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Governor

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Acting Director

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Secretary of State

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**STATE OF NEVADA  
BOARD OF PRISON COMMISSIONERS**

**MEETING MINUTES**

The Board of Prison Commissioners held a public meeting on Monday, November 25, 2019, beginning at 8 a.m. at the following locations:

<b>Meeting Location:</b>	Old Assembly Chambers State Capitol Building 2nd Floor 101 N. Carson Street Carson City, NV	<b>Video Conference:</b>	Grant Sawyer State Office Building Room 5100 555 East Washington Ave. Las Vegas, NV 89101
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**1. Call to Order**

Action: The meeting was called to order by Governor Steve Sisolak who then took roll call and confirmed there was a Quorum. Governor Steve Sisolak instructed that public comments would be limited to 3 minutes.

Present were Governor Steve Sisolak; Secretary of State Barbara Cegavske; and Attorney General Aaron Ford. NDOC Attendees: Acting Director Harold Wickham; Deputy Director Bill Quenga; Deputy Director John Borrowman; Deputy Director Kim Thomas; Policy, Programs and Grant Administrator Chris Franklin; ADO II Diane Dastal.

**2. Public Comment: (1<sup>st</sup> Period)**

Action: Public Comment heard from Mercedes Maharis, Southern Nevada Silver Haired Legislative Member, Senate District 3. Ms. Maharis is a Nevada Chaplain and addressed Mental Health Care. Ms. Maharis commented that in June 2019 and October 2019, there were shootings and gassings at a Musical Activity held there. She does not agree with those actions. In this time in history, it is especially important that we project a positive image and not violence. Ms. Maharis prepared a 5-minute report for all Board of Prison Commissioners (BOP) members. She was told that she could not present this report to the BOP. She put a considerable amount of work into the report and it is about a certain group that she feels did not receive Mental Health or Physical Health Care. She asked again to be given 5 minutes to present this short film, and that it would explain what has been happening and hopes it will open your hearts. Ms. Maharis will also submit the film in writing to the BOP within the next few days. She was here at the March 2019 meeting and commented that there is a terrible problem with the Public Notice. She was assured that she would be notified automatically, but was not. She thanked all for passing new Laws in Criminal Justice Reform; all that has been done for the Community; and all that has been done for others in the system.

Governor Sisolak asked if anyone else in Southern Nevada had public comments. No response, and Governor Sisolak closed item Number 2 for public comment.

**3. Acceptance and Approval of Minutes – March 13, 2019, meeting.**

Action: Governor Sisolak motioned for approval of the minutes; Attorney General Ford motioned for approval. The minutes of the March 13<sup>th</sup> meeting were accepted and approved unanimously. ([Link to March 13, 2019, Minutes will be added.](#))

**4. Agenda Item #6 – Chief Medical Officer update pursuant to NRS 209.382.** Discussion and update on inmate menu and nutrition, Chief Medical Officer Ihsan Azzam or Designee. For Discussion Only. ([See Item 6 Exhibit](#)) email 11/27/2019 – 3:16 p.m.

Dr. Azzam discussed the written report that members had copies of at the meeting. Medical, dental, and sanitation inspections were completed. The deficiencies identified were promptly corrected. Inspections were also conducted to assess nutritional adequacy of inmates' diets. Dr. Azzam stated that most nutritional values in the inmates' food menus were consistent with the Dietary Guidelines for Americans, and the food is nutritionally adequate for inmates. Dr. Azzam concluded his briefing and opened for questions.

Governor Sisolak thanked Dr. Azzam and asked if there were any questions on Item Number 6 from Southern Nevada. There were no questions and the report was accepted.

**5. Agenda Item #7 – Update regarding Hepatitis C Testing and Treatment – Dr. Michael Minev, Medical Director, NDOC, D. Randall Gilmer, Chief Deputy Attorney General, and John Borrowman, Deputy Director of Support Services, NDOC – For Discussion Only ([See Item 7 Exhibit](#))**

Deputy Director John Borrowman provided information to the BOP concerning policy changes regarding Hepatitis C. Nevada Department of Corrections (NDOC) has looked at the evolving medicine that is available in the industry and across the nation and looked at the trends in Medical Health Care being provided at Correctional Facilities across the nation. It was decided by Dr. Minev that we need to evaluate health care being provided for Hepatitis C and made a change to the Medical Directives for the treatment of inmates with Hepatitis C. That change includes testing all inmates, which includes inmates with symptoms as well as those that self-report Hepatitis C. Inmates will be tested at intake. Currently, there are inmates in our population that have not been tested, and this change in policy will allow us to test those inmates as well. Inmates can opt out if they choose not to be tested.

The second change in the Medical Directive is to remove the prohibitions to treating the less acute inmates. In doing so, we would be allowed to treat all inmates at all acuity levels. We are looking at our provider capacity and will be limited by that in SFY 2020-2021. We will evaluate the options as we put together a budget for SFY 2022-2023. Dr. Minev opened for any questions.

Governor Sisolak asked if anyone had questions. Attorney General Ford stated that there were no questions from Southern Nevada. Governor Sisolak concluded item Number 7.

**6. Update on the VERA Institute Study – Kim Thomas, Deputy Director Programs, NDOC – For Discussion Only**

The VERA Institute of Justice has worked across the country finding ways of reducing the usage of restrictive housing or disciplinary segregation. The final recommendations and findings were based on site visits in May and August of 2017. The policy changes are basically ten (10) in number. We have taken the task of developing an implementation grid so that we assign these recommendations to specific people. We are almost at 100 % in compliance and agreement, and moving forward with the implementation recommendations.

Findings/Recommendations:

- 1) 12% of the inmate population is confined in some form of restrictive housing.
- 2) In the first 3 quarters of 2017, there was a decrease in the usage of disciplinary segregation that is primarily because of the policy change. The most serious disciplinary charge is the sole charge that is levied. There was a drastic reduction in the amount of time the offender spent in disciplinary segregation. Found an increase in the usage of Administrative Segregation since 2015.

- 3) There is a waiting list for those who are in a restrictive housing unit, waiting for a medium-custody general population bed to become available. There is a backlog in this area.
- 4) There were a significant number of offenders released from segregation to the public; however, this information is not current and relates to the beginning of the project in 2016 - 2017.
- 5) The placement in Administration Segregation is indefinite in time. That is being corrected.
- 6) The conditions in segregation are still highly restrictive. For instance, in our Behavioral Modification Units, those conditions are more like an Administration Segregation setting opposed to a step-down unit.
- 7) Offenders are placed in a Pre-Hearing Detention Administrative Segregation.
- 8) The Behavioral Modification Units were not uniform in all facilities and are still much like segregation. There is a written Administration Regulation on the operation of the Behavioral Modification Units, which will be presented before this Committee for approval. The regulation will greatly enhance the uniformity throughout facilities, and ensure a less-like Administration Segregation environment.
- 9) The number of those in segregation back in 2016-2017, who had mental health needs was reported at 41%.
- 10) Regarding the length of stay in segregation, the women decreased by 7.3% overall, with a decrease of 5.7% in the third quarter of 2016. With respect to the men, there was higher length of stay during the third quarter of 2017 as opposed to prior years.

There are significant changes in the NDOC Disciplinary Policy. The creation of the Behavioral Modification Units is to help ensure institutions are more consistent by having an Administrative Regulation as opposed to each institution creating their own Operating Procedure. Close the Mental Health Unit at Ely, and make the Northern Nevada Correctional Center our Mental Health treatment hub for those with serious Mental Health needs.

Governor Sisolak thanked Deputy Director Thomas for the presentation. Governor Sisolak asked if there were any questions; there were none.

**7. AB 236, DOJ, Office of Justice Programs, Bureau of Justice Assistance Phase II Grant. Steve Yeager, Assembly Judiciary Chair; Jim Hardesty, Nevada Supreme Court Justice; Kim Thomas, Deputy Director Programs, NDOC; and Chris Franklin, Management Analyst IV, NDOC – For Discussion Only**

Len Engle and Barbara Pierce from Crime and Justice Institute; Chairman Steve Yeager, and Justice Jim Hardesty. Len Engle started by thanking all for the invitation to present on the Justice Reinvention Initiative. They started with a brief PowerPoint presentation with some slides relevant to the process that began last year, the legislation that followed, and now Phase 2 of the implementation process.

Len Engle stated, the Justice Reinvention Initiative is a Public/Private partnership between the Bureau of Justice Assistance and the Program Evaluation Unit (PEU) Charitable Trusts was funded through this partnership since 2010. Originally, 10-million dollars was put into it, and now there is close to 30-million dollars. The goal of this partnership is to assist states in getting a better Public Safety return on their Criminal Justice investment. Use of the state's data to drive decision making, is at the heart of the effort. Nevada engaged in this process 3 years ago. In 2018, there was an opportunity for Nevada to apply to Bureau of Justice Administration (BJA) and to PEU for Justice Reinvestment Assistance. Justice Hardesty contacted me, and through PEU and BJA we put together a presentation for the funder that was pretty impressive. The request was approved by the state leaders. An in-depth analysis of the Nevada's Criminal Justice Data was done last summer focusing on data from NDOC and the Courts. This process then moved into Policy Development then Legislative Support. Chair Yeager will speak on the passing of legislation signed into law, and the implementation of these policies. Ms. Pierce will speak on the implementation process.

The State's Crime and Justice Institute and PEU have worked to include both adult and youth reform work and are in Phase 2 of the implementation process.

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Chair Steve Yeager, (Advisory Commission on the Administration of Justice) we received the information from the Crime and Justice Institute. That commission in general is tasked with studying Nevada's Criminal Justice System and issuing recommendations. We looked at the data here in Nevada and discussed what could be improved. The ACAJ released a report of findings and recommendations in January 2019. Those recommendations were turned into Legislation known as Assembly Bill 236, which was passed and implemented policy changes.

Some of the Major Findings:

Nevada's prison population grew 919% in 4 decades. In the 1970's we were at approximately 1300, and at present day approximately 14,000 inmates in NDOC. That comes with massive spending and cost increases to the state budgets. Two in three people who are being admitted to prison, are being admitted for non-person offenses. NDOC classifies a non-person offense as a drug, property or other crime not a violent offense. The number of offenders admitted with Mental Health needs increased 35% in the last ten years. Women with Mental Health needs were up 47% in the same time period. Recidivism is up for all offense types except DUI's. Recidivism is defined as return to custody within 36 months of release. Increases in Drug and Property Offenses of 6% for recidivism in the last 6 years. The conclusion is that we were incarcerating folks, but it wasn't working in terms of making the public safer when those individuals got released. The prison population admissions were up 6% since 2008. Time served in prison was up 20% since 2008. That includes the prison population, those who are coming in and how long they are spending in prison. In the last 10 years, the prison population in our state was up 7%. If Assembly Bill 236 would not have been passed, the growth would continue as it was, and we would surpass 15,000 individuals in prison by the year 2028. That would cost the state an additional \$770 million in terms of a corrections budget.

Assembly Bill 236 Goals:

- A. **To improve responses to individuals with Behavioral Health needs.** Some of the impact of Assembly Bill 236 makes sure that all of our Law Enforcement is getting Standardized Crisis Intervention Training. Metro is doing a great job with that already. We need to extend it beyond Metro. Justice Hardesty is taking the lead in making sure Judges are trained on Behavioral Health needs. Requiring actual in-person assessments for specialty courts rather than video or paper assessments.
- B. **To address sentencing disparities.** Assembly Bill 236 restructures penalties for drug offenses based on weight and substance. The Bill broke down the Burglary Statute. The Burglary Statute in Nevada was the broadest in the Country. It encompassed all sorts of things that are not normally thought of as burglary, which raised the Felony Theft Threshold from 650 to 1200.
- C. **To use evidence-based practices when it comes to supervision or probation in the community.** Removing barriers to probation. The default is to send people back to prison, but maybe that is not the best way. We need a Risk and Needs Assessment that is evidence based so we know how to supervise someone effectively. Not everyone will be 100% successful on probation. We need a system of graduated sanctions and revocation caps to make sure we are sending the right people to prison. The ones that can be supervised in the community, keep and supervise them appropriately. It reduces probation terms tailored to the category of offenses. We found that most people who fail probation fail quickly at the beginning of probation. The idea was to shorten probation and have intensive sources at the front, provide support for Re-entry programs for those who go to prison, as well as those who are going to get out and how they are going to re-enter society.
- D. **Target reinvestment opportunities.** The Justice Reinvestment part we will monitor how the implementation goes. We will be able to quantify what the diverted costs are and hopefully prioritize funding to amplify the systems in the State and to make sure we can continue to be successful with offenders on probation with mental health needs and the following. Each county will have a local coordinating council that will meet as a group and report back on where their priorities are or where they would like amplify the recourses or requests for funding.
- E. **Creative Behavioral Health Field Grants Program.** This allows Law Enforcement to come up with innovative ideas and apply for funding for a grant program.

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The projected growth is going to be over \$770 million over the next 10 years. With the passage and implementation of Assembly Bill 236, we are projecting to avert 63% of that prison population growth. That is a \$540 million savings over the next 10 years for the state. That is funding that can be used to reinvest in our Criminal Justice System. This will help the goal of reducing the prison population and make the public safer because of treatment and we will actually be taking on where the drivers of crime are.

Governor Sisolak asked if there were any questions; there were none.

Barbara Pierce: She heads up the Crime and Justice Institute (CJI) Implementation work. Implementation Assistance is available to the state. The group has done this in five other states Utah, Alaska, Maryland, Mississippi, and Louisiana. They have a team that is dedicated and funded by the Bureau of Justice Assistance that is providing Implementation Support to agencies as was the Phase 1 process.

Technical Assistance: The team tailors their assistance to each individual states' needs and resources. They meet with the agencies responsible for putting Assembly Bill 236 into practice. One of the main things done by the team is implementation planning, that is crucial. They have developed a statewide plan and are sharing pieces of that with the responsible agencies, and refining responsibilities between agencies and team. They also have a training team that can provide some evidence-based training. They assist in drafting and/or reviewing agency policies. They place a heavy emphasis on performance measures, and provide support in terms of collecting data, how to talk about performance measures and share those. Essentially, you have to figure out what you are going to put in place and plan for it. Prepare people by providing the skills and recourses. Going live requires coaching of staff and monitoring the progress and adjustments to be made. The ultimate goal is full implementation when policies are no longer new. Cross agency collaboration, communication, and problem solving are essential and practiced in Nevada. Need to keep stakeholders involved even when legislation is passed. Implementation is a long process and people need to be informed of the progress being made and any concerns.

Sub Awards: Funding that comes from the Bureau of Justice Assistance through the Crime and Justice Institute is available for the state to utilize. Grant award funding is available and has to be directly tied to implementation and sustainability of Assembly Bill 236. It can pay for training or consultants who are working for you that Crime and Justice Institute is not providing already. You can purchase equipment such as system services to better collect data and help develop performance measures, and/or hire personnel to evaluate programs.

The following states have used this funding:

Louisiana used it to pay for overtime to calculate people's prison time.

Utah had Judicial Conferences on Administration Safe Practices.

Mississippi had a train-the-trainer session and purchased projectors and laptops.

Bureau of Justice has made \$350 thousand available in the Sub Award Funding for the State of Nevada. Because of the way the Federal Grant Cycles run the first segment of that is \$150 thousand, which needs to be spent by September 2020. The second portion of that is \$200 thousand available in October 2020.

- The process for the Sub Awards is an agency identifies an implementation need.
- The agency seeks approval for each entity.
- The state will authorize the application for funding.
- The agency submits the application to our organization.
- We often help agencies create the application.
- We present the requests to the Bureau of Justice Assistance and secure approval.
- We establish a sub contract with the agency.
- When the spending begins, agencies submit invoices for reimbursement.

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That concludes the overview of Implementation Assistance.

Governor Sisolak thanked Chair Yeager for the presentation, and asked if Justice Hardesty wanted to speak or address questions. Justice Hardesty will respond to questions. Governor Sisolak did have one question concerning the comment made about two-of-three inmates are nonviolent offenders and asked for further comment on the subject.

Len Engle responded that essentially the Crime and Justice Institute did an in-depth review of data and tried to figure out who exactly is being sent to prison. Data was taken from case files and Presentence Investigation Reports. It was determined two-of-three inmates were not going to prison for violent offenses because they were drug and property offenders. We assume that most of the prison population are for violent offenses, but that was not the case. Also, many folks going to prison are coming off of probation (they were granted probation and then probation was taken away and they were sent to prison). Many are nonviolent offenders, and they may do better if they got probation first for a nonviolent offense and given a chance to succeed, and then if the Judge determined they did not succeed, they would go to prison. Part of our study is how does the system make sure individuals that are not violent and not at risk of becoming violent to Nevada citizens, are kept on probation instead of being sent back to prison.

Governor Sisolak asked if there were statistics or numbers showing how many offenders were on probation, revoked, and incarcerated, as that would be useful. Len Engle stated that it was a high number of admissions to prison that were revocations from parole and probation, about 40%; which is close to half coming from parole and probation. Governor Sisolak asked if this information was something that came out of these statistics. Steve Yeager stated that they did not have it on their PowerPoint presentation, but have another slide and report on statistics, and will get a copy of that information for the Commissioners. It was discovered that revocation from probation was actually the number one cause of increase to the prison population over the last decade. Deputy Director Thomas stated that statistics can be found in the January 2019 final report. The plain technical violations, whether it was parole or probation, were a very high percentage of all the admissions (44% sounds accurate). Governor Sisolak asked to have a copy of the report.

Governor Sisolak asked if there were any questions; Secretary Cegavske stated that a plan has not been submitted yet, and asked what purpose the money would play exactly in the plan. Is it going to be used for treatment of offenders who have not hurt a person, but have committed a crime by breaking and entering and theft, if that is not considered a violent act. She does considered it a violent act. Another question from Secretary Cegavske is, "do we still have problems with probation?" Are we fixing the probation issues before releasing people into the community? Governor Sisolak thanked Secretary Cegavske and asked who wanted to respond to this; what is the definition used for a violent crime?

Steve Yeager responded to the questions. Non-person offenses as categorized by the Nevada Department of Corrections and essentially drug and property offenses count as non-person offenses. A home burglary is a very serious crime, and found car burglary offenders were the vast majority going to prison. Auto burglary and home burglary is not treated the same because they are not the same kind of offenses. The \$350 thousand sub grants are open-ended, in the terms that as long as we are using the money to implement Assembly Bill 236, we can apply for those funds. Funds may also be used for training, staffing, equipment, or specialty courts; anything involved in Assembly Bill 236. The Bill is effective until July 1, 2020, that was one of the compromises made in the Legislative process, to make sure we are ready to go when we flip that implementation switch.

General Ford asked if the implementation process does not become effective until July 1, 2020, what about the \$150 thousand that has to be spent by September 2020? Steve Yeager responded that yes, that is correct and that

people do not have to wait until July 1 to start the preparatory process; applications may be submitted at this time. The Implementation team is talking with state agencies to figure out how the funds will be utilized. One thing we have not talked about is the newly formed Sentencing Commission who will have quite a role in implementing Assembly Bill 236.

Governor Sisolak stated that talk of a 919% prison population growth in the last four decades, but how much of that was nonviolent versus violent? Steve Yeager commented that unfortunately, we do not have a good answer to that question. Len Engle said this growth is the same for every state across the country in the same period. It is not a coincidence that the war on drugs and the advent of harsh criminal penalties for drug offenses, and the reduction in parole in the 1980s and 1990s gave way to this level of incarceration. The crime rates were also climbing significantly in the 1970s and 1980s. The crimes across the board for violent and nonviolent were up through the mid-1990s, at which point they started to decline. Governor Sisolak asked if there were statistics to back that up, and Mr. Engle said that they would make reports available to him.

*Justice Hardesty:* Gave additional information in regards to the Governor's last question in that there are over 300 slides with a tremendous amount of detailed information on the subject. What it exposes is the fact that Nevada has a serious data collection and evaluation system, and this needs to be addressed. The Legislature did a good job of trying to augment the system in its budget this last session, but we still have a long way to go in order to develop data systems that are necessary to achieve the goals and objectives of the Justice Reinvestment Institute (JRI). In order to be a JRI state, we need to make informed decisions along the lines of the questions that the Governor is asking. To Secretary Cegavske's point, burglary is divided out in the findings of home burglaries and other types of burglaries. One would want to focus on those less-violent/nonviolent offenses in the burglary category. A lot of effort was made at the Legislature during these hearings to strengthen the home invasion penalty.

Justice Hardesty stated to the Governor that there is a very important pragmatic issue that rests with the Governor and colleagues on this committee that needs to be discussed, and that is the money that is available to us, but the Bill does not address who decides how to spend that money and what the priorities are. I think it is critical as the Chief Executive Officer of the State, that you ask the various departments to submit their requests for priorities as to what they need to implement. Justice Hardesty suggested that the Executive Branch identify those priorities, as the staff involved have a better understanding as to what it will take to prioritize these funds.

To address General Ford's questions regarding timing, Justice Hardesty stated that because the Bill does not take effect until July 1, 2020, that does not mean planning cannot be done now. We have an opportunity to assess this Bill and prepare ourselves to start spending funds before July 1, 2020. He will request as Chair of the Sentencing

Commission that the Sentencing Commission debate this issue. The Commission has 24 members that represent all the stakeholders in the Criminal Justice System. He has asked Ms. Pierce and Mr. Engle to make a presentation to the Sentencing Commission similar to the presentation at this session, but more in depth so we can get a better handle on what kind of implementation steps need to be taken and how to prioritize those.

A significant part of the Bill was the establishment of the Justice Reinvestment Councils around the state. The Bill did not identify how it would be organized. It is critical that the Sentencing Commission discuss this matter. It is really from the Investment Councils that localize the Implementation Plan and find what works in each county in order to effectuate some of these results. There are a number of priorities that can be focused on.

1. Data Collection
2. To help strengthen the Division of Parole and Probation and its supervisory efforts of defendants trying to keep individuals out of prison.
3. How to attack the issue of recidivism.

4. How do we collect the appropriate data to evaluate what we are doing and where we are going?
5. Establish a formula that will allow the state to assess the averted costs and plans of representing and reinvesting averted costs into systems that will make a difference.
6. This is a lot of work to address over the next couple of years, but it will afford us the ability to make some significant changes.

Governor Sisolak thanked Justice Hardesty, and asked if there were any further comments or questions; there were none.

DD Thomas stated that we are prepared to implement sections 89, 90, 91, 92 and 100 of AB 236. Some have already been implemented and will continue to work on the implementation process. DD Thomas stated that he can answer questions respective to those sections of AB 236 that NDOC has to carry. Governor Sisolak stated that he did not think there were further questions. Governor Sisolak moved on to Agenda Item Number 4.

**8. Agenda Item #4 Presentation by the ACLU of Nevada; Holly Welborn Policy Director, ACLU of Nevada - For Discussion Only**

The ACLU of Nevada will provided a brief historical overview of their legal and advocacy work on behalf of individuals incarcerated in the NDOC; a brief discussion of positive institutional changes; and address what the ACLU of Nevada believes are the most pressing issues facing Nevada inmates including segregation practices as they relate to implementation of SB402 from the 2017 Legislative session, the state's obligation to provide access to medically necessary treatments for transgender inmates, and conditions for youthful offenders at Lovelock Correctional Center.

*Holly Welborn:* Stated her briefing will focus on three key issues that are most pressing and give a historical perspective on the relationship with NDOC. Ms. Welborn stated that she was appointed by Governor Sisolak to the Advisory Commission on the Administration of Justice as the Inmate Advocate, and has served in the position for three interims.

First item of concern, are the incarcerated individuals that come to us via intake. In the past 4 years we have received 304 complaints based on medical need. Individuals having trouble accessing medications, services, treatments, and other medical contacts. Inmates have not had success through the grievance process. The ACLU's goals and objectives are to manage and address these issues that occur within NDOC without litigation. After writing letters and having meetings that are unsuccessful, we go down the litigation route. Litigation has subsided, there used to be a relationship that was quite adversarial with NDOC until April 2016 when a new Director took over.

We saw critical progress in the state on issues like solitary confinement. Ms. Welborn stated they are working closely with NDOC on addressing youthful offenders who are incarcerated at the Lovelock Correctional Facility. There are a number of policies and procedures that have been adopted that are quite promising; however, there is room for improvement.

**The first issue is AR 494:** Letters were written to Director Dzurenda concerning AR 494. AR 494 concerns transgender inmates and their access to medically necessary treatment. We refer to the policy NDOC adopted as a Freeze Brain policy. What that means is when a transgender person is sent to NDOC, the policy states that the transgender person will not receive any type of medical treatment, such as hormonal therapy, gender confirmation therapy, etc., unless they were receiving that form of therapeutic treatment prior to incarceration. ACLU is strongly opposed to this type of policy. Denying a person access to medication and visitation with doctors to reassess their



hormonal levels can dramatically affect their health. It can have serious consequences for an individual who started on a particular hormone therapy. A person does not have a gender dysphoria diagnosis at that point, and NDOC is saying is that person cannot continue through those therapeutic services to receive that type of diagnosis. We think these are patently unconstitutional policies.

Director Dzurenda put together a roundtable discussion with us and Transgender Allied Group, Gender Justice of Las Vegas, and other individuals where we listed those concerns. Some of them were taken into consideration, but the Freeze Brain policy, was not. It continues to be the policy of NDOC today. NDOC and the Board of Prison Commissioners need to understand that the Ninth Circuit Court in August 2019, released an opinion out of Idaho (ADREE EDMO V. CORIZON, INC.), which stated that the denial of Gender Confirmation Surgery under the same type of Freeze Brain Policy, that exists in Nevada and Idaho, is an unconstitutional violation of the Eighth Amendment by denying medically necessary treatment to that transgender person. The court ruled that a person could proceed with Gender Confirming Surgery. That is the state of the law in the Ninth Circuit. There are individuals in NDOC that are living in Administrative Segregation and are not receiving therapeutic services.

**The second issue is Youthful Offenders:** There has been much collaboration with NDOC in addressing youthful offenders incarcerated at the Lovelock Correction Center. NDOC admitted that they face challenges in meeting minimum standards required for children in a correctional institution. We have advocated to remove young people tried as adults from adult institutions and retain them in a facility suitable for juveniles. There was overcrowding at Lovelock in the youth pod where the children are housed and there were some children sleeping in the Infirmary. When we first toured Lovelock's youth pod in February 2018, we were quite appalled. NDOC was really trying to institute every possible mechanism to meet the educational, recreational, and medical needs of the children who were living there, but their hands are tied by the function of the Prison Rape Elimination Act (PREA), which requires sight and sound separation between young people and the adult population. You can achieve that either through the physical isolation of those individuals or through staff ratios 2 Staff 1 Child if they are exposed to the general population in a mixed setting. This presents challenges at Lovelock when you have 20 children and 1700 adults. NDOC has to put the entire institution on lock down for the young people to receive physical recreation or to go to classes. Children are learning how to use a tablet, and this can be an effective tool in certain circumstances, but the minimum requirement standard is in-class instruction and make the environment as holistic and age appropriate as possible. If we do not provide that type of environment for a young person then that young person's risk for recidivism is much higher. Most of the young people that are incarcerated at Lovelock will eventually be released back into society, because the main crime that is committed amongst these young people is robbery with a deadly weapon. There are very few youthful offenders who have attempted murder or murder crimes and extremely harmful crimes against other people.

Governor Sisolak asked if robbery with a deadly weapon was not considered a severe crime. Ms. Welborn commented that robbery with a deadly weapon is a severe offense and there are victims of those crimes. When people think about what it takes to transfer a young person to an adult system, they think we are talking about murder, attempted murder and sexual assault; those type of offenses is what it would take to move a child to the adult system rather than retaining them in a therapeutic environment for children. At the time of this report there were substantial challenges with where to place young women. They would have to go to Florence McClure Women's Correctional Center, because of PREA and sight and sound separation requirements, there was a brief proposal to erect a portable unit to house young people and they would live in isolation until they reached the age of majority. The other option is to send the child out of state, which presents pretty grave equal protection issues because they are treating those young women different than the rest of the youthful population that goes to NDOC. We have seen similar issues occur in Arkansas, Arizona, and Missouri where litigation has been filed under the Equal Protection Clause to retain those girls in state so they have access to their families. It is understood that there are agreements between NDOC and local juvenile institutions that are retaining young women in a juvenile

facility until they reach the age of majority and are transferred to the NDOC. In the last Legislative Session, we worked on AB 449 a Study Bill, to bring experts from out of state to assess housing placement for children in Nevada and see what the feasibility and cost will be to retain young people in local juvenile institutions.

**The last issue:** The issue of solitary confinement. Solitary confinement is all forms of segregation, disciplinary administrative, etc., where we place people in extreme isolated conditions for extended periods of time over 21 hours a day for several days at a time. Because the person does not have out of cell time, reading materials and a variety of other recourses keep the person from entering a state of psychosis. That keeps some sense of normalcy that meets the human dignity of that individual while they are incarcerated. We were very heartened by the VERA Institute coming to Nevada, and we agree with much of their assessment. We follow the Special Rapporteur on Torture's recommendations that solitary confinement of over 21 hours a day not exceed 15 days. When the new Director took over in July 2016, there was a complete shift in their perspective on solitary in the state. For over a decade the ACLU of Nevada had advocated on the practice and not just from us, but from the Nevada Disability Advocacy Law Center and from Solitary Watch, a national organization. There were over 1200 people, most coming from Ely State Prison, but there were some from other prisons in the state as well that complained about being in solitary or in extreme isolation for anywhere from 2-3 months to 26 years. At the same time, we decided to embark on a survey and report campaign. We went to all of these individuals that were telling us about their experiences in isolation. We drafted a report and it was published right before the 2017 Legislative Session. With the support of NDOC and through Senator Pat Spearman, Nevada passed its first Adult Solitary Confinement Legislation. We are hopeful that there will be significant changes and will monitor how this Board acts and how NDOC implements many of the recommendations made by the VERA Institute.

General Ford asked to go back to the transgender policy for a moment. He believes we have made some changes to that policy that may have not made it into the regulations yet. The Medical Director has addressed some of the transgender issues; however, does not think we go as far as the Ninth Circuit opinion related to the actual operations, but believes we have made some substantial developments in that arena. To that point, he asked Ms. Welborn if the circuit is split on the requirement of surgery? The Ninth Circuit being the circuit that controls us, but there are other circuits that disagree. Can you speak about what the state of the law is nationally on this issue?

Ms. Welborn agrees that there is a circuit split, there are some case laws out of the Fifth Circuit that gets around the necessity that mandates not providing hormonal therapy or gender confirmation surgery, and that it's not a violation of medical necessity. In the EDMO case it will be interesting to continue to watch the disposition, because it takes that case out of the Fifth District. EDMO is the law of this jurisdiction.

General Ford said several times before, on controversial issues where reasonable minds may disagree agencies do not get to make the final decision as to whether something is constitutional or not. It is for the courts to decide. At this point the Ninth Circuit has made the determination, for this circuit, as to what the state of the law is.

Governor Sisolak thanked Ms. Welborn on her presentation; however, the Governor emphasized his particular feeling and disagrees that robbery with a deadly weapon is not considered a serious crime. His constituents think it is serious when they are endangered in that way and it needs to be treated as such.

- 9. Agenda Item # 5: Mental health in prison and re-entry transition for inmates with mental health issues - Acting Director Harold Wickham; Dr. David Green, Mental Health Director, NDOC; Dr. Michael Minev, Medical Director NDOC; Parole and Probation Chief Ann Carpenter; Parole Board Chair Chris DeRicco; and DHHS Director Richard Whitley – For Discussion Only**

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*Acting Director Wickham:* Provided a summary of NDOC mental health mechanism and what we are currently doing. Upon taking in offenders into the institutions they receive a mental health classification. Mental Health staff do assessments to determine their criminogenic needs, such as the Nevada Risk Assessment System (NRAS), and tracked through the Nevada Offender Tracking and Information Systems. The most acute offenders are placed in the Mental Health Units (MHU) which have four (4) levels of care. The offenders are evaluated and prescribed medications as necessary to stabilize. They receive one-on-one care until they are appropriate for group or programs, with the goal of stepping down into a Structured Care Unit (SCU) and eventually stepping down into our general population. We do our best to have offenders that have serious mental issues or traumatic brain injuries, which cannot be stepped down when they are released, to be released with a Legal 2000. They are released to the Northern or Southern Nevada Adult Mental Health Services. There are slight differences for the veterans upon release to the appropriate veteran resources.

We are very excited about making positive changes to the way we provide care and services to the offenders as well as working with the Department of Health and Human Services, Parole and Probation, and developing more community partnerships. We are currently following the recommendations of Executive Audit to determine what help is available and most beneficial to assist offenders in succeeding upon release. We are looking for other ways to close the gaps in services from entry into the Criminal Justice System to successful reintegration back into our communities. We are looking at better ways to exchange the data, such as criminogenic needs from the NRAS System, suicide risk factors, and programs that the inmates have or have not taken, their treatments, medical comorbidities, and medications, as well as education and vocational training.

*Director Whitley:* The expansion of Medicaid presents the opportunity to change things when offenders leave; we penetrate maybe 50% of the population. We are digging deeper into the most serious health conditions, to include behavioral health issues. We have access to see if services were provided after release and able to look at those that have Medicaid to see what services were provided. The largest being behavioral health, and within that would be addiction. A goal is for anyone Medicaid eligible leaving NDOC, should not use State General Funds to pay for medications. Upon departure from NDOC, they should enroll in Medicaid and have those medications covered.

There is also the Affordable Care Act where most of these folks are newly eligible; the federal share is 90% and the general fund match is 10%. We may be doing a better job with Clark County Detention Center and Washoe County Detention Center because of the rapidness of discharge and our eligibility workers that are in those facilities. The population is prioritized so that diabetics, people with serious mental illness, the homeless, people with HIV, etc., are prioritized so that we get them enrolled in Medicaid; they leave enrolled. General Ford asked if Director Whitley would repeat what he said about access to Medicaid upon exit.

Director Whitley stated that Welfare Eligibility Workers would go to NDOC, but what access they would have to inmates has not been formalized yet. Prioritizing anyone who has a chronic health issue and make them eligible for services won't solve the problem, as you know most of the folks that have chronic mental and substance abuse issues, have other factors that determine their health like housing and transportation, which are not covered by health care, but it's certainly a good start. If people are leaving stable, we should make every effort to keep them stable.

General Ford stated that the reason he asked is because his second Assistant Attorney General, Christine Jones-Brady, updates him quarterly, and one of the recurring themes related to reform and community reinvestment is the Medicaid issue. She suggested that we ensure all prisoners have Medicaid and/or other health insurance prior to release from incarceration. She also talked about increasing quality and affordable inpatient treatment programs and mental health facilities in Nevada, as well as promoting outcome based pre-trial diversion and re-entry programs with wrap-around services.

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**10. Prison Industries Update – per NRS 209.459 Employment of Offenders: Report on potential impacts and consideration of new program of employment with All Wire Poly Pipe and All Wire Printed Circuit Assembly for discussion and possible approval – William Quenga, Deputy Director Prison Industries, NDOC; Diane Dastal, Chief of Financial Services Prison Industries, NDOC – For Possible Action ([See Item 10 Exhibit](#)).**

Deputy Director Quenga: Brought to the Board for approval, a new industry that would like to engage in partnership with NDOC Prison Industries. The company is All Wire from Southern California. All Wire currently has an outside operation in Chowchilla, California, and operate with 30-40 females from the Chowchilla prison. They are looking to engage into a contract with Prison Industries and would set-up shop at Southern Desert Correctional Center. This will bring in 40 new inmate workers as wire circuit assemblers and extruded wire operators.

Chief of Financial Services Diane Dastal: Ms Dastal gave an overall briefing of All Wire to the Board. All Wire is in the business of manufacturing Poly Pipe, cable, wire harnesses, and printed circuit board assemblies. They plan to hire 20 offenders to manufacture Poly Pipe, and another 20 in the wire business. Our research did not uncover any wire or pipe manufacturers in Nevada. Prison Industries reached out to DETR, who provided employment and wage data and the Governor's Office on Economic Development provided economic impact data. The Department of Business and Industry stated that they could not provide impact studies and the Teamsters stated they have no issues with All Wire. Offender learners would learn pipe and wire manufacturing, customer service, interpersonal skills, oral communication, diversity, work ethics, responsibility, dependability, teamwork, etc. All Wire would provide valuable job training, assist NDOC with room and board, as deductions are taken out of the worker's pay. It would also enhance Prison Industries financial position. Additionally, more contributions would be made to the Victims of Crime Fund and Prison Industries Capitol Improvement Fund. This would assist with Prison Industries goals of reducing operating costs, providing offenders with skills necessary for re-entering society, and enhancing the safe operation of correctional facilities.

Secretary Cegavske asked who we selling to, what about safety, and what do the workers make? DD Quenga answered that All Wire's biggest customer is Comcast, but they also supply NV Energy and PG&E. The skills the offenders would learn can be used on the outside. As far as the circuit wiring, these skills are in demand by companies like Tesla and others. This program would fall under the Prison Industries Enhancement Certification Program, in which we must abide by the Department of Justice, Bureau of Justice Administration guidelines which state we must pay the 10th percentile of the prevailing wage for the work done, as it crosses the state lines. The wage starting for the circuit assemblers will be \$8.21 per hour, extruded wire fabricators will be \$10.25 per hour.

Governor Sisolak asked, when you say the skills are usable outside of the facility, how available are jobs in this industry on the outside? DD Quenga stated the production of these wires and circuit boards are in demand by companies like Tesla and many others. This company also has facilities in California and Wisconsin. Governor Sisolak asked how many jobs are there outside of correctional facilities?

Alan Hopkins, President of All Wire, answered that All Wire has been in business for 53 years and has two plants in California and one in Wisconsin. All Wire has very good working relationships with all of its customers and many ask us to send our workers to them when they get out. Their workers are offered full-time employment, averaging over \$2,000 per month, with full benefits. The State of California has told us that the recidivism rate for our program was less than 5%, and that is because there is a shortage of good electronics workers in the industry.

Secretary Cegavske wanted to follow up on the safety aspect of having inmates with access to all these materials.

DD Quenga stated that the materials will be inventoried and accounted for, and as we proceed further with this proposal, we will address the safety and security aspects. We don't want wire on the yard, is what we're getting at

asked the Governor. Acting Director Wickham stated that we are absolutely looking into the safety and security aspects. Also, most of our Prison Industries are located in secluded areas, outside of the main perimeter and the inmates are searched thoroughly before they leave the work place. There are also officers there providing direct observation for safety and security.

Governor Sisolak stated that he will have Director Wickham follow up with the safety and security issues. Having no more discussion, motion is on the floor, signify by saying Aye. All stated Aye; none opposed; motion is passed.

#### **11. Public Comment (2<sup>nd</sup> Period)**

Acting Director Wickham had an update in regards to the transgender Freeze Brain Policy. The directive has been updated and we no longer do the Freeze Brain policy as it pertains to the gender dysphoria medications. Also, on the youth offender programs, we currently have 11 youth offenders at Lovelock Correctional Center, all whom are receiving education five (5) days a week and are receiving activity and gym time.

Paul Corrado: I am an Offender Workforce Development Specialist, something I hope that every one of the people in Re-Entry in NDOC will be able to take. First of all, we closed a prison that was constructed in 1862. Any new prison will burden the State of Nevada with a significant expenditure, most likely over the next 100 years. We talked this morning about how to deal with not having to build a new prison. I think the money that was calculated was simply operational and didn't have anything to do with how much a prison would be in the next 10 years. Secondly, neither inmates or staff are represented here today to my knowledge. Inmates are the clients of NDOC, staff are the policy implementers of this Board and I don't know why their voices are mute. Since the Legislature has approved for staff to be union members, this may correct itself over time.

Number three, even when parole is granted, a parolee will not be released until an approved place for them to go can be found. If there is a cost associated with a halfway house, transition center, or wherever they are allowed to go, this may be a significant and overwhelming barrier to leaving prison. My suggestion is to use the identified statistics associated with those who are granted parole, and are still incarcerated, to justify the cost to fund their leaving. People have gotten their board and are still in prison 6 months, even a year or more. This, to me, is not good for them and not good for us, as taxpayers. And, the whole thing about overcrowding in prisons does have a significant cost in terms of staff safety, as well as inmate safety.

Number four, when the assumed correlation between burglary and drug use has been validated or not validated, please focus on the cause, rather than the effect. This can result in more effective and real solutions to the issues "solved" by incarceration. It is important to identify the coming changes and plan for the future, taking these issues into account in the age of artificial intelligence is going to be as big a change in the society as the steam engine, electricity, and the computer. The estimate, right now, is about 47% of the jobs will go away.

Number five, inmates going before the Parole Board are given no guidance as to how to prepare for the Board. Their only source of information are other inmates who recently went through the process. I would ask the Board to review and consider these at a future meeting. The Nevada Parole Board was approached to include these as a handout to assist in preparing for Parole Board meetings, which I learned that the Parole Board could not publish. After the handout is reviewed and approved, I would appreciate if NDOC could perhaps provide a copy to inmates at least 6 months out from their parole eligibility, in order to prepare for their hearing. The Parole Board would follow the direction of this Board and provide, for example, and opportunity for an inmate to make a statement before and after their hearing. I will donate \$1,000 of my own money in an effort to cover the cost.

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Governor Sisolak thanked Mr. Corrado, and asked if anyone else wished to speak during public comment. There were no other public comments.

**13. Adjournment:** Meeting adjourned at noon.

APPROVED THIS 8<sup>th</sup> DAY, MONTH OF OCTOBER, IN THE YEAR 2020

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GOVERNOR STEVE SISOLAK

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SECRETARY OF STATE BARBARA K. CEGAVSKE

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ATTORNEY GENERAL AARON D. FORD

Transcribed by D. Mantelli, Executive Assistant, Nevada Department of Corrections