY ARREST/CONVICTION	B	1
SUBSTANCE ABUSE: SOME DISRUPTION OF FUNCTIONING	B	1
FORMAL PROBATION/PAROLE: ON PROBATION	B	1
PRIOR FTA'S/FTC'S: 1-2 FTA'S/FTC'S	B	1
UNRELATED PENDING FELONY CASES: ANY PENDING FELONY CASE(S)	B	3
CURRENT CHG(S) - MOST SEVERE: VIOLENT OFFENSE	H	10

Risk Assessment: HIGH RISK

Total Points: 22

Application

Investigative Staff Signature	Initials	Assessment Type	App Number	Completion Date/Time
	CHI	RISK ASSESSMENT		02/08/2013 16:17

Application No. N00022743

POINT SCALE

TIME IN COMMUNITY *
0 – RENO OR GSA – OVER 1 YEAR
1 – RENO OR GSA – LESS THAN 1 YEAR
2 – NEVADA – OVER 1 YEAR
3 – NEVADA – LESS THAN 1 YEAR
4 – OUTSIDE OF NEVADA
5 – UNVERIFIED

RESIDENTIAL STABILITY
0 – MAINTAINS RESIDENCE – OVER 1 YEAR
1 – MAINTAINS RESIDENCE – LESS THAN 1 YEAR
1 – LIVES WITH OTHERS – PAYS RENT – OVER 1 YEAR
2 – LIVES WITH OTHERS – PAYS RENT – LESS THAN 1 YEAR
3 – LIVES WITH OTHERS – DOES NOT PAY RENT
4 – UNVERIFIED

FAMILY TIES*
0 – RENO OR GSA
1 – OUTSIDE OF GSA – HAS REGULAR CONTACT
2 – UNVERIFIED – HAS NO CONTACT

SOURCE OF SUPPORT
0 – FULL-TIME – OVER 1 YEAR
1 – FULL-TIME – LESS THAN 1 YEAR
2 – PART-TIME – OVER 1 YEAR
3 – PART-TIME – LESS THAN 1 YEAR
4 – SUPPORTED BY OTHERS (FRIENDS/FAMILY/GOVERNMENT)
5 – UNEMPLOYED/NO SOURCE OF SUPPORT

CRIMINAL HISTORY – MISDEMEANOR**
0 – NO PRIOR HISTORY
1 – 1-3 MISDO. ARRESTS/CONVICTIONS
2 – 4-6 MISDO. ARRESTS/CONVICTIONS
3 – 7 OR MORE MISDO. ARRESTS/CONVICTIONS

CRIMINAL HISTORY – FELONY**
0 – NO PRIOR HISTORY
1 – 1 FELONY ARREST/CONVICTION
2 – 2 FELONY ARRESTS/CONVICTIONS
3 – 3 OR MORE FELONY ARRESTS/CONVICTIONS

SUBSTANCE ABUSE
0 – NO KNOWN ABUSE
1 – SOME DISRUPTION OF FUNCTIONING
2 – TREATMENT WITHIN THE PAST YEAR
3 – SERIOUS DISRUPTION/NEEDS TREATMENT

FORMAL PROBATION/PAROLE
0 – NONE
1 – ON PROBATION
3 – ON PAROLE

PRIOR FTA'S/FTC'S**
0 – NONE
1 – 1-2 FTA'S/FTC'S
2 – 3-4 FTA'S/FTC'S
3 – 5 OR MORE FTA'S/FTC'S

PENDING FELONY CASES
0 – NO PENDING FELONY CASE(S)
3 – ANY PENDING FELONY CASE(S)

CURRENT CHARGE(S) MOST SEVERE***
0 – TRAFFIC/NON DUI/ALL OTHERS
2 – DUI (MISDO)
2 – FTA/FTC
4 – THEFT/FRAUD
5 – DRUG OFFENSE
8 – FIREARM OFFENSE
9 – DUI (FELONY)
10 – VIOLENT OFFENSE

CUTOFF
LOW RISK = 12 AND BELOW
MEDIUM RISK = 13-16
HIGH RISK = 17 AND ABOVE

* GSA = GREATER SURROUNDING AREA. GENERALY ONE HOUR OR LESS IN DRIVING TIME FROM WASHOE COUNTY IS CONSIDERED SURROUNDING AREA.

** MAY NOT REFLECT A SEARCH IN NATIONAL CRIMINAL HISTORY DATA BASES. CURRENT CHARGES ARE NOT INCLUDED.

*** EXAMPLES TO THESE CATEGORIES MAY INCLUDE: **VIOLENT OFFENSES**: MURDER, MANSLAUGHTER, KIDNAPPING, ABDUCTION, ROBBERY, CARJACKING, ARSON, ASSAULT (SIMPLE ASSAULT OR ASSAULT & BATTERY/MISDEMEANOR OR FELONY), AND SEX OFFENSES (RAPE, SEXUAL ASSAULT/BATTERY. **FIREARM OFFENSES** INCLUDE ANY CHARGE RELATING TO POSSESSION, USE, OR MANUFACTURING A FIREARM. **DRUG OFFENSES** INCLUDE SCHEDULES I, II, III, IV AND V DRUGS, IMITATION CONTROLLED SUBSTANCES, COUNTERFEIT CONTROLLED SUBSTANCES AND DRUG PARAPHERNALIA. **THEFT/FRAUD OFFENSES** INCLUDE ANY CHARGE RELATED TO LARCENY, BURGLARY, FRAUD, EMBEZZLEMENT, FORGERY, UTTERING AND BAD CHECKS.

CARSON CITY JUSTICE AND MUNICIPAL COURT
ALTERNATIVE SENTENCING PREARRAIGNMENT SCREENING FORM

CIT/DATE:	LAST NAME, FIRST	
DOB:	SSA:	
AKA:		

INCOME	MONTHLY	ASSETS	VALUE	EXPENSES	
Defendant		Property		Rent/Mortgage	
[ ]Spouse [ ]Parent		Vehicle(s)		Utilities	
Unemployment		Checking Account		Spousal Support	
Disability M/P		Savings Account		Child Support	
Settlement		Line(s) of Credit		Credit/Medical	
Other		Other		Other	
Total:		Total:		Total:	

The information provided is true and correct. I promise, under penalty of perjury, that I am not financially able to hire my own attorney at this time. I request that the Court provide me with a court appointed attorney. I understand that I may be ordered to reimburse Carson City for the expense of a court appointed attorney.

Defendant: _____ Date:

Based on the financial information provided by the Defendant, the [ ] Public Defender [ ] Conflict Counsel is hereby appointed to represent the Defendant and the Defendant may be ordered to reimburse Carson City for the use of the Court Appointed Attorney.

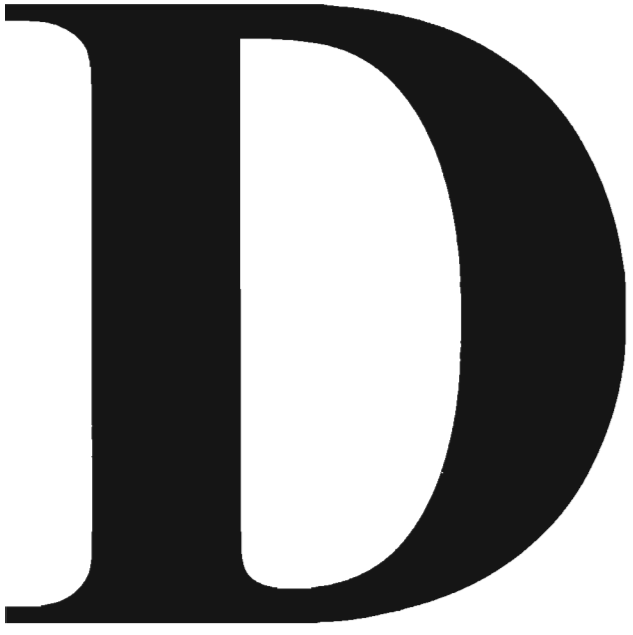
Judge: Date:

OWN RECOGNIZANCE RELEASE CRITERIA			
City of Residence		Employer	
With Whom?		Phone Number	
How Long?		How Long?	
Ties to the Community?			

Pending Court Matters		Health	Reports: Medications:
Cont.		Cont.	
What Court?		Cooperative Un Cooperative	

Risk of F.T.A.	Low [ ]	Medium [ ]	High [ ]
Requires Interpreter [ ]			

NOTES
CHRI:



NV-CURE
Citizens United for the Rehabilitation of Errants
540 E. St. Louis Ave.
Las Vegas, NV 89104
702.347.1731
nevadacure@gmail.com
nevadacure.org

February 24, 2014

ACAJ Members
Legislative Counsel Bureau
401 S. Carson St.
Carson City, NV 89701-4747

RE: Independent Nevada Ombudsman Corrections Office

Dear ACAJ Members:

NV-CURE is requesting that an independent Ombudsman Corrections Office be established in the State of Nevada.

My name is John Witherow and I am the President of NV-CURE, a nonprofit prisoner advocacy group established to educate the public on issues pertaining to the prison and parole systems. We are associated with National CURE, International CURE and 45 independent state CURE groups. We believe the grievance process in the NDOC is broken and must be fixed.

NV-CURE urges this Committee to recommend to the Legislature that a Legislative Committee Corrections Ombudsman be created similar to the system in place in the State of Michigan. See attached Michigan Compiled Laws regarding the MI Corrections Ombudsman, the MI DOC Policy Directive (03:02:135) regarding the Ombudsman and the Notice regarding the Ombudsman posted in all prisons and parole offices. The Ombudsman system in Michigan works: It reduces prisoner lawsuits and induces MDOC employees to conform their behavior to the mandates of the law – because MDOC employees know that claims related to their alleged misconduct will be investigated and determined by an independent ombudsman with the authority and power to conduct a full and fair investigation and the ability to insure corrective action be initiated. Nevada sorely needs this type of system in place.

Under the current system in place, the prisoner grievances are supposed to be investigated and the merit determined by the NDOC. When the grievance raises an issue related to staff misconduct, it is investigated and the merit determined by the Inspector General's Office. The Inspector General's Office is a division of the NDOC and staffed almost exclusively by NDOC employees, which means correctional employees investigate and determine the merit of claims raised by prisoners against other NDOC employees. Needless to say, the Inspector General's Office rarely finds merit to the claims of prisoners against their fellow employees – and retaliation against prisoners that file grievances against NDOC employees is rampant with devastating consequences to the prisoners. See attached Declaration/Affidavits and letters from prisoners

Martinez Aytch, George Dunlap, George Marshall, Charles Pierson and Duane Whitmore as examples of retaliation[i]

The Attorney General has the authority to appoint an ombudsman to investigate prisoner grievances should an ombudsman be deemed necessary. Unfortunately, an ombudsman under the control of the Attorney General is not much different that an NDOC Inspector General investigating and determining the merit of prisoner claims against other state employees within the Executive Branch of government.

NV-CURE suggests that an independent corrections ombudsman in the State of Nevada will result in substantially improved staff conduct, a significant reduction in retaliation against prisoners for filing grievances, an actual reduction of the number of grievances actually filed and a major reduction for the costs of prisoner litigation.

Thank you for your time and consideration in this very important matter.

Very Best Regards,

JOHN WITHEROW
President, NV-CURE

Cc: 140224 NV-CURE ltr to ACAJ Members

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[i] NV-CURE has collected numerous prisoner complaints over the past 2-1/2 years on the physical abuse of prisoners by staff, the games played by staff in the grievance process, retaliation against prisoners by staff for filing grievances or lawsuits and the lack of adequate medical care and treatment. All of these complaints will be provided to this Committee upon request and many have been discussed with NDOC Director Cox and disseminated to the US DOJ, ACLU and other agencies. Unfortunately, NV-CURE does not have the authority or ability to investigate each of these complaints and determine their merit.

MICHIGAN LEGISLATURE(www.legislature.mi.gov)
Printed on Saturday, February 8, 2014
Michigan Compiled Laws Complete Through PA 2 of 2014

Search Results

(14 found)
Search Criteria: Section Number = 4.351-4.364

Document	Type	Description
Section 4.351	Section	Definitions.
Section 4.352	Section	Office of legislative corrections ombudsman; creation; legislative corrections ombudsman as principal executive officer; appointment; term.
Section 4.353	Section	Procedures as to budget, expenditures, and personnel.
Section 4.354	Section	Commencement of investigation; procedures as to complaints, investigations, hearings, and reports.
Section 4.355	Section	Access to information, records, and documents; inspection of premises; informal hearings; appearance; evidence.
Section 4.356	Section	Administrative process; investigation or hearing discretionary.
Section 4.357	Section	Notice of investigation; notice when investigation declined.
Section 4.358	Section	Legislative council; hearing; administration of oaths, subpoena of witness, and examination of books and records.
Section 4.359	Section	Correspondence between ombudsman and prisoner as confidential and privileged; secrecy; disclosures; exemption.
Section 4.360	Section	Report of investigative findings; recommendations; forwarding report.
Section 4.361	Section	Announcing critical conclusion or recommendation; publishing adverse opinions; publishing statement in defense or mitigation of action; notice of action on recommendation.
Section 4.362	Section	Annual report.
Section 4.363	Section	Prisoner not to be penalized for complaint or cooperation; prohibitions.
Section 4.364	Section	Authority of ombudsman.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.351 Definitions.

Sec. 1. As used in this act:

(a) "Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the department.

(b) "Complainant" means a prisoner or legislator who files a complaint under section 4.

(c) "Council" means the legislative council established under section 15 of article IV of the state constitution of 1963.

(d) "Department" means the department of corrections.

(e) "Legislator" means a member of the senate or the house of representatives of this state.

(f) "Office" means the office of the legislative corrections ombudsman created under this act.

(g) "Ombudsman" means the office of legislative corrections ombudsman.

(h) "Prisoner" means a person committed to or under the jurisdiction of the department.

(i) "Official" means an official or employee of the department of corrections.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.352 Office of legislative corrections ombudsman; creation; legislative corrections ombudsman as principal executive officer; appointment; term.

Sec. 2. (1) The office of the legislative corrections ombudsman is created within the legislative council.

(2) The principal executive officer of the office of the legislative corrections ombudsman is the legislative corrections ombudsman who shall be appointed by and serve at the pleasure of the council.

History: 1975, Act 46, Imd. Eff. May 16, 1975.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.353 Procedures as to budget, expenditures, and personnel.

Sec. 3. The council shall establish procedures for approving the budget of the office, for expending funds thereof, and for the employment of personnel for the office.

History: 1975, Act 46, Imd. Eff. May 16, 1975.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.354 Commencement of investigation; procedures as to complaints, investigations, hearings, and reports.

Sec. 4. (1) The ombudsman may commence an investigation upon either of the following:

(a) Receipt of a complaint from a prisoner, a legislator, or on the ombudsman's own initiative, concerning an administrative act which is alleged by a prisoner to be contrary to law or contrary to departmental policy.

(b) The ombudsman's own initiative for significant prisoner health and safety issues and other matters for which there is no effective administrative remedy.

(2) Subject to approval of the council, the ombudsman shall establish procedures for receiving and processing complaints, conducting investigations, holding hearings, and reporting the findings resulting from the investigations.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.355 Access to information, records, and documents; inspection of premises; informal hearings; appearance; evidence.

Sec. 5. (1) Upon request and without the requirement of any release, the ombudsman shall be given access to all information, records, and documents in the possession of the department which the ombudsman deems necessary in an investigation, including, but not limited to, prisoner medical health records, prisoner mental health records, and prisoner mortality and morbidity records.

(2) Upon request and without notice, the ombudsman shall be granted entrance to inspect at any time any premises under the control of the department.

(3) The ombudsman may hold informal hearings and may request that any person appear before the ombudsman, or at a hearing, and give testimony or produce documentary or other evidence which the ombudsman deems relevant to a matter under investigation.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 2010, Act 287, Imd. Eff. Dec. 16, 2010.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.356 Administrative process; investigation or hearing discretionary.

Sec. 6. (1) The ombudsman shall advise a complainant to pursue all administrative remedies open to the complainant. The ombudsman may request and shall receive from the department a progress report concerning the administrative processing of a complaint. After administrative action on a complaint, the ombudsman may conduct further investigation on the request of a complainant or on his or her own initiative.

(2) The ombudsman need not conduct an investigation on a complaint brought before the ombudsman. A person is not entitled as a right to be heard by the ombudsman.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.357 Notice of investigation; notice when investigation declined.

Sec. 7. Upon receiving a complaint from a legislator or a prisoner under section 4 and deciding to investigate the complaint, the ombudsman shall notify the complainant, the prisoner or prisoners affected, and the department. If the ombudsman declines to investigate, the ombudsman shall notify the complainant, in writing, and inform the prisoner or prisoners affected of the reasons for the ombudsman's decision.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.358 Legislative council; hearing; administration of oaths, subpoena of witness, and examination of books and records.

Sec. 8. Upon request of the ombudsman, the council may hold a hearing. The council may administer oaths, subpoena witnesses, and examine the books and records of the department or of a person, partnership, or corporation involved, in accordance with section 4 of Act No. 412 of the Public Acts of 1965, being section 4.314 of the Michigan Compiled Laws, in a matter which is or was a proper subject of investigation by the ombudsman under this act.

History: 1975, Act 46, Imd. Eff. May 16, 1975.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.359 Correspondence between ombudsman and prisoner as confidential and privileged; secrecy; disclosures; exemption.

Sec. 9. (1) Correspondence between the ombudsman and a prisoner is confidential and shall be processed as privileged correspondence in the same manner as letters between prisoners and courts, attorneys, or public officials.

(2) The ombudsman shall maintain secrecy with respect to all matters and the identities of the complainants or persons from whom information is acquired, except so far as disclosures may be necessary to enable the ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation.

(3) A report prepared and recommendations made by the ombudsman and submitted to the council under section 10 are exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.360 Report of investigative findings; recommendations; forwarding report.

Sec. 10. (1) The ombudsman shall prepare and submit a report of the findings of an investigation and make recommendations to the council within 30 days after completing the investigation if the ombudsman finds any of the following:

(a) A matter that should be considered by the department.

(b) An administrative act that should be modified or canceled.

(c) A statute or rule that should be altered.

(d) Administrative acts for which justification is necessary.

(e) Significant prisoner health and safety issues as determined by the council.

(f) Any other significant concerns as determined by the council.

(2) Subject to section 11, the council may forward the report prepared and submitted under this section to the department, the prisoner or prisoners affected, or the complainant who requested the report.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.361 Announcing critical conclusion or recommendation; publishing adverse opinions; publishing statement in defense or mitigation of action; notice of action on recommendation.

Sec. 11. Before announcing a conclusion or recommendation that expressly or by implication criticizes a person or the department, the ombudsman shall consult with that person or the department. When publishing an opinion adverse to the department, or any person, the ombudsman shall include in that publication a statement of reasonable length made to him or her by the department or person in defense or mitigation of the action if that statement is provided within a reasonable period of time as determined by the council. The ombudsman may request to be notified by the department, within a specified time, of any action taken on any recommendation presented. The ombudsman shall notify the complainant of the actions taken by the office and by the department.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.362 Annual report.

Sec. 12. The ombudsman shall submit to the council and the legislature an annual report on the conduct of the office.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1982, Act 170, Imd. Eff. June 1, 1982.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.363 Prisoner not to be penalized for complaint or cooperation; prohibitions.

Sec. 13. (1) A prisoner shall not be penalized in any way by an official or the department as a result of filing a complaint, complaining to a legislator, or cooperating with the ombudsman in investigating a complaint.

(2) A person or the department shall not hinder the lawful actions of the ombudsman or employees of the office, or willfully refuse to comply with lawful demands of the office.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

LEGISLATIVE CORRECTIONS OMBUDSMAN (EXCERPT)
Act 46 of 1975

4.364 Authority of ombudsman.

Sec. 14. The authority granted the ombudsman is in addition to the authority granted under the provisions of any other act or rule under which the remedy or right of appeal or objection is provided for a person, or any procedure provided for the inquiry into or investigation of any matter. The authority granted the ombudsman shall not be construed to limit or affect the remedy or right of appeal or objection and shall not be deemed part of an exclusionary process.

History: 1975, Act 46, Imd. Eff. May 16, 1975.

MICHIGAN DEPARTMENT OF CORRECTIONS **POLICY DIRECTIVE**	EFFECTIVE DATE 01/17/2011	NUMBER 03.02.135
SUBJECT OFFICE OF THE LEGISLATIVE CORRECTIONS OMBUDSMAN	SUPERSEDES 03.02.135 (02/01/09)	
	AUTHORITY MCL 4.351, et seq. as amended by 2010 PA 287; 791.203; 2010 PA 286	
	ACA STANDARDS 4-4019; 4-ACRS-6B-03	
	PAGE 1 OF 3	

POLICY STATEMENT:

The Department maintains a cooperative working relationship with the Office of the Legislative Corrections Ombudsman, including neither hindering its lawful actions nor willfully refusing to comply with its lawful demands.

POLICY:

GENERAL INFORMATION

A. For the purposes of this policy directive, Ombudsman refers to the Office of the Legislative Corrections Ombudsman.

B. The Ombudsman is authorized by law to investigate the following:

1. Upon receipt of a complaint from a prisoner or parolee under the jurisdiction of the Department, from a state legislator, or on the Ombudsman's own initiative, an administrative act by the Department or its employees which is alleged by a prisoner or parolee to be contrary to law or applicable Department policy.

2. Upon the Ombudsman's own initiative, significant health and safety issues and other matters for which there is no effective administrative remedy.

C. To preserve the integrity of the grievance process and avoid duplicate and possibly conflicting attempts by the Department and the Ombudsman to resolve a problem simultaneously, offenders should pursue all administrative remedies, including the grievance process, prior to contacting the Ombudsman except if regarding a significant health or safety issue. The Department shall provide the Ombudsman information and access to grievance information and documents upon request as set forth in this policy, however, even if administrative remedies have not been exhausted.

D. Offenders shall not be penalized in any way for initiating a complaint with a state legislator or the Ombudsman, or for cooperating in an investigation conducted by the Ombudsman.

E. Each Warden shall designate a staff person to serve as liaison between his/her facilities and the Ombudsman. The Deputy Director of Field Operations Administration (FOA) shall designate staff to serve as liaison for facilities and programs under FOA. The Administrative Assistant to the Director shall serve as liaison on Department-wide matters.

F. Information prepared by and pertaining to the Ombudsman shall be posted upon request of the Ombudsman in each housing unit in each Department facility and in FOA field offices.

ACCESS TO INFORMATION

G. Upon request and without the requirement of any release, the Ombudsman shall be given access to all information, records, and documents in the possession of the Department which the Ombudsman deems necessary in an investigation, including, but not limited to, prisoner medical health records, prisoner mental health records, and prisoner mortality and morbidity records. Pursuant to Public Act

287 of 2010, a signed release is not required in order to provide this information.

H. The facility liaison and, for Central Office, the Administrative Assistant to the Director shall assist in the review of information requested by the Ombudsman. All requests for information or documents pertaining to matters in litigation, under criminal investigation, under review by the Department of Attorney General, or any other sensitive matter shall be referred to the Administrative Assistant to the Director for response.

I. The Ombudsman shall be provided access to the Department's Document Access System (DAS). Requests by the Ombudsman for photocopies of any other materials shall be provided within a reasonable period of time, subject to Paragraph H.

ACCESS TO FACILITIES

J. Except during a disturbance, the Ombudsman shall be allowed unrestricted access to a facility under the control of the Department. The Ombudsman shall be subject to search in the same manner as an employee, as set forth in PD 04.04.110 "Search and Arrest in Correctional Facilities". During a disturbance, one person from the Ombudsman's office may be present in the think tank as an observer. Access by the Ombudsman to other areas in the facility during a disturbance shall be at the discretion of the Warden.

K. The Ombudsman shall be required to produce appropriate identification and to register into and out of facilities in the same manner as Central Office staff. Volunteers and student interns assigned to the Ombudsman must be accompanied by a full-time paid employee of the Ombudsman. The Ombudsman shall immediately notify the Administrative Assistant to the Director of any new employees, student interns, or volunteers assigned to the Ombudsman. The Administrative Assistant to the Director shall forward this information to each Warden and FOA Facility Supervisor.

Visits

L. The Ombudsman may meet with any offender or Department employee to obtain information or documentary or other evidence which the Ombudsman deems relevant to a matter under investigation. Each facility head shall ensure adequate space is available in his/her facility in which the Ombudsman may meet in private with employees and offenders housed in that facility. The Ombudsman may meet with offenders outside of standard visiting hours with prior approval of the facility head or designee.

M. In Correctional Facilities Administration (CFA), the Ombudsman shall be allowed to visit any prisoner upon request, even if the prisoner's visits have been restricted. The Ombudsman is not required to be on the prisoner's approved visitors list; and such visits shall not be counted as one of the prisoner's regular visits. Visits with a prisoner also shall not be counted toward out-of-cell movement when there is a limit on the amount of such movement (e.g., STG designation). Prisoners shall be paid for work and shall receive a school stipend for absences from their assignments for a call-out to meet with the Ombudsman; this does not apply to an absence from a public works assignment. Contact visits shall be permitted with a prisoner upon request of the Ombudsman.

MAIL BETWEEN OMBUDSMAN AND OFFENDERS

N. Mail between an offender in a Department facility and the Ombudsman shall be processed in accordance with Administrative Rule 791.6603 and PD 05.03.118 "Prisoner Mail". All mail between an offender and the Ombudsman is confidential and shall be handled the same as legal mail. Offenders may use Department of Management and Budget (DMB) interdepartment mail runs, in facilities where such service is available, to send postage-free mail to the Ombudsman. Outgoing offender mail to the Ombudsman shall be handled the same as mail to a state public official.

TELEPHONE CALLS BETWEEN OMBUDSMAN AND OFFENDERS

O. Telephone calls shall be permitted between the Ombudsman and an offender in a facility upon request of the Ombudsman. The call shall not be monitored, or listened to, by staff.

OMBUDSMAN REPORTS

P. Before announcing a conclusion or recommendation that expressly or implicitly criticizes an individual or the Department, the Ombudsman is required to consult with that individual or the Department. As determined by the Director, the Department may prepare a statement in defense or in mitigation of the action to submit to the Ombudsman. The statement shall be included in publication of any opinion adverse to the Department or its employees.

Q. The Department shall notify the Ombudsman, upon request, of any action taken on any recommendation made by the Ombudsman.

R. A report prepared and recommendations made by the Ombudsman and submitted to the Legislative Council pursuant to an investigation are exempt from disclosure under the Freedom of Information Act (FOIA).

PROCEDURES

S. Operating procedures are not required for this policy directive.

AUDIT ELEMENTS

T. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: RMM 01/13/11

Keith Barber
Ombudsman

Office of Legislative Corrections Ombudsman

Date: January , 2009
To: Michigan Department of Corrections Prisoners and Parolees
From: Keith Barber, Ombudsman
Subject: **Office of Legislative Corrections Ombudsman**

The Office of Legislative Corrections Ombudsman was created by the Michigan Legislature in 1975 to investigate administrative acts of the Michigan Department of Corrections that are alleged to be contrary to law or Department policy. The Ombudsman's Office will have 4 staff members: the Ombudsman, 2 field investigators and an executive assistant. PD 03.02.135 describing the Ombudsman's Office will be available for review in your law library.

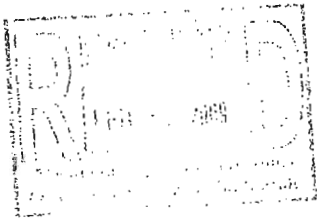
Prisoners and parolees may send issues that allege a violation of Department policy or state law to the address at the bottom of this page. **It is important to understand that the Ombudsman's office will not be able to investigate every issue sent to the office due to our limited number of staff.** The Ombudsman statute states that **all** administrative remedies available to a complainant **must be** completed before the Ombudsman begins an investigation of the issue, except for issues regarding possible imminent health and safety concerns. **Prisoners must try to resolve concerns through the available administrative remedies before sending the complaint to the Ombudsman, unless it is an immediate health and/or safety issue** (for example: talk to an officer, your counselor, health care staff…; complete a grievance through all 3 steps; or, complete the request for a rehearing for major misconducts). The Ombudsman's Office will not be in a position to accept collect telephone calls, and in many cases will not be able to respond to telephone requests for assistance unless it is an emergency situation.

All information presented to the Ombudsman is confidential except as far as disclosure of specific information may be necessary to enable the Ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation. Correspondence between a prisoner and the Ombudsman is also confidential and must be processed as privilege correspondence in the same manner as letters between prisoners and courts, attorneys, or public officials. Prisoners are not to be penalized in any way by an official or the Department for filing a complaint, complaining to a Legislator, or cooperating with the Ombudsman in an investigation.

The Ombudsman's Office looks forward to working closely with the prisoner and parolee population, Corrections staff, the Michigan Legislature and concerned individuals so that critical individual and systemic issues can be identified and investigated as quickly as possible.

The Ombudsman's mailing address is:

Legislative Corrections Ombudsman
124 West Allegan
P.O. Box 30036
Lansing, MI 48909



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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) (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) (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 (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: (1) he, in good faith, believes the other person is experiencing a drug overdose; and (2) he acts with reasonable care in administering the drug to the other person. 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." 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. 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." "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]. "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."

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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: (1) A person experiencing, or likely to experience, an opiate-related overdose; or (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. "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." "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." 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: (1) He or she, in good faith, believes the other person is experiencing a drug overdose; and (2) He or she acts with reasonable care in administering the drug to the other person. (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
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." 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: (1) In good faith to treat a person who he or she reasonably believes is experiencing an overdose; (2) Outside of a hospital or medical office; and (3) Without the expectation of receiving or intending to seek compensation for such service and acts. ... (i) For the purposes of this section, the term: (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 arrest or search. (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. (3) "Overdose" means an acute condition of physical illness, coma, mania, hysteria, seizure,

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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. (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. (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: (1) The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose. (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: a. A family member, friend, or other person. b. In the position to assist a person at risk of experiencing an opiate-related overdose. (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. (d) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section: (1) Any practitioner who prescribes an opioid antagonist pursuant to subsection (b) of this section. (2) Any person who administers an opioid antagonist pursuant to subsection (c) of this section."

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CO	S.B. 13-014 (2013)	May 10, 2013	[Legislative declaration, defines terms] 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" 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. 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: (a) the frequency of required retraining or refresher training; and (b) The curriculum for the training, including: (A) The recognition of symptoms and signs of opiate overdose; (B) Nonpharmaceutical treatments for opiate overdose, including rescue breathing and proper positioning of the victim; (C) Obtaining emergency medical services; (D) The proper administration of naloxone to reverse opiate overdose; and (E) The observation and follow-up that is necessary to avoid the recurrence of overdose symptoms" [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] "(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: (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 (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. (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."

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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. (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. "(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: (A) a person at risk of experiencing an opioid-related overdose; or (B) a family member, friend, or other person in a position to assist a person at risk of experiencing an opioid-related overdose. (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. (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. (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. (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. (e) A person acting on behalf of a community-based overdose prevention program shall be immune from

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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. (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. To be codified at 18 V.S.A. 4240.
VA	HB 1672 (2013)	July 1, 2013	"A. Any person who: ... 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. .... 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. ... 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. 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... (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

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			assistance with an opioid overdose; and care for an overdose victim after administration of the opioid antidote. 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. 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. 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."
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. "13-3102. 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. .. 13-3104. (A) To qualify for a certificate, an individual shall meet the requirements of this section. (B) The application shall be at least 18 years old. (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. (D) (1) The applicant shall successfully complete an educational training program offered by a private or public entity authorized by the Department. (2) An educational training program required under this subsection shall: (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] .. 13-3106.

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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.] 13-3107. 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] .. 13-3109. [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. B. When an opiate antagonist is prescribed in accordance with subsection A of this section, the provider shall provide: 1. Information on how to spot symptoms of an overdose; 2. Instruction in basic resuscitation techniques; 3. Instruction on proper naloxone administration; and 4. The importance of calling 911 for help. 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: (1) "Opioid antagonist" means naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of an opioid overdose. (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: (A) The causes of an opiate overdose. (B) Mouth to mouth resuscitation. (C) How to contact appropriate emergency medical services. (D) How to administer an opioid antagonist. (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. (c) (1) A licensed health care provider who is authorized by law to prescribe an opioid antagonist may

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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. (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. (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. (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. (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). (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: **Sec. 2925.61.** (A) As used in this section: (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; (b) Using an auto-injector in a manufactured dosage form. (2) "Law enforcement agency" means a government entity that employs peace officers to perform law enforcement duties. (3) "Licensed health professional" means all of the following: (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; (b) A physician assistant who holds a certificate to prescribe issued under Chapter 4730. of the Revised Code; (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. (4) "Peace officer" has the same meaning as in section 2921.51 of the Revised Code. (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: (1) Obtains naloxone from a licensed health professional or a prescription for naloxone from a licensed health professional; (2) Administers that naloxone to an individual who is apparently experiencing an opioid-related overdose; (3) Attempts to summon emergency services either immediately before or immediately after administering the naloxone. (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. (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. ... **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: (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. (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. (3) The naloxone is personally furnished or prescribed in such a manner that it may be administered by only either of the following routes: (a) Using a device manufactured for the intranasal administration of liquid drugs; (b) Using an auto-injector in a manufactured dosage form. (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. **Sec. 4729.511.** (A) As used in this section, "naloxone distributor" means either of the following: (1) A wholesale distributor of dangerous drugs; (2) A terminal distributor of dangerous drugs that supplies naloxone to any entity under division (B)(1) of this section. (B)(1) A naloxone distributor shall prioritize the sale, distribution, and delivery of naloxone to all of the following:

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			(a) A children's hospital, as defined in section 3727.01 of the Revised Code; (b) A hospital, as defined in section 3727.01 of the Revised Code; (c) An emergency medical service organization, as defined in section 4765.01 of the Revised Code; (d) A facility that is operated as an urgent care center. (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. (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. **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: [identical to 4723.488] ... **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. [identical to 4730.431] ... **SECTION 2.** That existing sections 4723.482 and 4762.03 of the Revised Code are hereby repealed. **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
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
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
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. 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. 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]... [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. ... (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. (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
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. ... 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. 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. ... 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. ... 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
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; ... [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
IL	720 Ill. Comp. Stat. Ann. 570/414 (2012)	Feb. 6, 2012	(a) [defines overdose] "(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. (c) A person who is experiencing an overdose shall not be charged or prosecuted for [same as (b)] (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] (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] "(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. (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. (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: ..... (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: (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; (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

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			arrives; (c) The person identifies himself or herself to, and cooperates with, the law enforcement officer, emergency medical responder, or medical provider; and (d) The offense arises from the same course of events from which the emergency drug or alcohol overdose event arose. (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. (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.] (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. ..."
RI	R.I. Gen. Laws §21-28.8-4 (2012)	June 18, 2012 (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. (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. (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.

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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. (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. (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. " 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. (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. (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. (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. (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. (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.

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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: (1) For a person who: (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; (B) Reasonably believes that another person is experiencing a drug or alcohol-related overdose and in good faith seeks healthcare for that person; or (C) Is reasonably believed to be experiencing a drug or alcohol-related overdose and for whom health care is sought; and (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. (b) The following offenses apply to subsection (a) of this section: ... (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. (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. (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. (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: (1) In good faith to treat a person who he or she reasonably believes is experiencing an overdose; (2) Outside of a hospital or medical office; and (3) Without the expectation of receiving or intending to seek compensation for such service and acts. ... (i) For the purposes of this section, the term: (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 arrest or search. (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. (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. (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. (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. (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. (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."

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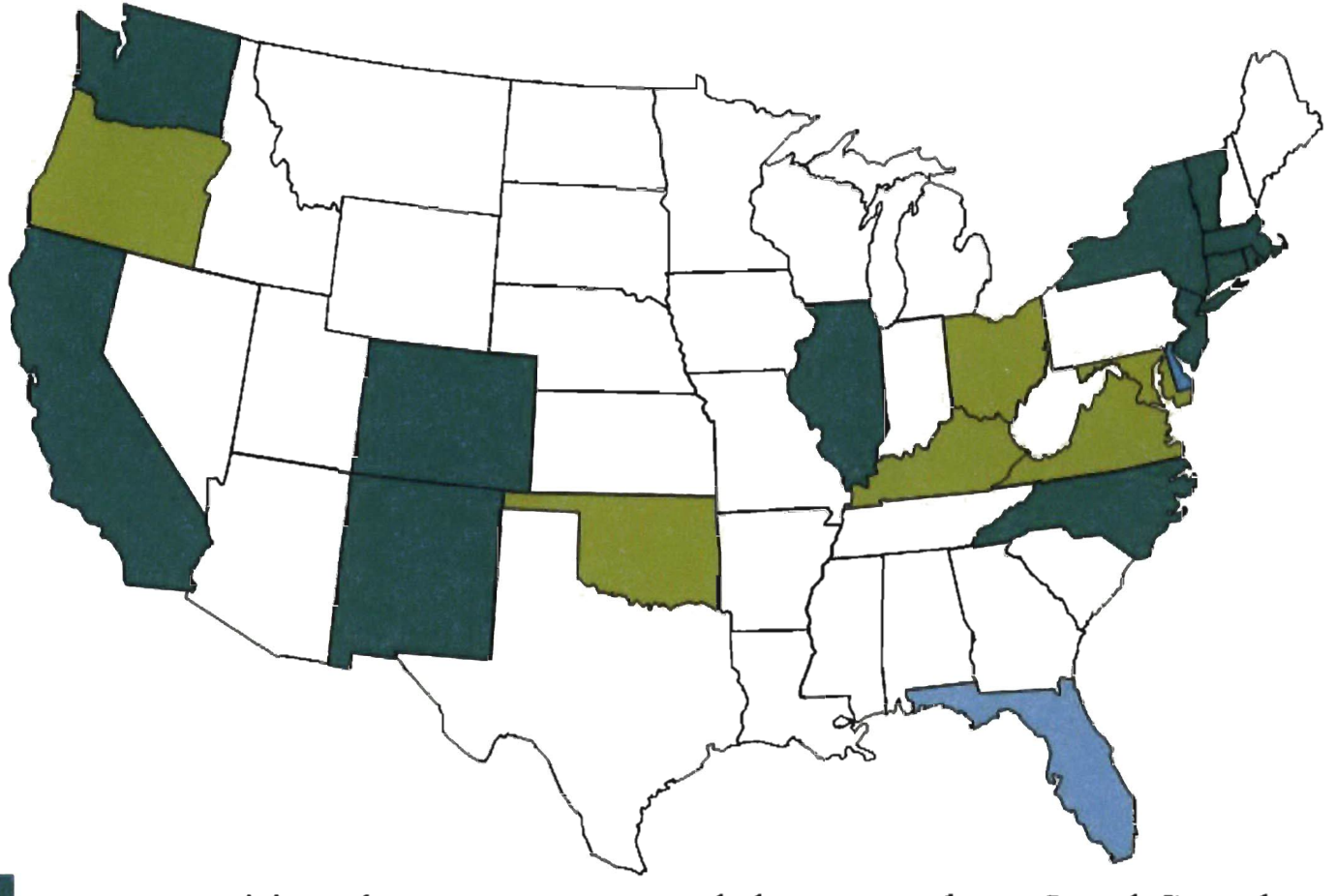
NJ	S.B. 2082 (2013)	May 2, 2013	(7) a. A person who, in good faith, seeks medical assistance for someone experiencing a drug overdose shall not be: (1) arrested, charged, prosecuted, or convicted for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of, a controlled dangerous substance or controlled substance analog pursuant to subsection a., b., or c. of N.J.S.2C:35-10; (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); (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); (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; (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; (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; (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. b. The provisions of subsection a. of this section shall only apply if: (1) the person seeks medical assistance for another person who is experiencing a drug overdose and is in need of medical assistance; and (2) the evidence for an arrest, charge, prosecution, conviction, or revocation was obtained as a result of the seeking of medical assistance. 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. [Section 8 provides Identical protections for the victim]

STATE	CITATION	EFFECTIVE DATE	SUMMARY
VT	H0065 (2013)	June 5, 2013	(a) As used in this section: (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. (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). [Section (c) provides identical protections for a person experiencing an overdose] (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. (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. (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. (a) For purposes of this chapter: (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. (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. (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

STATE CITATION	EFFECTIVE DATE	SUMMARY
		the revocation or modification of the conditions of probation, if: (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 (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. (c) The immunity described in this section shall apply to the following offenses: (1) Miscellaneous drug crimes as described in § 4757 (a)(3), (6), and (7) of this Chapter; (2) Illegal possession and delivery of noncontrolled prescription drugs as described in § 4761 of this Chapter; (3) Possession of controlled substances or counterfeit controlled substances, as described in § 4763 of this Chapter; (4) Possession of drug paraphernalia as described in §§ 4762 (c) and 4771 of this C hapter; (5) Possession of marijuana as described in § 4764 of this Chapter; and (6) Offenses concerning underage drinking as described in Title 4, § 904 (b), (c), (e), and (f). (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. (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. (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,