MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-second Session
February 9, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Thursday, February 9, 2023, Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Kelsey DeLozier, Deputy Counsel
Sally Ramm, Committee Secretary

OTHERS PRESENT:

James Dzurenda, Director, Nevada Department of Corrections
Kirk Widmar, Chief, Offender Management Division, Nevada Department of Corrections
Marcie Ryba, Executive Director, Nevada Department of Indigent Defense Services
Thomas Qualls, Deputy Director, Nevada Department of Indigent Defense Services
Jim Hoffman, Nevada Attorneys for Criminal Justice

Christopher DeRicco, Chair, State Board of Parole Commissioners
Kelly Mellinger, Hearings Examiner II, State Board of Parole Commissioners
John J. Piro, Clark County Public Defender's Office
Erica Roth, Washoe County Public Defender's Office
Tonja Brown, Advocates for the Inmates and the Innocent
Anne Marie Grant
Mercedes Maharis

CHAIR SCHEIBLE:
We will open with a presentation from the Nevada Department of Corrections.

JAMES DZURENDA (Director, Nevada Department of Corrections):
I will give an overview of what our issues are, where we plan to take the agency and how it is going to affect communities, all of us and our families. Our biggest struggle this year is going to be the staffing issues across the State. However, I have some options. We are exploring marketing companies that will help us recruit employees from companies in California going out of business or laying off people.

Potential employees from certain states could come into Nevada because it is a better place to live and to work. We are teaming with health and human services organizations to follow a similar strategy regarding medical and clinical staff. We target agencies and states that have medical personnel looking to come to Nevada or expand into a different state.

Another challenge is staff wellness. We are working on wellness programs that will help with staff retention. We cannot keep safety and security where it should be without appropriate numbers of staff to do what must be done.

The second biggest challenge is facilities infrastructure. A facility in Carson City built in the 1960s had limited maintenance and is a problem. We must examine all facilities and audit the infrastructures to see what are the most important repairs to keep the public and staff safe and offenders safe from each other.

I mentioned before how important programming is to ensure offenders in our system have the tools and the ability to succeed when they get out. We must give them the opportunity to get out better than they came in. Using the appropriate evidence-based tools is going to reduce violence in our communities and make sure we are not revictimizing our families and friends.

When the U.S. Department of Justice (DOJ) has designated programs as being evidence-based over a three-year period, it means the data shows that at least 51 percent or more of those programs meet the actual needs and goals of those programs. Behavior changes after participation in behavior programming addresses issues such as substance use disorder and mental health.

More evidence-based programs are needed rather than programs that clinicians like to do because it makes them feel good or because offenders like the program. Programs that are evidence-based must show the resources being spent change offenders' behavior when they go into the community.

The Sentencing Policy Division data website shows most of the offenders coming into the system have charges of violence and sex charges. This is where programming of the Nevada Department of Corrections (NDOC) must be focused with evidence-based programs that change behaviors to reduce violence.

The courses include training in recognition and behavioral therapies which are geared toward changing behaviors of violent offenders. These programs are how NDOC is going to funnel resources to reach the offenders, so when they reenter society, they will not revictimize our communities and our families.

I meet every six months with every director, secretary or commissioner who run all the prison systems in the Country. I have been doing this since 2010 through the Correctional Leaders Association. We meet to go over what technology is going to help with reducing the number of victims in the community and reducing violence in the facilities. You will see, throughout this Session, bills that will allow me to issue and distribute wireless devices. Education on this will be provided to everybody. It is not an iPad or tablet that works like it does in our home. This technology will help NDOC do what successful programs are doing.

The upcoming bills will list these programs. Nevada is one of the few states that does not have wireless devices in the prison system. These devices are important because it can be shown that they have reduced violent crimes happening in the facilities by 35 percent. They are also important in reconnecting families and the support groups in the communities with those offenders who will be eventually going home. This matters because getting and

keeping those family connections is important in helping the offenders become successful people.
I will explain all this if you want to understand the wireless devices and how important they are, what they do, what they do not do and how it is important even to the DOJ with counterterrorism information. Another good thing, no fiscal note is attached to it.

It is also important to improve the culture of the agency. This cannot be left up to only NDOC. It is the responsibility of all—the public, the clinicians, the Legislature and the community providers who are putting blame on other individuals for being unsuccessful in reentering people from the prison population to the community. The NDOC is planning to make it easier for the public, volunteers and services to come into the facilities. It must be a community effort to change unwanted behaviors.

If adequate money, resources or staff are not available, I will find them. I have reached out to most of the agencies I know, including activist groups, which will be able to help me. The families of those who are incarcerated are a resource that is free of cost to the State. The families must be involved with changing behaviors, especially of those in prison who have children or parents with children who have been in prison. Their family members did something wrong, and they could be ashamed. The person leaving the facility may need help with those families.

Changing the culture of the agency and the behavior of the reentering person could be the biggest resource for making sure that they do not victimize their families when they get out and have the resources to make their lives and the lives of their families sustainable.

The last subject for today is opening more resources for job opportunities. One is HOPE for Prisoners in Las Vegas which has over $5 million in grant money and funds to connect businesses with offenders in our facilities. We have already started working with the Nevada Department of Motor Vehicles to station the Commercial Driver's License (CDL) program in a couple of our facilities—the women's facility in Las Vegas and a facility in Carson City. This includes already approved and licensed companies that do the licensure and the education schooling for CDL. There are hundreds of jobs available, and companies are looking to us for help finding qualified drivers.

Employers are also looking for welders. We already have companies that are going to purchase welding simulators for us. Those welding simulators will be strategically placed around the State in the correctional facilities so that we can do the training and certifications before anyone gets out the door. We have a full range of different things I am not bringing up that we have in our pockets, and we are going to be doing them. You are going to see how we will reduce victimizations in our community. I have seen agencies around the Country where these plans have worked.

We will bring NDOC into the future and demonstrate how successful we are. I am open to questions, now or at other venues and times, if you want information on things that we are thinking about. It would be advantageous for us to be able to educate as many people as possible.

SENATOR OHRENSCHALL:
Several years ago, there were reports in the *Las Vegas Review-Journal* about inmates at NDOC who had served their entire term and were still in custody because the reentry plan was not complete. Do you have any update on fixing this problem? Or are there still inmates in that situation, who have served their terms but are still incarcerated because the plan has not been completed or other issues?

MR. DZURENDA:
It depends on what the newspaper was talking about. We do not hold people past the end of their sentences. They have estimated sentences for parole if there is no plan set up through Nevada Board of Parole Commissioners. Delays can also happen through the individual or through wherever they are or will be released to, and that can hold up their release. They must have a plan for when they go in front of the Parole Board. This could be the issue that was brought up, but we do not hold people past the end of their sentence expiration dates or we should not be. I do not know if it is ever happened, but we should not be doing that.

SENATOR NGUYEN:
You mentioned a couple of reentry programs that you are working within the community, different various nonprofits that have success. Evidence-based practices are such an important part of the personal philosophy that you bring into the NDOC. What are you doing to make sure that the investments in the partnerships that you are forming are evidence-based? Several organizations

deal with reentry. Some of them are more successful, and they may not have the name recognition. What kind of monitoring is done for accountability? Are you looking at those?

MR. DZURENDA:
It is difficult when individuals are not on parole and have finished with their parole or probation. We cannot track them unless we are tracking recidivism. When you are talking about data, if they are not coming back into the system, they cannot be tracked. This is true whether they are incarcerated in another country or where they ended up, unless we are tracking them through parole or probation, so we know when they are coming back. The recidivism is what is used to calculate the statistics. For statistical tracking, we can use testimonies from employers that the individual is still working, has been promoted or is now moving on.

Right now, there is no standard definition of recidivism. Every state has a different definition. The DOJ, through The Council of State Governments, tried three years ago. They failed. Trying to get a recidivism definition is difficult because systems are so different. Five unified systems in the Country, including Connecticut, Alaska, Delaware, New Hampshire and Hawaii, adopted the same definitions. This means their systems, jails and prisons are counting the same. But the systems are different from Nevada's system. Recidivism means something different here. We calculate our own recidivism, and it is any individual that returns on a different sentence. So, our recidivism will be different from a county jail recidivism or even what the State believes was used in the sentencing division. I wish there were an easier way to calculate the data on that.

SENATOR NGUYEN:
I had experience in the nonprofit sector, and I know that is a broad terminology, but there are other things that I would encourage the Department to look at. Different reentry programs have had more success in placing like individuals in longer-term jobs that pay more, as opposed to organizations that are filtering people into lower-paying jobs in the $10 to $12 an hour range. And then there are some that can place people as part of their reentry programs in jobs paying $20 to $25 an hour.

MR. DZURENDA:
We discontinued all the minimum-wage jobs you are talking about. We were placing individuals into minimum-wage jobs out of Casa Grande Transitional Housing in Las Vegas. That was the worst thing we could do. We are not here to fill jobs; we are here to get sustainable jobs for those individuals to succeed. Even though I got many calls from convenience stores and fast-food places that are angry with me, it is not my goal to place people in lower-paying jobs. We are trying to get sustainability because people are not going to be able to have a family, sustain lives and be successful on those other jobs.

SENATOR HARRIS:
I want to follow up on the two questions that my colleagues have asked. I do not know if we heard what the Department is doing to ensure folks are released when they should be and that lack of a plan is not keeping people beyond the time in which they are entitled to release. Now, I understand, it is not full-term. However, if people have served their time and probation says they should go, there should not be one day longer that they should be incarcerated. What efforts are in place to ensure that people are not in the facility longer than they should be, and the only reason they are sitting there is because they are waiting on bureaucracy to do something so that they can be released?

MR. DZURENDA:
For the record, I agree with you 100 percent. I do not want people in my care either. I would rather be out of business. It is not fair, and that is what we are working on through the sentencing policy. But it is a process that has happened over the years, and even the earned credits and the meritorious credits are not right. There have been changes of laws without grandfather provisions, so everybody is on a different version. Our tracking and classification systems are outdated. I am asking for another system that we can use for tracking of classification and the classification system. That is part of it. But there is more. The meritorious credit is the major thing that people misunderstand, and why not? It is hard for even me to understand.

SENATOR HARRIS:
Yes, sentence credits are a mess, right? Everybody knows that you are working on it. But what about the plans these people need to be released?

MR. DZURENDA:
The plans you are talking about are the plans for release, not only for our individuals that are discharged right into the community but through parole as well. It is important that I get the resources that connect parolees to services because that must be in their plan. The housing end must be in their plan, or if they came in on substance use disorder-related crimes, we work with them. They must produce their own plans using our plans for resourcing and present them to the Parole Board.

SENATOR HARRIS:
That is great. You get the point: we want those plans to be done more quickly and there should not be a reason someone is staying behind bars when they have gone through the process and have been granted release. As to Senator Nguyen's question about evidence-based practices with reentry programs, I do not know if I heard whether that is the standard you are using.

I want to summarize what I heard, and then please tell me if it is correct. Right now, you are relying on claims of reentry programs to assess whether they are working and have no internal process to determine which programs are worth the Department's time and which ones are not. Is that right?

MR. DZURENDA:
You are correct. Once they are discharged from NDOC, we do not track what jobs they go to unless we connected it. If they have their own business, we do not track them once they are out of the facility. There is little education on evidence-based best practices. If I have a program that has been proven to be evidence-based, I am taking it at face value that the DOJ has identified and certified that it is going to affect and change the behaviors according to the goals of that program. Will it work 51 percent of the time? I am trusting them.

Best practices are not the same. Best-practices programming is a program that has no proven evidence to work, but there is no other program out there. Many of the states will use these best-practice programs because they do not have an evidence base for a specific behavior, like that of a sex predator. There are no evidence-based sex predator programs in the entire Country. Best-practices programs must be used, which means that these are programs some agencies have said worked. It is better than doing nothing, and that is where resources are funneled.

SENATOR HARRIS:
I get that. You are not using evidence-based programs for reentry and are attempting to use best practices because you cannot find any evidence-based programming for reentry or because it is too hard. What is the reasoning for using best practices versus finding an evidence-based program that works?

MR. DZURENDA:
I will try to clarify that we are using evidence-based programs for the offenders. When you are talking about reentry and when they are discharged to a job, there is no evidence-based program to say that welding is going to change someone's life. Thus, best practices means that around the Country placing parolees into sustainable jobs means they have a better chance to succeed. There is no evidence based on it. No agency can track it forever or over a three-year period or whether they stayed in this job, went to that job or they do not belong to the NDOC anymore. There is no evidence for that.

The programs leading up to the reentry must be all evidence-based. Whether it involves substance use or behavioral issues, the behavior programs must be evidence-based. When parolees discharge, we hope they get the services they need.

SENATOR HARRIS:
What I am trying to get at is not the act of placing someone. Let us say I want to compare partnering up with HOPE for Prisoners program versus a hope for inmates' program. What metrics are you using to decide which partnership will be more effective and lead to better results, if any?

MR. DZURENDA:
When assessments are done on individuals, it all depends on their needs and what programs exist. We must go with the programs that meet the needs of the individuals, and this must be determined on the individual case basis. It is an individualized treatment program because everybody is different. The resources will be used for the program that is evidence-based for that specific program need. Another interesting thing is some programs make individuals worse. We must be careful of that. We must make sure the needs are clinically related to the needs of the person. Then we pick the program that is evidence-based to meet those needs. It is not one needs fits all and it is not one program fits all.

SENATOR HANSEN:
Part of the reentry issue that has happened in the past was the difficulty of getting identification cards for the inmates. It sounds like a simple issue but was remarkably complex. Can you update us on this?

MR. DZURENDA:
We issue NDOC identification cards to every offender coming in. The complexity is we base the identification on the commitment note from the court. The commitment from the court says that the offender is John Doe; we identify from the commitment we get on that day. The identification card will say John Doe. That does not necessarily mean the person's name is John Doe. It means the court's commitment paper says it is John Doe. However, a lot of these individuals have multiple names, multiple aliases and they may or may not ever have been identified. It is not unique to hear when someone gets arrested and police pull them over and they have no identification, they say I am John Doe. Then they get booked as John Doe, go to the court, and the court identifies them as John Doe. They get to corrections as John Doe, get released as John Doe. The next time they get arrested, they say their name is James Doe. The same course of events happens, using James Doe.

Some individuals have fifty names. This is not unique to Nevada. It is all around the Country. These are the identification issues we have. How can identification be proven if fingerprints are not available? What if a birth certificate cannot be found? We use the name on the commitment letter from the court. If we cannot verify, we mark the identification card "unverified." At release, the identification card is kept but clearly says unverified. The card identifies a person if the police ask for it during a traffic stop but the card information is unverified.

Verified identification means the identification of the person can be verified through a birth certificate or fingerprints. This is the only thing we can do with the identification cards and is the best system we have. Some offenders do not want the State to get birth certificates from other countries, or the country requires the person seeking a birth certificate to appear in person. If the certificates are approved, the wireless devices will allow email, which would be important with identification cards because birth certificates in most states need a return email address to send documents. This is complicated, but it is not unique to Nevada. What we have now is the best, but it can be improved. I do not want to see it go away.

SENATOR HANSEN:
Now I understand why it has been several years and we are still trying to work on it. The Lovelock prison, where staffing levels are down 45 percent, is in my district. Do you have some ideas on turning that around? Could you share those with us?

MR. DZURENDA:
I will because you asked. It is it is not out to the public yet, but we are going to be shutting down the Humboldt Conservation Camp. We will bring those correctional officers and staff to Lovelock to help with the crisis and the staffing there. We will send the offenders in the Humboldt Camp to other camps. We do not want to lose Nevada Division of Forestry training and the expansion of the program.

Another change not released to the public yet is moving the youthful offenders out of Lovelock to Warm Springs. The facility in Carson City should never have been closed—and the individuals moved out to the rural camps—because Warm Springs is where we have the most resources for individuals. The youthful offenders are up to 18 years old. The best place to move them is either going to be Las Vegas or Carson City. This will get them closer to their families, support and resources. It will also help Lovelock because it will reduce the number of staff needed to operate that facility.

SENATOR STONE:
Mr. Dzurenda, you brought up the issue of aging infrastructure, and I am following up on some of the answers you gave to my colleague about closing facilities down. You indicated you wish some had not closed. Is there a capacity issue based on the number of beds that NDOC has available? We have a growing population here in Nevada. What is your capital improvement plan to address growing populations of people that need to be in our correctional system in the next five years and beyond?

MR. DZURENDA:
You are exactly right that the JFA Institute, with which the State has a contract, is showing the prison population numbers will increase nationally and in this division. Right now, there is no capacity problem. We have room that is going to help with our staffing crisis, but we must be prepared for population increases.

The infrastructure is going to be an important issue. High security offenders should not be able to pop open their cell doors. This happens now with a certain type of cell door and is an infrastructure problem. Most of our doors slide from side to side. Over the years the slides wear down. Gaps appear that can be used to lift the doors, pop them open and come out. After years of neglect, the doors were not replaced. It is not an easy fix because companies that built those motors and doors do not exist anymore.

All must be customized for replacements, which is expensive. Planning is necessary when you have facilities like Southern Desert Correctional Center and High Desert State Prison that are built on the side of a mountain. No planning was done for the erosion and the waters that come down the mountain. The fences should have a post cemented into the ground with a bar on the bottom to each of the posts. What happens when there is erosion under the fence?

In Lovelock, half the gates do not work. The gates are meant to lock, and when they do not lock, it is dangerous for us. They must be a part of our capital improvement plan to bring us to standards, so we know that we are safe and not worrying about someone getting out of a cell to attack somebody. Infrastructure is important, and it is about time that the State really starts focusing on it.

SENATOR STONE:
I served in the western neighborly state where the prison system reached capacity and the federal government forced the state to release prisoners in some counties. That is why I was asking what our capacity is. I am hoping as I become more experienced in Nevada that we see a robust capital improvement plan, while at the same time we see a decreased recidivism rate.

Tell me a little bit about some of our apprenticeship programs in Nevada like partnerships with colleges. Are they robust enough? Because obviously we want to train these individuals to come out and be productive members of society.

MR. DZURENDA:
No, we are not where we should be. We should be focusing more on the colleges. Another thing that is premature to say until the legislation is approved, but it is about the wireless devices. Some of the federal government's Pell Grants will allow us to start doing secondary education on wireless devices.

Every offender will have the opportunity to get diplomas or equivalency diplomas. We cannot reach every individual right now. This is going to be a game changer for us and a lot of it is going to be connected to those resources to provide education and better training. Education must be a focus because it is the prime requirement for having more sustainable jobs and higher wages. It is proven that with higher education, there are better opportunities for more sustaining jobs. This must be one of our goals.

SENATOR STONE:
In the neighboring state, we also had a program that allowed our inmates to participate in service dog trainings. Not only was this great because we got more service dogs out into the community, but it had a calming effect on some of the violent criminals. I was wondering if you had any programs like that in Nevada.

My last question. What is the contemporary cost today for all services, everything involved to house a prisoner every single day in the Nevada correctional system?

MR. DZURENDA:
I will answer the first question because I do not have the exact number for the second one, but one of my staff might. We do not train service dogs, but we still offer Pups on Parole, which decreased during COVID-19. We are bringing it back. I met with the Humane Society to increase the numbers. It has been proven that having some type of dog or cat welfare animal reduces violence because the animal becomes part of the individual's rehabilitation. The animal becomes the inmate's family, and when the dog or cat is taken away, it is devastating. In Connecticut, we would have to put individuals into mental health services if something happened to their dogs. It is important to be able to teach individuals the right way to treat animals because it all comes back to lifestyle. How we treat an animal is also how we are going to treat people.

KIRK WIDMAR (Chief, Offender Management Division, Nevada Department of Corrections):
As shown in the report submitted, (Exhibit C), the cost of one prisoner for one day varies by custody level services provided and institution.

SENATOR DONDERO LOOP:
I would like to go back to the program discussion and ask you what programs you are using.

MR. DZURENDA:
To be transparent, Program Director Harold Wickham and I are doing compendiums at each location because each of them could have different programs. The most valuable information in the compendium will tell you the programs that are being offered there, what the focus and the goals are, and the numbers of individuals who can participate in the weeks the programs take place.

When we talk about programs for violent individuals, nationally used evidence-based programs regarding recognition and behavioral therapies show that 80 percent of the people going through these programs change their behavior for the better. My focus is to increase our violence programs, most of which can be done on wireless devices.

Substance use disorder programs are a big idea with Corrections because most of our offenders have some type of substance use disorder related to their crimes, even if they were not arrested for them. We utilize our clinicians and substance use disorder staff who are trained in evidence-based programs for drugs, alcohol and opioids.

The other important program is mental health programming. This is where we are severely lacking. We are not proficient in mental health programming because we do not have needed mental health staff in every location. A goal of the State and of mine is to be able to increase our mental health services because of the lack of evidence-based programs for people who are mentally ill. They are treated with psychotropic medicines, which is insufficient.

SENATOR DONDERO LOOP:
Those programs would all be equal outcomes or equal type of programs. It is whatever works with that inmate is my understanding.

MR. DZURENDA:
You are correct. That really comes to the basics of it.

SENATOR DONDERO LOOP:
As an educator, I know education is one of the important pieces for our prisoners. What made the difference between now being able to use iPads and related devices for education versus six to eight years ago? You and I had a conversation at one time. What is the difference? Where did we change the idea that said, oh, wait a minute, we can use these?

MR. DZURENDA:
I think I can explain this when I go over the bill. The wireless devices are what other states are doing. Education now is not offered to everybody, and when it is offered, there are waiting lists. That should never happen. That is why when you have wireless devices, just like we have learned from COVID-19, you can reach a lot more individuals. That is going to be the key to getting education to more offenders quickly, especially when you are talking about federal Pell Grants for secondary education courses. You do not need to have somebody present.

When you do have physical school, like we do with our youthful offender units, all the homework and all the tests can be done on those wireless devices. What is also important, the wireless devices have the capability to save things permanently. When offenders get discharged into the community or go to parole, they can still access all that information. Without the devices, once they leave the facilities, they cannot get their information back.

This is another reason wireless technology is going to be important for such programs as Medicaid services and veterans' services. The applications and everything inmates need are on the wireless devices. Their information can be saved so when they are released, those services, job applications and resumes are all saved and could be transferred out to anyone.

SENATOR DONDERO LOOP:
I agree with everything you said. The important piece to me as an educator is that we have devices which can be in-house Internet so that it does not go out. They cannot search. It is important for them to have this product. There are many products out there for those devices to better inmates' literacy levels, better their math levels, better their science levels and find things in which they are interested—not just applying for a job somewhere.

While I recognize that we may be lacking teachers and we may have staffing problems with education, there are many online classes we can aggregate and silo into the inmates own Internet system so they can be in a class with teachers from several different institutions. And I would be happy to have a further conversation about that. I am sure you have experts. My head explodes frequently when I think about prisoners sitting in their cells all day long, doing nothing, when we could be giving them this service. That is my soapbox for the day.

MR. DZURENDA:
It is not Wi-Fi or Internet. It does not go directly out. It is not like your own tablet. The devices also connect faith-based services. We can do live religious services from the community that can go into every offender cell for inmates who want to listen to and be a part of that service. There is a huge array of these types of services. We are far behind the times. We need to bring them to light, and then we will see the benefits.

SENATOR OHRENSCHALL:
Could you provide the Chair and members of the Committee with the number of inmates who have been granted parole but are still housed at NDOC, maybe because the parole plans are not complete or there is an issue? I would be interested in that number.

MR. DZURENDA:
We can get that. I do not want to give you a number off the top of my head. We also have part of the 2022 returns from parole. You will see the numbers over a course of 12 months of who returned. The list includes those with charges and those who have technical violations. That information will affect the results you are looking for. Also included are those still incarcerated who can go to parole and are just waiting to leave.

SENATOR OHRENSCHALL:
I was excited to hear what you said about children at Lovelock moving to a separate facility where we will not have adult inmates. Can you tell me how many children are at the Lovelock facility and for how many years? I have heard talk about having one NDOC facility for young people who would not be in the general population with folks serving very long sentences. Would the program be more focused on education and rehabilitation? Do you see this in the future? I have heard it talked about for years, but it never made the step.

MR. DZURENDA:
Yesterday, we had 17 at Lovelock. Today, we have 16 because one just turned the age to be moved out. It would be great if we can have Legislators tour the Warm Springs facility—when you walk into the facility there is unit one. Unit one is split up into two different hallways. It is all connected to services and classrooms. There is a library or program room. There is a chapel. All this is connected just to those two corridors and includes a connected recreation yard. It is going to be run like a youthful juvenile facility.

I want to be able to get those juvenile services there that I could not get at Lovelock. It is going to be the closest to the best we can do, which will keep youthful offenders separate from the adult population. The staff will be able to get the culture and training that is different for the youth population than it is with the adult population.

SENATOR DONDERO LOOP:
At least two of us on this Committee have been to the Warm Springs facility.

CHAIR SCHEIBLE:
I just asked our policy analyst to follow up and plan that tour for the rest of us.

One issue I want to touch on is visitation because you did talk about how important it is for families to be involved in the rehabilitation process of preparing people to reenter society outside of being incarcerated. Over the last four years, we have had many hearings, presentations and conversations about different changes to the rules to visitation eligibility and the ways that people who are incarcerated are able to communicate with their families. Would you talk to us generally about how you view visitation and what we can expect to see under your leadership in the facilities?

MR. DZURENDA:
We have a request for proposal going out right now to be awarded by the end of the month. This will allow video visiting for everybody. It is not going to replace personal visits. It will allow visits for someone who cannot make it to a facility, like those from other countries who cannot see their kids. It is going to be connected through virtual and video.

Video will be in our visiting rooms, where the inmates can connect confidentially and have attorney visits at every facility. In the side housing units,

inmates can connect their wireless devices right into kiosks in the wall and do a video visiting with anyone from around the world. This is going to be a game changer, especially for the youth population and those family members from Las Vegas who cannot get to Lovelock. This system will be able to provide at least a visual. People can see their children. Individuals can see anyone providing support from their communities on video. People still can come in person. We understand the majority of those cannot afford to travel to the facilities. This will allow remote communication.

CHAIR SCHEIBLE:
We will move to the next item on our agenda, a presentation from the Nevada Department of Indigent Defense Services.

MARCIE RYBA (Executive Director, Nevada Department of Indigent Defense Services):
Our focus is on provision of public defender services. With me today is Deputy Director Thomas Qualls. We will share the Department's presentation (Exhibit D). This Department was created in 2019, and in 2021, there was a COVID-19 pandemic. We have not had the opportunity to come in and introduce ourselves and let you know what we are doing. We are taking that opportunity now.

We are a Department with seven people: Director, two deputy directors, two management analysts and two administrative staff. We work under the Board on Indigent Defense Services. We also provide oversight for the Nevada State Public Defender.

Why was the Nevada State Public Defender Department created? In 1963, almost 60 years ago, the U.S. Supreme Court held the Sixth Amendment of the U.S. Constitution guarantees the right to competent counsel to be provided to those who were charged with a crime and who cannot afford a lawyer. In the 1970s, Nevada was a leader in indigent defense. We created the Clark County Public Defender's Office and the Washoe County Public Defender's Office. For all our rural counties, we created the Nevada State Public Defender. Funding for the State Public Defender at that time was from the State. The counties paid a small portion.

Over time, that funding structure flipped and soon the counties were paying for everything they were required to pay for, and the State would cover things that

were specifically the State's responsibility. The counties then decided they could provide the service cheaper and provide better service on their own.

Many of the rural counties either decided to form a county office or contract with independent attorneys to provide indigent defense services. And that brings us to 2018. The American Civil Liberties Union (ACLU) filed a lawsuit *Davis v. State of Nevada*, issued on August 11, 2020, by the First Judicial District Court of the State of Nevada In and For Carson City, Department II, Case Number 170C002271B) against the State saying the State was not providing adequate indigent defense representation in certain rural counties. The rural counties the ACLU named are Churchill, Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye and White Pine. All those counties relied on independent contract attorneys to provide the services—no organized office, no county office, no State office, just individual attorneys.

In response to the lawsuit, the Legislature in 2019 created the Department of Indigent Defense Services (DIDS) in *Nevada Revised Statutes* (NRS) 180 where the duties of the DIDS are stated. Shortly thereafter, in 2020, Nevada entered a stipulated consent judgment which required us to achieve certain conditions. Many of these are contained in NRS 180. The link to the stipulated consent judgment is <https://dids.nv.gov/litigation/Davis>.

The duties of the DIDS and the programs we administer can be likened to the program in Clark County that is headed by Drew Christenson, Director, Office of Appointed Counsel. We provide counsel administrator's services for the rural counties. The purpose of A.B. No. 480 of the 81st Session was to create separation between the judiciary and the independent defense function. Prior to that, the judiciary would appoint and select counsel and approve or deny billing and requests for experts and investigators.

With the passage of A.B. No. 480 of the 81st Session, the Department has taken on those roles, and in the past year, we have selected counsel in over 2,000 cases. We have reviewed requests for expert fees and over 400 bills. We processed over 400 postconviction bills. We also started implementing the *Davis* stipulated consent judgment. We started our attorney oversight because this is something that is specifically required by the stipulated consent judgement.

We created a list of training and qualification requirements. The training requirements were already in place in Washoe County and Clark County, but nothing was in place in the rural counties. Attorneys who want to practice in the rural counties must apply to be on the list, like Washoe and Clark Counties. At present, we have 110 qualified attorneys on the list.

We have created a procedure for people to provide complaints and recommendations to us if they are unhappy with their service or have ways, they think indigent defense could be improved. We also are required to provide a systematic review of public defense on an annual basis. At this point, with the three of us, we are doing that virtually. We do not have sufficient staff to be going to every court in the State to watch the proceedings.

We are required by NRS 180 to collect data for the stipulated consent judgment. Over the period of COVID-19, we rolled out a case management system. We built it and provided it free of charge to all indigent defense service providers. This is where we collect data on the providers' caseloads, the time they are spending on the cases, whether they are hiring experts and the amount of time the experts spend. We use this data to prepare and publish quarterly and annual data reports. We also provide attorney training. We will hold our third annual conference in Reno on May 4 and 5, 2023. It is free of charge for all indigent defense providers. We also provide monthly free training for our attorneys when possible.

Another important thing we have achieved is the maximum county contribution facilitation. The Legislature asked our Board to create a formula to determine the most that each county pays for indigent defense services. The county no longer pays 100 percent. Right now, it is like a high deductible healthcare plan. Once the county reaches a certain amount, anything over and above that the county can request reimbursement from the State. This past year, we had to go to the Interim Finance Committee (IFC) to get over $1.9 million for our rural counties reimbursed by the State.

We have created an indigent defense oversight function where we review indigent defense services in 15 counties. We work with those counties to develop their plans to avoid corrective action, and we inspect courtrooms, courthouses and indigent defense facilities to make sure the staff has a place to meet with clients. We hope to observe what is going on in court more often in the future.

THOMAS QUALLS (Deputy Director, Nevada Department of Indigent Defense Services):

Additional things that we are responsible for include developing a pipeline of attorneys to the rural counties. We are working on several different avenues to do this, including working with William S. Boyd School of Law, University of Nevada, Las Vegas, to develop intern and extern programs. Over the last two years, we received grant funding to place two externs from the Law School in county public defender offices where they are given actual hands-on trial experience as well as a $6,500 stipend to cover housing and expenses. We provide scholarships for those externs, and we also host interns and externs in our office.

We do grant applications and management to supplement our budget, and we facilitate those in house. We serve as the Secretary for the Board on Indigent Defense Services, maintain our Department's website and are charged with building our Department's budget. All three things we do as lawyers who are not trained in that work.

Despite the budget and small staff and the fact that much of our existence has been during the pandemic, we have achieved great success. Some examples of our fiscal year 2022 achievements include that we now have plans for the provision of indigent defense services in every county in Nevada. Up until last year, only Washoe County and Clark County had these services. We worked diligently in team building with county management and with indigent defense providers in each of the 15 rural counties to develop these plans, which are also dynamic in our oversight function. We are continually adjusting and amending these plans to suit the counties with our end goal of creating sustainable and effective systems.

Fiscal reporting and reimbursement requests, as Ms. Ryba discussed under the reimbursement formula that was passed, enabled us to facilitate over $1.9 million in reimbursements for both cases under the *Davis* settlement and cases not affected by that case last fiscal year.

We oversaw the implementation of A.B. No. 480 of the 81st Session, which created much needed independence for public defenders from the judiciary to put them on an even playing field with prosecutors. We have continued our regular training and development of resources for all providers for indigent services in the state. As Ms. Ryba discussed, we rolled out the legal server case

management system, and for the first time in Nevada's history, we now have a year's worth of data on case numbers, case types and workloads for each of these counties. We also drafted permanent regulations for the Board on Indigent Defense Services, which became effective October 5, 2021.

Chris Arabia was going to be with us today, but he is in court. He is our new Nevada State Public Defender who oversees all the State public defenders' offices across Nevada. This soon will include White Pine County, which has opted in for all indigent defense services. Additionally, the State Public Defender is going to provide death penalty representation for Churchill, Humboldt and Lander Counties; appellate representation for Esmeralda, Humboldt, Lander and Lincoln Counties; and pardons and parole representation for Churchill, Esmeralda and Humboldt Counties. We are working on other programs, including a complex litigation unit which would cover not just death penalty cases, but other complicated matters for the rural counties. All those accomplishments were fulfilled mostly under the restrictions of the pandemic.

We have a court-appointed monitor, Professor Eve Hanan, William S. Boyd School of Law, to ensure we are complying with all the requirements of the *Davis* stipulated judgement on a timely basis. She produces quarterly reports, and most of those reports recount all the compliance the Department has done with our small staff and type of budget. Professor Hanan consistently points to several concerns, and we have pulled out three of those from her most recent report that also cited her concerns about the Governor's budget.

The monitor is concerned that there is an insufficient department budget for oversight and other functions. As Ms. Ryba noted, we are charged with oversight of all rural indigent defense systems under the *Davis* lawsuit, including on-site review of court and the systems in each of these counties. With only three directors, and with all the other policy issues we do, this is an onerous requirement.

Ms. Ryba and I were successful last year in visiting every one of the counties, doing team building, working on their indigent defense plans and overseeing court to the extent that we can. It is impossible for us to be in all these places and do the kind of systemic regular reviews that we need to in these courtrooms. This includes making sure the attorneys and clients have private spaces to meet, that initial appearances are being held and attorneys are attending them, and that they are asking and making the kinds of arguments

that they need to be making. The monitor's concern is that we need additional policy analysts in the field to be our eyes and ears to be fully compliant with the settlement. She recommends more staff, more oversight positions and more funding in that area.

There is a shortage of qualified indigent defense lawyers in Nevada. This is not unique to Nevada. Several states are experiencing this problem now, and they are addressing it in different ways. The reasons for the shortage are inadequate pay and unsustainable workloads. We are actively working to address these issues. We have contracted with the National Center for State Courts to create a workload study. We have collected data, as we mentioned, through our legal server case management system, and the Center has collected additional data through intensive Delphi Research studies and interviews with practitioners in different practice areas.

The last national workload standard that we have is from the American Bar Association, done in the 1970s, almost 50 years ago. The Rand Corporation, over the last couple of years, has undergone a thorough nationwide study. We understand it is complete, but it is undergoing peer review right now. We are waiting on that study to supplement and reference around the Statewide study. Once that comes out, preliminary indications are there will be significant increases needed in the number of attorneys in all these rural counties; some of them need double the numbers that are there. Since we do not have the final numbers, we do not want to cite those officially now. But the monitor has been following this, and she has been meeting with the National Center for State Courts, as well. She is concerned that the rural counties are struggling to recruit and retain attorneys under these circumstances.

The Nevada State public defenders' offices are down 33 percent in attorney staffing. Again, this has to do with inadequate salaries and the inability to compete with other counties and municipalities, not to mention private industry.

Under the *Davis* settlement consent judgment and under our regulations, we are required to achieve parity with prosecutors in the relevant jurisdictions. It is supposed to be an even playing field. The salaries of the prosecutor and their investigators and the public defender and their investigators require parity. This provides the level playing field that is anticipated in our justice system. To use Carson City as an example, the assistant district attorney makes $180,000 a year. The head of the Nevada State Public Defender's Office makes around

$130,000 right now. That is an example of the disparity in the State versus the county system. We see similar systems within counties where public defenders are paid less. This is something that we are actively working to fix, and we hope that the Legislature adds some assistance.

The final thing that I will address is the monitor's concerns about the process for the maximum contribution funding. The monitor would like that money to all be in the DIDS budget because it makes for a much more efficient and effective system. Now, the counties present quarterly financial reports to us, and when they exceed their maximum contribution spending, we must take those reports, go through the Governor's Finance office, go to IFC to request reimbursement for the county, and then that must be processed. If the request is approved, the counties get reimbursed. There is a two- or three-month lag time before they get paid. This takes Legislators' time, our time and resources, and puts the counties in some financial jeopardy. It would be much more effective if we had the money in our budget.

Even though we reimbursed $1.9 million this last term, the counties do not believe that the state is going to make good on their money, or if the State has that money or on the promise for reimbursement. Since a third party is involved, and we do not have that money in our Department's budget, we cannot ask them to show us the proper documentation before we can reimburse them. We can just tell them here is the process and it should go according to plan, but we do not know. For all those reasons, the monitor would like to see that money in the Department's budget.

CHAIR SCHEIBLE:
Is there one standard rate that attorneys are paid for taking on indigent defense cases?

MR. QUALLS:
No, there is not a standard rate. Each county can create its own plans or its own system. Some counties have county public defender offices and they set the salaries with that. Certain counties, like Elko, have collective bargaining agreements through which that happens. Clark and Washoe Counties have those. Other counties hire independent contractors to serve as public defenders, and the amounts of those contracts vary across the counties.

The one thing that is standard is in NRS 7.125. There is a statutory rate for the independent appointed conflict counsel, $100 an hour. A bill is coming that we hope will increase that amount, which has not increased since 2003. We hired a data analyst to look at that. One of his conclusions was that $100 in 2003 is about $163 in 2023. For that reason alone, the rate needs to go up. The same data analysts put out a Statewide survey on overhead costs. A lot of the feedback was we cannot continue to take these appointed cases because $100 an hour does not even cover our overhead.

SENATOR HARRIS:
Can you talk a little bit about the process to budget for this maximum county contribution and the plans to ensure we do not have to go to IFC to ask for the fund? Is there something in place to get a better budget and put it in the estimate?

MS. RYBA:
The county maximum contribution formula is contained in our administrative code; it is what was spent in fiscal years 2017-2018 and 2018-2019 averaged out with inflation. We know what the base is, but we always must add inflation. Every year on May 1, counties tell us what their budgets are for indigent defense services. We take the budgets, subtract what the maximum payments are, and determine the amount we think we need for each county. We add all of that together and present that. My understanding is there will be two one-shots in the Governor's Finance Office budget to set aside approximately $3.9 million for the maximum contribution formula. It will not be within the Department budget, but instead it would be within the Finance Office budget.

SENATOR HARRIS:
Are you aware of the process by which the funds will move from the Finance Office to your budget if you need to draw from it?

MS. RYBA:
That part has not necessarily been determined. I know that the Director of the Governor's Finance Office is the secretary for the State Board of Examiners (BOE). We may have to do a request to the BOE. One concern is with a prosecutor on the BOE, which we would no longer have independence from the prosecution, which we are supposed to have. The prosecutor, who is the Attorney General, would have a say in whether these counties are reimbursed.

That was part of the monitor's concern about going to the BOE. Otherwise, I am not sure what the process will be. I am presuming that we will have to go in front of the Board of Examiners.

SENATOR HARRIS:
And sometimes when BOE gives support, it still comes to us to approve the actual transfer. I do not know who developed that plan, but I am hoping they produce another one. You know this is not the Finance Committee, but it seems like we can get a line item in your budget that reverts if the funds are not used. That would be a bit cleaner and achieve what we are looking for. We do not want to have to keep an eye on IFC granting this money, and there is not much difference for us if we must approve it from the Board of Examiners or through similar IFC process. I will just leave it at that, but please reply.

MS. RYBA:
The Office of the State Public Defender has over $1 million to reimburse postconviction billing. We have those funds to quickly reimburse that funding. It could be something like that.

SENATOR STONE:
You mentioned the shortage of public defenders, and part of the reason that you are alluding to it is because they are being paid at 2003 levels instead of 2023 levels. Are you working with any of the Nevada law schools to recruit defense attorneys? Are there any incentives that you can get to allow them to come into rural areas?

MS. RYBA:
Yes. We are working with Boyd School of Law. We are required to work with them to develop a pipeline to bring our attorneys into the rural areas. However, we do not have any funding in our budget to pay for any of these pipelines. We did obtain a grant from the State Bar of Nevada (SBN) for stipends that Mr. Qualls talked about. We received approximately $26,000. The first year of the stipend was last year. We successfully placed two students. We have onemore year beginning this summer, and after that the State Bar funds will expire. The State entity is no longer allowed to apply for those grant funds since funds must now be awarded to nonprofits.

The Boyd School of Law has received an endowment, and this could be used to continue the program. On Wednesday, I will be at the Law School for a lunch

session with free pizza, and we will tell the students how great the rurals are, and how many opportunities there are. Matt Panel from Elko County, Jacob Summer from Churchill County and Chris Arabia from the Nevada State Public Defender's Office will be with me and Peter Handy, Deputy Director of DIDS. We are going to encourage them to consider moving to rural Nevada and to help with the public defender shortage.

SENATOR STONE:
Is there any risk to the State that you are not going to be in compliance with the settlement?

MR. QUALLS:
Let me just add to what Ms. Ryba said, regarding your first question. We are working with the Boyd School of Law in several other ways. We do student luncheons and other things to try to recruit people into these positions. We are also in conversation with the SBN to carve out an indigent defense reciprocity exception to recruit from other states.

I will move on to the potential danger of violating the *Davis* stipulated consent judgment. It is one of the reasons we presented the *Davis* monitor's concerns right now. The plaintiffs are quiet about our compliance, so we do not really have any read on that. I would note that in the monitor's last report, she wrote that the Sixth Amendment can be violated by structural or systemic inadequacies. We have had situations happen because we are the appointed counsel administrator, so we are aware of this in the various counties. Recently in White Pine County, there was a double homicide, and it took us time to find a qualified lawyer who would accept the appointment. There is the real possibility this creates a public safety issue because if there is not a qualified attorney to take these appointments, the charges must be dismissed.

We are seeing that in the related realm of competency issues and incompetency holds. The NDOC Director spoke earlier about the crisis in mental health of which we are all aware. There is some crossover there. We are at that flashpoint with indigent defense. It is like squeezing a balloon—some attorneys go over here and take these contracts, leaving holes over there. There are not enough people doing this work or coming into this work. Last year's numbers from the Boyd School of Law show there were only six graduates who went into any kind of public service law at all. The short answer to your question is yes, we are in that jeopardy.

SENATOR STONE:
I am intrigued with your idea of reciprocity, but you can educate me. The laws in other states are sometimes different than those in Nevada. If we did have some type of reciprocity, how would you tailor that to ensure that we have competent legal counsel for our indigent populations in Nevada?

MR. QUALLS:
Indigent defense is different from other areas of law in the state-by-state practice. The reality is that most other states have some form of reciprocity with other states. So, for instance, if a public defender has been practicing in Utah for ten years and wants to come here to practice, we do have a limited two-year carveout where they could work in an established office, but then eventually they will have to take the SBN examination.

There are real concerns about learning the criminal statutes that are different here from those in Utah. I suppose it is not as big a concern as different areas of law. The U.S. Constitution is federal, and that is being upheld—Sixth Amendment rights, Fifth Amendment rights, Fourth Amendment rights and others. As for individual offenses and how many years they carry everybody must learn those anyway. But there could be some sort of conditional approval where prospective attorneys must take a certain number of criminal continuing legal education classes to pass a probationary period or another local requirement.

SENATOR STONE:
Regional representative of the U.S. Department of Labor in the ten western states was my last role prior to coming here. We collaborated with Governor Doug Ducey in Arizona about occupational licensing recognition to attract more physicians and more nurses and pharmacists. The attorneys wanted to be excluded from that legislation. But what I am hearing from you is that you can isolate defense attorneys as a part of reciprocity in trying to attract more of them to come into Nevada—if that were happening here in Nevada, would you be inclined to support legislation like that?

CHAIR SCHEIBLE:
You do not have to opine on hypothetical legislation. You are here to give us an overview of Department of Indigent Defense Services. We do appreciate the policy conversation. You do not have to tell us bills that you would support or

oppose. You have some ethical parameters on things that you are allowed to take positions on given that you are part of the State government.

I will open the hearing on Senate Bill (S.B.) 39.

SENATE BILL 39: Provides that certain records received, obtained and compiled by the Board on Indigent Defense Services in the Department of Indigent Defense Services and the Department are confidential under certain circumstances. (BDR 14-215)

MS. RYBA:
Today we are excited to present S.B. 39. In our presentation, we talked to you about how NRS 180 requires that we collect certain data and the *Davis* stipulated consent judgment requires that data collection. With the passage of A.B. No. 480 of the 81st Session, we are now the counsel administrator for many of these counties. We are collecting the data that attorneys want to make sure attorney-client privilege maintains privilege. Senate Bill 39 would provide that certain records received by our Department keep the attorney-client privileged material confidential and it remains confidential under certain circumstances. Specifically, we are required to look at complaints. We want to make sure that if someone is making a complaint the person is not waiving attorney-client privilege. We are required to investigate certain complaints, collect data, and review and approve requests for experts and investigators. Our main concern is to make sure that information remains private and cannot be obtained by a public records request.

SENATOR HARRIS:
Can you explain why complaints come to your office and not the SBN?

MS. RYBA:
We have a limited ability to look at complaints. Under NRS 180, we are required to create a complaint and recommendation portal where individuals can provide complaints or recommendations regarding indigent defense services. We are now hearing from attorneys or clients complaining about certain attorneys or other matters. We want to make sure that if anything is said in these complaints it remains privileged.

SENATOR HARRIS:
If it needs to be privileged, are those complaints forwarded to the State Bar? My understanding is you do not have any authority to discipline or revoke someone's Bar license. Is that right?

MS. RYBA:
That is correct. We do not have authority to revoke anyone's Bar card. But we do have the ability to determine whether attorneys should stay on our list. If we are hearing complaints of certain things that they are doing, what we do is offer them training to fix the certain issues. The complaints we receive at this point are people saying my client or my attorney has not contacted me. We reach out to the party, let them know that their attorney or client would like contact and ask that they follow up with us. The purpose is to improve indigent defense services. But sometimes clients may say something in their complaints which should be protected. So, we want to make sure that it is not subject to an information request.

SENATOR HARRIS:
Would this bill prevent you from filing a complaint with the State Bar of Nevada if you felt the action was warranted?

MS. RYBA:
We do not believe so, because in S.B. 39, section 1, subsection 3, it does allow the Board or the Department, if necessary, to forward any nonattorney client privileged materials to the SBN. We would be able to forward anything we thought necessary so long as it was not protected.

SENATOR HARRIS:
All right, I would just encourage as much coordination as possible since there are people who already do this. I hope you are not doing all of it in house and just taking people off list if they need to be reported to the SBN.

MR. QUALLS:
We respond to the complainants with an explanation that we are not the SBN and that their complaint to us does not take the place of an SBN complaint or a postconviction habeas petition or anything of that matter. It is designed to look at systemic problems so that we can address those.

CHAIR SCHEIBLE:
I am going to take the privilege to follow up here and I am going to guess that most of the complaints that you get are more along the lines of "I could not get the deal that I wanted"; "I must go to trial, and I do not want to"; "My attorney does not answer my calls at 9:00 p.m." You filter out those complaints as opposed to complaints that come forward, such as an offer was made in a case that was never conveyed to the client by the attorney, which would be a serious ethical violation; or the attorney did not share important evidence with the client that was provided by the prosecution in a timely fashion, and the client thought it did not exist. Am I correct in my assessment of the types of complaints that you normally get?

MS. RYBA:
I think the main type of complaint that we receive is the client just wants to have contact with the attorney. We give attorneys a call to let them know their client called and said you have not contacted them. "Could you please call them?" That is the main type of complaints we have received. And that is not really the reason we need this bill.

The reason behind S.B. 39 is attorneys are sending us requests for experts and investigators, and before we can approve those requests, we need to know that it is reasonable and necessary for them to have that expert. They do give us a little bit of information about the case so we can decide if this is reasonable and necessary or not. We are not going to approve those fees. We want to protect the thought the attorney is revealing and ensure it is not subject to some sort of public records request or to any sort of disclosure, or the fact they are relaying this information to us somehow violates the attorney-client privilege. That is the main portion of the bill.

Also, like we said, we are required to collect data. We have provided the legal server system for providers. It has client names and birthdates in it. Some attorneys are using the data system to record client notes. We have created a policy that we will not investigate any sort of files, but because of the way the legal server is set up, we would have access to it. We just choose not to investigate it. Senate Bill 39 would create the ability to protect the information by attorney-client privilege and not subject it to any sort of disclosure other than the information that is not protected.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
Nevada Attorneys for Criminal Justice supports this measure. Specifically, the issue is that when an attorney submits a bill for an expert, that can reveal the tactics that they are intending to use at the trial. They also might pursue a lead that does not pan out. That is also tactical information, and like Deputy Director Qualls said, it is important that the defense and prosecution be on an equal footing. Prosecutors do not have to reveal their tactics until trial is approaching. Defense should not be asked to either. We believe this is a good bill that puts everyone on an equal footing.

CHAIR SCHEIBLE:
That concludes our hearing on S.B. 39. We will move next to S.B. 67.

SENATE BILL 67: Revises the definition of the term "sexual offense" for the purpose of certain provisions relating to parole. (BDR 16-258)

CHRISTOPHER DERICCO (Chair, State Board of Parole Commissioners):
With me today from the Parole Board is Kelly Mellinger, who is employed as our Hearings Examiner II. We will provide you an overview of S.B. 67. Ms. Mellinger will present the bill.

KELLY MELLINGER: (Hearings Examiner II, State Board of Parole Commissioners):
I would like to start with historical background. The federal Adam Walsh Child Protection and Safety Act of 2006 was enacted to protect the public by establishing a comprehensive national system for the registration of sex offenders and offenders against children, which included without limitation the establishment of a uniform nationwide system for the registration of and community notification concerning such offenders.

In furtherance of this purpose, the Act required each state to enact laws regarding registration of and community notification concerning sex offenders and offenders convicted of a crime against a child which conform to the provisions of the Act. States which did not enact such laws by the date provided in the Act would not receive certain federal funds.

The definition of the term sexual offender was approved by the Legislature in 2007 with passage of A.B. No. 579 of the 74th Session, now NRS 179D.097. The changes to the laws regarding registration of sex offenders and offenders convicted of a crime had an effective date of July 1, 2008 but were not

implemented in Nevada until 2018 due to litigation. Because the law was enjoined, when the definitions of sexual offenders were placed into NRS 213, those definitions did not refer to NRS 179D.

Now that the Adam Walsh Act is no longer enjoined, we would like to clean this up and ensure the same definition is being used throughout the statutes. The issue is that there are other statutes within NRS that have differing definitions of "sexual offense," and they do not all coincide. For example, there is a definition in NRS 213.107 and another in NRS 213.1214, subsection 6, paragraph d. This bill revises the definition of sexual offense for the purposes relating to parole; and to make the definition consistent with the definition of the term used elsewhere in NRS. Passage of this bill should provide greater clarity regarding this definition specifically as it relates to NRS 213.

If any of you have any questions regarding this bill, we will do our best to provide an answer or provide you with follow-up information if necessary.

CHAIR SCHEIBLE:
It looks to me like one of the primary changes that this would make in practice is removing the inclusion in the definition of sexual offense for purposes of parole and probation, removing offenses that are found to be sexually motivated. Is that part of the intent here?

MR. DERICCO:
It might be easy if I break it down by section for you. Section 1 of the bill contains the definition that we are looking to have updated which will have the meaning ascribed to it in NRS 179D.097. The new definition is striking the outdated version. As a part of section 2 of the bill, the language already refers to NRS 179D.097 and is in effect right now. It is recommended that we use the term "sexual offense" in there. It means the same thing if this were to pass.

When you get specifically to section 3 of the bill, this talks about the NDOC and the sex offender assessment the Department is required to conduct statutorily. As a part of that, which is contained in NRS 213.1214, there is a definition of sex offender and there is a definition of sexual offense. But if the NRS 179D definition is used, we do not need the NRS 213.1214 definition. We are trying to clean it up so there is one definition of sexual offense throughout NRS 213. Once again, this is only for the prisons that must do an additional sex offender assessment on certain qualified individuals convicted of a sex offense. It is not

doing anything to change the requirements once the offenders get out on the street or anything of that nature. It is asking if they qualify for this additional assessment that we now refer to NRS 179D.097 to determine. It is providing that clarification in NRS 213.

In section 4 of the bill, the NRS 179D.097 language is already in statute and the requested change refers to the new definition in section 1 of this bill if the new definition passes. Section 5 of the bill has to do with lifetime supervision, which is much different than parole. Section 5, subsection 16 gives greater clarification to determine which offenses qualify under the special sentence of lifetime supervision requirement, after the offender has completed a custodial sentence or probation or anything of that nature. Of note, someone can be convicted of a sex offense and not be on lifetime supervision.

This bill does not make any changes for anybody under supervision or anything else. *Nevada Revised Statutes* 179D.097 lists all the offenses the Legislature has deemed sexual and for which the perpetrator is considered as a registerable sex offender. They are the sexual offenses that have already been adopted and have been included in NRS 179D.097.

The Parole Board should also have the sex offender assessments to make better informed decisions and capture all those crimes that are already mandated to register as a sex offender. This bill is cleaning up the definitions so that all NRS 213 will be the same and everybody knows what is expected regarding that definition.

JOHN J. PIRO (Clark County Public Defender's Office):
We are in opposition because the language in this bill too broad. We agree with Mr. DeRicco that our statutes are confusing, not just for the Parole Board or just for those charged or those victimized, but for all the actors in the criminal justice system trying to apply these laws.

Although the intent of this bill is the cleanup, if enacted as written it will have far-ranging impacts beyond just cleaning up. For example, NRS 179D.097 broadens the list so much that it sweeps everything into lifetime supervision. There may have been people on the registry who are off the registry already and they may be swept back into lifetime supervision. That is one of the consequences of this bill. Stopping sexual assaults and proper punishments for the offenders are one of the greatest challenges of our time. And it is probably

time for an overhaul and a study of our laws and crimes of this nature that are taken thoughtfully, carefully and can be evidence-based.

Roping everything into the broadest definition of Nevada law seems like U.S. Supreme Court Justice Potter Stewart's quote in 1960 regarding obscenity: "I will know it when I see it." It is a little bit different now. The world has moved on. The Raider fan peeing in public after a game and charged with lewd conduct should be treated differently than mentally ill persons exposing themselves to traffic, who should be treated differently than the offender sexually assaulting a child or another person. Because of these unintended consequences, we are in opposition.

ERICA ROTH (Washoe County Public Defender's Office):
I echo much of the sentiment of the Clark County Public Defender's office, and I do not want to reiterate everything that Mr. Piro said. A few points that I want to really dig into on this: When we are talking about who is going to be subject to lifetime supervision and what does that mean? It will limit where people can live, it will limit what kind of jobs that they can have and poses a risk of impacting juvenile justice offenders. If we have an individual who is convicted of statutory sexual seduction as a minor, changing the definition of sexual offense to the broadest possible definition risks bringing in somebody who has that conviction as a juvenile and will still have to register for life, significantly limiting what that trajectory will look like.

There is a reason there are different definitions of sexual-related crimes or sexual offenses regarding parole and probation or lifetime supervision. Not all crimes are created equally, and we need to take the opportunity to dig in because this is confusing.

We have cases pending on appeal where parties disagreed about what was or was not required to be lifetime supervision. Clarification is necessary and is the responsible thing to do, but simply choosing the broadest possible term is going to have unintended consequences. For that reason, we oppose the bill.

SENATOR HANSEN:
I wonder if you had a chance to talk and work out the language. You do not want to be too broad, but you obviously wanted to be in compliance with the Adam Walsh Act and the 2018 decision, correct? That is all for the record.

MR. PIRO:
Senator Hansen, that is correct. We did talk with Chair DeRicco, and we want to work out a fix on this.

CHAIR SCHEIBLE:
I will take a point of personal privilege to say that this hearing was scheduled quickly, and I think both parties are working in good faith. We decided to go ahead and hear the bill because it is short so that the Committee can start ruminating on it. But I would expect that we will have some further conversations.

MR. HOFFMAN:
I would like to echo what Mr. Piro and Ms. Roth said.

TONJA BROWN (Advocates for the Inmates and the Innocent):
We oppose this bill. We echo the sentiments of the others in opposition.

CHAIR SCHEIBLE:
I call Director DeRicco and Kelly Mellinger forward to give some closing comments and clarify anything.

MR. DERICCO:
I want to start out regarding a couple of the comments that were made about this bill changing requirements for lifetime supervision. Statements made in opposition regarding this are in error. I refer you to section 5 of the bill that specifically addresses NRS 213.1243, which talks about lifetime supervision. That is a special sentence of supervision that only certain people that have been convicted of sex offenses are subject to and this is what was added in this language. Section 5, subsection 16 of the bill delineates "as used in this section." Sex offender means any person who has been convicted of a sexual offense as defined in NRS 176.0931, subsection 5, paragraph b. Our request does not change the individuals who qualify for lifetime supervision. So that was just an added delineation here for clarity which, like I said before, is outstanding. There will be no more and no fewer people getting lifetime supervision.

I spoke with the public defenders yesterday as well as today and we discussed that this is the cleanup bill just so that our Parole Board statutes, which are primarily located in NRS 213, use the same definition in the parole statutes of

sex offense. We want continuity with that. We want to make things clear for us, the stakeholders and the public. We already have several instances which I brought up within NRS 213 that referred to the definition of sexual offense as defined by NRS 179D.097. It is mentioned in four separate areas in NRS 213. It is already in law. Our only intent for this bill is to bring everything together under one definition for the record.

I would like to point out that all the offenses enumerated in NRS 179D.097 are registrable sex offenses. This Legislature has already determined what individuals committing certain offenses, by State law, must register as a convicted sex offender. Anyone convicted of those crimes in NRS 179D must register in Nevada. It makes sense that we use the same definition in our Parole Board statutes, and we already have it in several places. Our definition should align with the definition of NRS 179D where it is already been determined by the Legislature which crimes and convictions qualify. Additionally, this will also ensure that we are imposing appropriate sex offender conditions for anyone paroled for one of these offenses.

Relating specifically to section 3 of this bill that refers to NRS 213.1214, the statute directs the NDOC on which individuals require a mandatory sex offender assessment. Should not we be using the same version of sexual offense in all parts of NRS 213? If an individual must register as a sex offender in this State for NRS 179D.097, why would not we want all offenses that trigger these registration requirements to be accurately assessed at a parole hearing? The sex offender assessment is another tool for the Parole Board to review the risk of a qualifying offender to reoffend sexually. This is a critical information for the Parole Board, and we should have that in all these cases.

As a citizen of the State, I believe that you would all agree that it would be better to have all individuals who have already been determined must register as sex offenders and the Parole Board have all the information to do an assessment on them as well. Without that, we are missing some of these people. They come to the Parole Board, and NDOC has not been able to conduct an assessment because of this old definition. We are rolling the dice with this group that is not listed under NRS 179D. We do not get that additional assessment to make a good and informed decision. That is what we are looking for here.

I know that there were specific concerns regarding NRS 179D.097, subsection 1, paragraphs (q), (r) and (s). Paragraph (q) pertains to sex trafficking pursuant to NRS 201.300. This definition is not included in NRS 213. However, NRS 179D includes that. Additionally, paragraph (r) addresses any other offense that has an element involving a sexual act or sexual conduct with another. Right now, this information is not captured for the assessment. Paragraph (s) addresses an attempt for conspiracy to commit an offense listed in paragraph (q). This information is not captured right now. Individuals are not getting assessments before they have parole hearings. Paragraph (t) pertains to an offense that is determined to be sexually motivated, pursuant to NRS 175.547 or NRS 207.193. Once again, it is part of NRS 179D. It is a registerable sex offense, but no assessment must be done—defenders just go by the wayside, and we cross our fingers on that.

We want to be able to do the best job we can when we conduct our parole hearings. If an individual has been convicted of one of these four subsections just mentioned, the individuals must all register as sex offenders in Nevada. I ask you this before you consider someone who qualifies as having committed a registrable sex offense. Does the Legislature want the Parole Board to also consider specific sex offender assessment for these four sections as well? Or roll the dice? I can break down each of these sections. I ask if individuals must register as sex offenders under NRS 179D.097, subsection 1, paragraph (q). For sex trafficking, should not the Parole Board also do an assessment to determine the risk of reoffending in the community?

CHAIR SCHEIBLE:
We are running short on time. Some of my members still have some questions for you, and I want to get to those.

SENATOR OHRENSCHALL:
Under the proposed language in this bill, there was testimony earlier from the Washoe County Public Defender's Office that some juvenile offenders who are not currently subject to lifetime supervision might become subject to lifetime supervision. Do you agree or disagree with that? And you are reading this proposed language in S.B. 67 because that concerns me.

MR. DERICCO:
Senator, this bill it is not expanding or doing anything to lifetime supervision. This is a cleanup of NRS 213. Every version of sexual offense within NRS 213

keeps the same definition. We are not talking about lifetime supervision. Section 5 of the bill brings up lifetime supervision. But you will notice there is not one mention of lifetime supervision in NRS 179D. It has nothing to do with lifetime supervision for this definition revision. In fact, that would not even be in a part of this bill had the Legislative Counsel Bureau not caught that we could provide greater clarity under which sex offenses qualify for lifetime supervision and which do not. So yes, I do disagree with that.

SENATOR OHRENSCHALL:
We must do a little research on that.

SENATOR HARRIS:
Consistency is a virtue. But so is narrow tailoring, right? And I do not know if it is necessarily true that we want to do this for every sex offender who is in NRS 179D. Maybe it is. I think what some of the folks in opposition are suggesting is that there are some people we do not want to catch and there may be a reason the definition should be slightly different for different applications. I suggest that we ask: Is this necessary for everything that is under NRS 179D? And if not, let us remove those and only include the folks that we absolutely need to although we may lose some of that consistency. Does that make sense?

MR. DERICCO:
I follow you, Senator. I hope I am putting this forward clearly.

CHAIR SCHEIBLE:
This whole bill changes NRS 213, right?

MR. DERICCO:
Just these sections. Yes.

CHAIR SCHEIBLE:
Yes, but it only affects NRS 213 and pertains to the assessment that somebody must go through before leaving NDOC to be placed on parole, correct?

MR. DERICCO:
It affects NRS 213.1214. Only section 3 of the bill discusses the assessment.

CHAIR SCHEIBLE:
When we are talking about the group of people who are being caught in the net, let out of the net, whatever analogy we are using, the net is an assessment before you leave the Department of Corrections and get placed on parole. The net is not offender registration.

MR. DERICCO:
For every individual, before coming before a parole hearing, the prisons do a risk assessment. The law right now says people with qualifying sexual offenses must also have sex offender assessments. That is before they come to the Parole Board for a hearing. It is another tool for us before we hear the case to determine if we should grant an individual parole, or is this a case that is too high risk because of the sex offender assessment? There could be varied factors here. We receive that assessment before the parole hearing. It has nothing to do with the release. It is a tool that we use to determine may this person be a good person to grant to the streets.

SENATOR HARRIS:
Consistency always goes two ways, and I am not sure you are not convincing me that we have too many people registering. While I know this is not so, the same definition is being used. You see that, so you are pulling the registration definition and saying everybody who registers need this assessment. And I just do not know if that is necessarily true. And if it is, if it is not true, then we need to carve out the folks who do not need it, or we need to look at people who are made registered sex offenders. It is not necessarily that the first is true. It could be the latter. We do not have to work this out now, but I am suggesting these lists may not have to be the same. What the people in opposition would like to do is dig in with you a little bit more on where this is necessary and not have assessments for people who do not need it.

MR. DERICCO:
I may respond briefly on that. In NRS 179D, we know every offense that this Legislature has determined is a registerable sex offense. Because this has already been determined that offenders must register as sex offenders, why should we not do an assessment on each one of those individuals that the Legislature has already told us has to register as a sex offender? We are not looking to add any other. We are just saying consistency. As an example, when a person who must register as a sex offender gets released, we believe we should have an assessment for us to make a good, informed decision. We are

not adding or creating anything that by law the individual must register as a sex offender for the sex offender registry.

CHAIR SCHEIBLE:
I appreciate this conversation. I thank Director DeRicco, Ms. Mellinger and my members for giving an excellent demonstration of the kind of robust discussions we have in the Judiciary Committee that are always aimed at reaching the best possible policy outcomes. And that is what we will continue to do in this case. At this time, I will close the hearing on S.B. 67 and move to public comment.

MS. BROWN:
Chair and members of the Committee, I have a couple of concerns because of the risk assessment. If a person, an inmate, is maintaining innocence and does not admit guilt because the Parole Board has repeatedly, over decades, asked inmates who have maintained their innocence to admit their guilt, they do not get paroled to the street. Before 2007 and the Board asked inmates if they were appealing their convictions. They can no longer ask that. Does the risk assessment still have something like that where the inmate is going to have to answer yes or no and possibly lie just to get to a Parole Board? I would like to see the risk assessment.

ANNE MARIE GRANT:
My brother Thomas Purdy was 38 years old when he was murdered by Reno Police and Washoe County Sheriff's Office on October 8, 2015. He was hogtied during a mental health crisis. He was a guest at the Peppermill Casino in Reno, and he asked security for help. Instead of helping him, they called Reno Police who hogtied him for 40 minutes and then dumped him at the jail still hogtied to be asphyxiated to death. Since the last Legislative Session ended, 47 human beings have died during interactions with Nevada law enforcement. Somebody's loved ones, 438 of them, have died during interactions with police in Nevada since 2000. I hope police reform was not the fad of 2021 and changes continue because people are still dying in your State.

MERCEDES MAHARIS:
I am a Nevada chaplain and member of the Nevada Silver Haired Legislative Forum from District 3 in Las Vegas. I find this disturbing because the sex offender committee was disbanded as I understand it. And the Adam Walsh Act needs to be repealed or replaced. The lifetime supervision registration has been

declared unconstitutional in Illinois and I believe South Carolina and possibly North Carolina.

The risk assessment that Mr. DeRicco is speaking of is a Static-99R assessment tool, but I question whether the risk assessment has been properly vetted by NDOC because the agency has unlicensed psychologists. I do not know if they have had certified training or not. I do not think that the Static-99R is helpful in a truthful way. Only one answer—and that is age—changes on it. And the rest of the numbers remain static. How do I know that? Because I collaborated with former Senator Tick Segerblom in bringing in a specialist to disband the psych panel because it was stopping prisoners from going before the Parole Board for years. That, thankfully, fell by the wayside.

I do not understand why we have an unconstitutional lifetime registration stricken down in other states and nobody studied it because the sex offender committee was disbanded. This is rough. And even today a person called and said he had to take all his notes because the psychologists were going in opposition to him even though he finally got the Static-99R ruled out. And there is a legal case about this now. I tried to get in on the line, but it kept throwing me off to testify in opposition. I am in opposition to this bill. We need to stop the Adam Walsh Act and stop lifetime registration and stop this harassment that is happening for sex offenders who are mostly uneducated. They did not get any help in understanding about sex, and that is the bottom line. I have submitted written testimony (Exhibit E).

I hope that all of you will certainly take this into consideration.

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CHAIR SCHEIBLE:
No other callers wish to offer public comment. I will close public comment, and that brings us to the end of our agenda today. This meeting is adjourned at 3:26 p.m.

RESPECTFULLY SUBMITTED:

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Sally Ramm,
Committee Secretary

APPROVED BY:

____
Senator Melanie Scheible, Chair

DATE:______________________________________

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page Number**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Roster
S.B.67	C	13	Kirk Womar/ Offender Management Division, Nevada Department of Corrections	Report on Daily Cost of Prisoners
S.B. 39	D	18	Marcie Ryba, Nevada Department of Indigent Defense Services	Presentation
	E	42	Mercedes Maharis	Public Comment