To: Nevada State Finance Committee
401 S. Carson St., Carson City, NV 89701
From: Fines and Fees Justice Center (FFJC)
May 10, 2023
RE: Fiscal impact of SB 416 and recommendation for funding

Dear members of the Nevada Senate Finance Committee,

Fines and Fees Justice Center (FFJC) applauds your consideration of SB 416, which would enable Nevada to end its dependency on hidden and hard-to-collect fees on incarcerated people and their families. We urge you to pass this critical piece of legislation. Implementation of SB 416 will primarily impact special revenue funds in NDOC, including the Offender's Store Fund budget, which funds various operations and staffing associated with the state's commissary, and the Inmate Welfare Fund. The initial fiscal note submitted by NDOC on 4/10/2023 projects a total annual cost of about $6.3 million dollars[1] to replace the revenue that is currently budgeted for: commissary and package sale markups, room & board fees, medical co-pays and AB 389 reimbursement fees, and collection of outstanding debt. As explained more fully below, FFJC believes that the actual cost of implementation is $4.9 million per year, and our team has built a model that mitigates that cost over the next five years.

At the outset, however, we want to commend the motion made by Chair Harris and approved by the Senate Finance committee during NDOC's 5/4/23 budget closing hearing, which shifts funding for 14 law library FTE from the Offenders' Store Fund to their respective individual facility budgets, and appropriates about $1.1 million annually of General Fund to support these costs in the facility budgets. While it does not change the ultimate cost to implement SB 416, this motion begins the process of paying for it by changing the funding source for law library employees to the General Fund. This action demonstrates the Committee's recognition of how the current funding system, where NDOC depends on the constant draining of incarcerated people's savings and earnings to fund its operations, is not only harmful to those who must pay but also to the stability of the budget itself. Passing SB 416 will allow legislators to fully address this deep-set injustice and imbalance with a long-term solution.

The FFJC funding model[2], summarized below and detailed on page 5, demonstrates how the fiscal impact of SB 416 could be mitigated by pairing the strategic use of ARPA funds and NDOC Offenders' Store surplus funds with a gradual phase-in of annual General Fund support over the next five years. **The model shows that only $2 million of annual General Fund support would be needed during the next five years to implement SB 416, with the General Fund not fully picking up the cost of the**

---

[1]NDOC's fiscal note originally projected a $6.1M total fiscal cost, but we believe that a $91k cost savings that was included was meant to be reported as a $91k cost, based on the item and NDOC's description of the impact.

[2]This analysis and modeling was conducted by Lillian Patil, Senior Budget Analyst of State and Local Budgets at the Fines and Fees Justice Center. The analysis leverages her public finance expertise from previously working in both state (Colorado) and local (San Francisco) government budget offices. To complete this analysis, she utilized data from: the Governor's Executive budget (current and past biennia), year-end ACFR documents for years FY2018-FY2021, and testimony from the 4/29/23 Nevada Committee of Finance.

legislation until FY2029. We hope this model and recommendation prove useful in identifying alternative revenue solutions for the inequitable and inefficient fees that SB 416 seeks to eliminate.

We believe, however, that NDOC's fiscal note should be adjusted to reflect the full picture of the costs and benefits associated with this legislation. We show our recommended adjustments below, along with notes on our assumptions and calculations. Overall, our recommended adjustments would change the price point on implementing SB 416 in full from $6.3 million per year to about $4.9 million per year, and we use this adjusted fiscal projection in our model.[3]

Fiscal Note Item	**NDOC Projection (annual)**	**FFJC Rec. Projection (annual)**	**FFJC Notes on Recommended Adjustments**
Commissary revenue reduction	-$4,217,233	-$3,392,876	We agree with NDOC's estimate of the cost to decrease markups from what is currently seen in 2022 budget actuals (over 50%) to 5%. However, we believe that an additional revenue offset should be added to account for the increased sales that NDOC would likely see once people can purchase items at lower prices. We use a conservative assumption (based on what San Francisco saw after implementing this reform) of a 22% increase in items sold and a corresponding 15% increase in inventory purchased. At a 5% markup, this results in an additional projected $824,357 of revenue, lowering the total commissary revenue loss to about $3.4 million annually.
Package revenue reduction	-$614,778	-$614,778	NDOC 2022 budget actuals show the revenue received from the package program to be $948,007. Without more data on how much was made in total package sales overall, we assume that NDOC's estimate represents the cost of limiting the percentage of sales NDOC receives to 5%.
Room & Board Reduction	-$482,899	-$482,899	n/a
Discharge of Debt	-$71,713	-$71,713	n/a
Co-Pay Elimination	-$187,107	-$108,816	Data provided from a public records request shows that medical copays assessed averaged $144,824 from FY2019-FY2021, and out of those assessed fee averages, only 75% were actually collected. We recommend using these data points for the revenue loss projection, which would equal about $109k.

[3] Given our limited access to NDOC's detailed collections data, we use most recent publicly available budget actuals data (2022 actuals, as seen in the Governor's FY24-25 Executive Budget) as our primary reference point for most cost projections and recommended adjustments to the fiscal note.

			We also believe there could be significant future savings from decreased emergency medical expenditure needs once inmates have no-cost access to preventative and as-needed medical care. The magnitude of those savings are unknown and so are not factored into this cost projection, but we recommend consideration of this savings factor in light of the overall fiscal impact.
$100 for Released Offenders:	$97,542	-$24,386	This was originally added as a net revenue increase, not loss. We assume this was a technical error and NDOC meant to submit it as a revenue loss. However, we believe this cost would be minimal if anything- public records request data collected by FFJC reported $1.57M total in savings accounts in FY21 and the NDOC dashboard shows that at end of FY21 there were 10,851 incarcerated individuals, which equates to an average of $144 per savings account. Moreover, with the passage of the other components of SB 416, incarcerated people would have fewer costs to pay and so would be better able to build up funds in their accounts. Without more granular data on individual accounts, we use an estimate of 25% of NDOC's original estimate to account for this additional context.
A 389 Reimbursements:	-$638,466	-$173,865	Assuming the revenue loss would be felt in the budget line items labeled "reimbursements" in the Prisoner's Medical Fund and the Inmate Welfare Fund, we believe the cost of eliminating AB 389 reimbursements would be lower than what NDOC has projected. FY2022 budget actuals showed that reimbursement revenue collected for both these account line items totaled $173,865 in FY2022.
Total	**-$6,114,654**	**-$4,869,135**	

Overview of Model Strategy and Recommended Funding Strategy

We believe that prison operations and services for incarcerated people are services that the general public relies on for public safety, and so should be primarily funded with the General Fund, rather than through fees only on incarcerated people that leave them and their loved ones trapped in a cycle of poverty and debt. Our model balances this belief with the reality of state fiscal pressures, using a gradual phase-in of General Fund support and supplementary use of ARPA funds and NDOC fund balance to replace NDOC's current reliance on fees collected from incarcerated people to fund operations. **The resulting model projects that the General Fund would not need to fully absorb the full costs of SB 416 for six years (FY2029.)** The three recommended revenue sources used in our model are discussed below:

1) ARPA SLFRF Funds: In 2021, Nevada was awarded $2.7 billion in discretionary ARPA funds and subsequently allocated nearly all the dollars to various state initiatives and agencies. During the State Committee of Finance session on April 29, 2023, it was reported that $33.5 million of this total has recently been identified as savings that will not be spent as originally planned. Because these funds must be obligated by December 31, 2024 and spent down by December 31, 2026, it is critical that the legislature quickly re-budget these funds to avoid having to return the

dollars to the Treasury. We believe that using part of these savings to enable the elimination of unjust fees on incarcerated people and their families both directly meets the intent of the ARPA package, which seeks to support the public and economic health of communities most impacted by the pandemic, and is an efficient way to ensure that these dollars get spent by the deadline. Our model therefore recommends that $5.7 million of these savings are allocated over the next two fiscal years (FY2024-FY2025) to cover the majority of the fiscal impact from this legislation, which reduces the General Fund support needed for these two years to less than half (41%) of the full fiscal impact.

2) NDOC Offenders' Store Fund Balance: For the time period examined in this analysis–FY2018 to FY2022–the Offenders' Store Fund has held a surplus balance of between $13 million and $22.5 million. Each year's ending surplus is routinely budgeted as a revenue source for the next fiscal year, but over the last five years and in this next biennium budget, only about $1M of this fund balance is actually used on average per year, meaning a significant portion of the marked-up commissary sales and various prison fees that are collected from incarcerated people is simply sitting year-over-year in the fund as surplus balance, or is reverted to the General Fund on a one-off basis. Ultimately, the reason this fund balance exists is because incarcerated people and their families have been forced to pay excessive prices for basic necessities like hygiene products and food. It is only right that this surplus is utilized for their benefit. Our model shows that if $1 million of this fund balance is used for three years (in addition to what is already budgeted annually on average) to replace part of the projected revenue from SB 416[4], **the General Fund would not have to fully pick up the cost of the revenue loss until 6 years from now, in FY2029.** This model also makes the conservative assumption that no additional fund balance builds up in the foreseeable future, but we know there is a high chance that this could occur based on the significant NDOC staffing vacancy savings that we have seen in recent years–which would only increase the amount of funding available to help cover the revenue loss or support the Fund in later years.

3) General Fund Support: The state's General Fund is in an extremely strong position, and we believe it is well able to fill any revenue gaps left by the implementation of this reform both in the short-term (due to the historic General Fund surplus projected for the upcoming biennium[5]) and the long-term (due to the extremely strong status of the state's reserves.) The Governor is even proposing raising the cap on the state's Rainy Day Reserve from 20% to 30% of all General Fund revenues, bringing it to a total of $1.6 billion dollars and creating a strong emergency revenue source should an economic downturn occur in the coming years. And in the May 2023 Economic Forum, $201 million more in revenue was forecasted for the upcoming FY24 and FY25 budget than had been previously projected. Our modeling assumes that even over a five-year period, the total General Fund support needed to implement SB 416 represents less than 10% of that newly recognized General Fund revenue- or using another comparison, represents only 4% of the total

[4] Even with this assumption, and assuming that the Offenders' Store Fund continues to use on average $1 million annually to fund other operations, our model shows that the fund balance would not be projected to be depleted until the end of FY2028.

[5] Source: NV Budget book, p. 75

General Fund support NDOC will receive in the coming biennium. The Nevada Senate Majority Leader said in a statement that this new $201 million puts Nevada "in a strong position to address many long-time unmet needs"[6] –fixing NDOC's broken budget structure is a perfect example of such a long-time need, which SB 416 takes big steps to resolve by eliminating its dependence on inequitable and inefficient fee revenues.

The final page of this memo shows the detailed model that we have summarized above. We appreciate the time and effort that the legislature has put into considering this critical structural reform of the NDOC budget, and we urge you to pass this legislation for the physical, social, and economic well-being of incarcerated people and their families throughout Nevada.

Model Detail

NV SB 416 Fiscal Impact- Spenddown Modeling							
Costs/Expenditures	***FY24 Proj.***	***FY25 Proj.***	***FY26 Proj.***	***FY27 Proj.***	***FY28 Proj.***	***FY29 Proj.***	**Notes**
Fiscal Note Cost / Year (FFJC Adjusted Estimate)	(4,869,134.50)	(4,869,135)	(4,869,135)	(4,869,135)	(4,869,135)	(4,869,135)	FFJC believes the true cost of SB 416 may be lower than the initial fiscal note for several reasons, and we use our adjusted estimate of $4.9M annual cost here.
Total Cost / Year	**(4,869,135)**	**(4,869,135)**	**(4,869,135)**	**(4,869,135)**	**(4,869,135)**	**(4,869,135)**	
Recommended Sources	***FY24 Proj.***	***FY25 Proj.***	***FY26 Proj.***	***FY27 Proj.***	***FY28 Proj.***		**Notes**
Use Of Fund Balance	0	0	1,076,362	1,076,362	1,076,362	0	Assumes annual use of Offenders' Store Fund Balance for three years starting in FY26. Recommended amount / year represents average amount of fund balance used annually between FY2018 - FY2025 (proj). With additional levels of fund balance budgeted to support Offenders' Store Fund operations, current Fund Balance levels would not be depleted until FY2028 (and could certainly see additional surpluses if the fund sees year-end savings over time.)
Use of ARPA	2,869,135	2,869,135	0	0	0	0	Recommend use of $5.7 million, or 17%, of the $33.5 million ARPA allocated dollars recently recognized as savings to Nevada, to support costs for this reform in the upcoming biennium budget only. Use of ARPA funds is not recommended after FY2025 due to ARPA spending deadlines.
Use of General Fund	2,000,000	2,000,000	3,792,773	3,792,773	3,792,773	4,869,135	Assumes modest state General Fund support for the upcoming biennum budget, with increasing funding beginning in FY2026 and full funding for this reform starting in FY2029.
Total Sources/Revenues	4,869,135	4,869,135	4,869,135	4,869,135	4,869,135	4,869,135	
Remaining Cost of Fiscal Note	0	0	0	0	0	0	

[6]Source:
https://thenevadaindependent.com/article/economic-forum-state-budget-will-have-251-million-more-than-expected