

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-third Session
April 8, 2005**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8 a.m. on Friday, April 8, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Steven Horsford

COMMITTEE MEMBERS ABSENT:

Senator Terry Care (Excused)

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7
Assemblywoman Heidi S. Gansert, Assembly District No. 25

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Kelly Lee, Committee Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Randal Munn, Special Assistant Attorney General, Office of the Attorney General

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George Togliatti, Director, Department of Public Safety
Robert Wideman, Major, Central Repository for Nevada Records of Criminal History, Department of Public Safety
Mike Ebright, Acting Deputy Chief, Division of Parole and Probation, Department of Public Safety
Todd Westergard, Senior Research Specialist, State Gaming Control Board
Marc Warren, Senior Research Specialist, State Gaming Control Board, Nevada Gaming Commission
Joe Bertolone, Chief Administrative Officer, State Gaming Control Board
Joan E. Neuffer, Staff Counsel, Administrative Office of the Courts, Nevada Supreme Court
Charles M. Moltz, Chief, Information Services, Office of the Attorney General
Michelle Youngs, Sergeant, Sheriff, Washoe County; Nevada Sheriffs' and Chiefs' Association
Robert Roshak, Sergeant, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Donna Coleman, President, Children's Advocacy Alliance
Clay Thomas, Deputy Director, Department of Motor Vehicles
Alejandra Livingston, Department of Corrections
Ronald P. Dreher, Peace Officers Research Association of Nevada
Terri Miller, Nevada Coalition Against Sexual Violence
Howard Brooks, Nevada Attorneys for Criminal Justice
Pat Hines
Stan Miller, Tort Claims Manager, Litigation Division, Office of the Attorney General
Matthew L. Jensen, Senior Deputy Attorney General, Office of the Attorney General
Madelyn Shipman, Nevada District Attorneys Association
Derek W. Morse, P.E., Deputy Executive Director, Regional Transportation Commission, Washoe County
Steve K. Walker, Truckee Meadows Water Authority

CHAIR AMODEI:

The hearing is opened on Senate Bill (S.B.) 492.

SENATE BILL 492: Requires local law enforcement agency to store personal property of arrested person under certain circumstances. (BDR 14-516)

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CHAIR AMODEI:

The proponent of S.B. 492 requested the bill be withdrawn from the agenda and not replaced. Based upon that request, the bill will not be heard today or rescheduled. The hearing is closed on S.B. 492 and opened on S.B. 331.

SENATE BILL 331: Makes various changes concerning Advisory Commission on Sentencing. (BDR 14-111)

RANDAL MUNN (Special Assistant Attorney General, Office of the Attorney General):

I will present my written testimony ([Exhibit C](#)) in support of S.B. 331.

CHAIR AMODEI:

Please address sections 2 and 3 of S.B. 331.

MR. MUNN:

Sections 2 and 3 of S.B. 331 amend parts of the statute that should remain the same because the Budget Division uses this contract and analysis for major foundational work on their budget analyses and projections. The sections do not change the information provided to the Advisory Commission on Sentencing (Commission); then only change who obtains the contractor, who brings it all together and who has initial access to the data.

CHAIR AMODEI:

The Committee heard testimony regarding truth in sentencing with an eye toward impact on budgets, staffing ratios and such, in the Department of Corrections. The existing law addresses the members on the Commission, including a member from the Division of Parole and Probation; however, there is no member from the Department of Corrections.

MR. MUNN:

You are correct. The list includes a district judge, a district attorney, a private practitioner, a law enforcement agency member, a member from the Division of Parole and Probation, a victim, a member from the Nevada Association of Counties and two members each from the Senate and Assembly.

CHAIR AMODEI:

I suggest the Director of the Department of Corrections be added to the list. Must there be an odd number of individuals on the Commission?

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MR. MUNN:

I may have thrown the odd number out of balance by making the Attorney General an official member. In the Governor's portion, on page 2, line 21, section 1, subsection 2, of S.B. 331, the number was thrown out of balance by not changing all the appointments, taking away the designation authority and adding another member. Therefore, it would be at the discretion of the Committee to add or supplant an additional person, and I would not oppose it.

CHAIR AMODEI:

There are many study requests before the committee with jurisdiction, the Senate Committee on Government Affairs; consequently, passage of S.B. 331 for another study would be competitive. Perhaps, it would be appropriate to put the Director of the Department of Corrections on the Commission.

You are requesting the Committee to amend S.B. 331 to remove sections 2 and 3 and keep the statistical and contract information with the Department of Administration.

MR. MUNN:

That is correct.

SENATOR HORSFORD:

Please explain the purview of the legislation in reference to [Exhibit C](#) regarding the creation of meritorious legislation as it pertains to the Senate Committee on Judiciary.

MR. MUNN:

The Attorney General has no specific vision of proposals or what particular legislation he has in mind. The intent of the Commission is to advise the Senate Committee on Judiciary and the Legislature as a whole. The Attorney General, as part of the process, would add another opportunity for submission of a bill draft. The Attorney General served on the Commission while he was in the Legislature, prior to the Commission's demise. He deemed the Commission a valuable resource and enjoyed his service, which prompted the creation of S.B. 331.

SENATOR HORSFORD:

What issues caused the Commission to become ineffective?

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MR. MUNN:

I have no historical knowledge but surmise, from the file, that the members were frustrated because they perceived their recommendations fell upon deaf ears.

CHAIR AMODEI:

If the Commission is reconstituted, will statutory authorization be required for a bill draft?

MR. MUNN:

The authority for the Commission already exists in law; however, there have been no appointments and no leadership to facilitate it. At the close of the Governor's reform of State government, the members had no interest in continuing when essentially told the Commission was unneeded. I anticipate the Attorney General would be interested should the Commission be moved to his office. There is no appropriation for S.B. 331; rather, the intent is to appoint individuals willing to serve on the Commission. The Governor or legislative leadership could appoint appropriate members to the Commission.

Although the statistical data being acquired is necessary to the Budget Division, the data is not shared with individuals who have the expertise to analyze it and make recommendations. It should not be expensive for the Commission to meet once or twice a year to peruse, analyze and discuss the data.

CHAIR AMODEI:

If the Commission is reconstituted under the described circumstances and wants to propose legislation, would the Commission propose bill drafts through those available to the Attorney General's Office, or would the Commission need to create its own bill draft to pursue legislation?

MR. MUNN:

That was not discussed with the Attorney General. The Attorney General's bill drafts, as well as those of the four Legislators on the Commission, would provide an ample number of bill draft requests for any action the Commission might recommend.

CHAIR AMODEI:

The hearing is closed on S.B. 331 and opened on S.B. 341.

SENATE BILL 341: Makes various changes concerning sex offenders and offenders convicted of crimes against children. (BDR 14-678)

GEORGE TOGLIATTI (Director, Department of Public Safety):

The Department of Public Safety (DPS) supports S.B. 341. I thank the Governor, Senators Titus, Raggio, Nolan, Wiener and Mathews, as well as Assemblyman Parks and Assemblywoman Gansert for the opportunity to provide input regarding this important legislation.

A misconception regarding sex offenders in Nevada makes it important to understand the realities. There are different categories of sex offenders: an offender who committed a crime in Nevada and is under the supervision of the Division of Parole and Probation (P&P); an offender who committed a crime in Nevada and is not under supervision; and an offender who committed a crime in another state.

SENATOR DINA TITUS (Clark County Senatorial District No. 7):

I am pleased to cosponsor S.B. 341 with Senator Nolan and Assemblywoman Gansert. I submitted a series of articles regarding sex offenders and offenses ([Exhibit D](#)).

As members of the Senate Committee on Judiciary, you are familiar with Megan's Law, named for seven-year-old Megan Kanka of New Jersey, who was raped and killed in 1994 by a known child molester who moved across the street from her unbeknownst to her family. States around the country reacted by putting sex-offender-registration laws in place to track sex offenders after their release from prison. Because sex offenders often reoffend, the laws tracked them to their new neighborhoods.

After 1994, it became clear some state laws were tougher than others and some states had more resources for enforcing and tracking sex offenders. A 6-month investigation in 2004 discovered shocking facts about sex offenders in Nevada. Sex offenders were flocking to Nevada from neighboring states to blend into the transient population; they knew Nevada authorities lacked the resources to track them down, and Nevada law was weaker than sex-offender laws in neighboring states.

This is an unacceptable situation. The statistics are shocking. Thirty-nine percent of sex offenders fail to register in Nevada, which has the fifth-worst

record in the country on sex offenders who fail to obey the law. On the other hand, Nevada has some of the toughest penalties for sex crimes in the country. This situation cannot be tolerated. Nevada does not want to become a haven for perverts and sex offenders.

Sex offenses cause a great deal of suffering on a personal level, community outrage on a broader level, and cost the state a lot of money. In an effort to tighten Megan's Law, we have been working with advocates such as Donna Coleman, Children's Advocacy Alliance, as well as law enforcement experts, such as George Togliatti.

ASSEMBLYWOMAN HEIDI S. GANSERT (Assembly District No. 25):

I would like to relate a personal story. My children attend school in an older area of Reno. Last year, there were three sex-offender incidents in one month. The first incident occurred when a young girl was walking home from school; a car pulled up next to her, and a person tried to coax her into the car. The second incident involved a student walking from school to a gymnasium approximately 250 feet down the road. When a man in a Jeep with a hood over his head pulled up adjacent to her, she began walking faster, and the man followed. She turned around, changed direction, and the man put his car in reverse and continued to follow her. She ran back to the school and escaped. The third incident involved 2 young boys on the playground, who were approached by 2 20-something-aged men who engaged them in conversation. The men asked the boys strange questions, and the boys ran away.

Due to three incidents in a short period of time, I became involved and called Richard Gammick, District Attorney, Washoe County. I asked Mr. Gammick about sex offenders and the manner in which they are tracked. I went online to the registry for sexual offenders established by the State. It was shocking to note there are 5,000 known sex offenders and approximately half are not in compliance with the annual registration requirement. In a state with a population of over 2 million, there were only 66 offenders at Tier 3 which is the highest tier. I was alarmed that we did not know the location of the offenders, nor were they sorted in a manner to determine which ones were the most likely to reoffend. The system seemed lax, which is the reason I cosponsored S.B. 341.

As parents and grandparents, as well as for the safety of the children in your neighborhood, I urge you to consider S.B. 341. Ask yourselves whether Nevada is safe for children or a haven for sex offenders.

SENATOR NOLAN:

Sex offenses are the most blatant deficiency in our law enforcement system, which is not the fault of P&P or the officers doing their best to track and monitor sex offenders in Nevada. The problem is prevalent throughout the system in regard to levels of protection, background checks and lack of treatment available to sex offenders in prison who are released back into society. An overhaul of the system is needed. I commend Assemblywoman Gansert, Senator Titus and Senator Raggio for recognizing the issue and cosponsoring S.B. 341.

MR. TOGLIATTI:

Recent newspaper articles reported that law enforcement neither knew the location of nor tracked sex offenders in Nevada. Part of the problem is not all offenders are under the supervision of P&P. Offenders who commit sex crimes in Nevada may, or may not, be under supervision. Offenders from other states may be Nevada residents through a compact or agreement with the other states.

Some sex offenders are described as walk-ins. There are people who commit sex offenses in other states and then move to Nevada. I have heard it said that what happens in Las Vegas stays in Las Vegas. If that is the prevailing message, there is no question Nevada will attract more sex offenders than Omaha, Nebraska.

All sex offenders are required to register, but often do not. Some are transient and move without notifying authorities. Peruse our Web site and query zip code 89101, which is downtown Las Vegas. Observe the number of sex offenders not in compliance who originally registered in the transient area, but are no longer registered. There is no way to effectively and economically monitor all sex offenders in the State; therefore, those not in compliance and not under the supervision of P&P usually remain undetected until their next encounter with law enforcement.

For that reason, the DPS is submitting amendments ([Exhibit E](#)) for inclusion in S.B. 341. The amendments include requiring a one-year driver's license and

gaming work card for sex offenders; eliminating the option to consider offenders convicted of crimes against a child or sex offenses for diversion programs prior to sentencing; including a search clause with special conditions for offenders on probation convicted of sex crimes—there is already a contingency in place for offenders on parole, but not probationers; clarifying language regarding the lifetime supervision program; improving the ability of P&P to address out-of-state transfers and violation thereof, which can become complicated depending upon what is determined a new offense versus violation of parole and probation; and providing low-cost background investigations and assistance to not-for-profit organizations. In response to the recent newspaper articles, I received a number of calls from managers of Little League and soccer teams asking what can be done to alleviate the expense for background checks on people involved with children.

The DPS does not support the portion of S.B. 341 regarding the Attorney General's Web site, which would be redundant considering there is a Web site with the Central Repository for Nevada Records of Criminal History (Repository). The process regarding manual versus electronic systems would be costly and burdensome, not only to DPS, but possibly the Department of Motor Vehicles (DMV) and the State Gaming Control Board (GCB). It would be impossible to comply with a July 2005 effective date, and it could take until 2006 to work out the software.

ROBERT WIDEMAN (Major, Central Repository for Nevada Records of Criminal History, Department of Public Safety):

The DPS supports the intent of S.B. 341, but has concerns with sections that require a process more difficult than needed to accomplish the objectives of the bill. The DPS does not seek to influence the level of supervision or information availability that public policy deems appropriate for offenders; the Department seeks to make the system as efficient as possible.

Sections 14 through 23 of S.B. 341 address the Attorney General's offender information Web site and details thereof. As the Director pointed out, DPS has such a Web site, and the movement of that Web site to the Attorney General's Office would create an obstacle and a wasteful expenditure in the process. The DPS is comfortable with the level of information public policy would indicate for the Web site, and we are able to comply with that process; however, the administration would be easier if the Web site remained under the control and authority of the DPS.

In addition, section 24 requires the Repository to create reports and forward them to other agencies. The definition of report is unclear; the ordinary connotation is a document describing the circumstances of each offender, which would be forwarded to other agencies. Such a report would be a staff-driven and labor-intensive process, and the Repository lacks staff to deal with it at this time.

Language is proposed in S.B. 341 to allow the DPS latitude to accomplish the intent of the bill without restricting the means to accomplish it. The DPS would prefer data-sharing on a regular 24-hour basis with other agencies and enable the process by allowing them to query information on a close-to-real-time basis. The ability to do this in a way consistent with other agencies would reduce cost and create a more efficient and workable solution.

Sections 49 through 53 of S.B. 341 contain a number of processes related to the GCB and the DMV. The DPS supports processes that are not paper- and staff-intensive in accomplishing the intent of S.B. 341. The DPS submitted a fiscal note relating to the issues regarding the Repository. The Repository has become fiscally healthy enough to accomplish the process out of reserve funds. When details of S.B. 341 are finalized, the DPS will return to the Interim Finance Committee with a work program and seek authority to expend funds to accomplish the process.

Director Togliatti indicated the July 1 expected start date is problematic. Substantial software-programming issues need to be solved to make the process workable. Between the end of the Legislative Session and the July 1 start date, it is unlikely that approval through the expenditure process could be accomplished to begin a contract. On that basis, a July 1, 2006 start date is recommended.

The general expectation of S.B. 341 provides that sexual-offender information, on a real-time basis, will be available to various components, namely, state agencies, law enforcement and others. Currently, that is not the case. When offenders register at a local law enforcement agency, the agency receives the information in paperwork form and sends it to the Repository through the mail. It is received at the Repository, put into work logs and entered later. There is a gap in the process as to the information being current.

A substantial portion of the fiscal note includes necessary funds for programming to enable law enforcement agencies real-time entry into the database to correct the problem which is the implied intent of S.B. 341. The money is there without impacting the citizens of Nevada.

SENATOR WIENER:

Does section 24 of S.B. 341 presume information data-sharing versus reporting?

MAJOR WIDEMAN:

The fiscal note is based on automated information-sharing. It would change if individual written reports or other staff-driven processes were required. In that event, new full-time-equivalent positions would be required to accomplish the processes.

CHAIR AMODEI:

Here is a summarization of your concerns on S.B. 341, sections 14 through 23, the Attorney General's Web site duplicating the function already performed in-house; section 24, the reports addressed by Senator Wiener; the start date; and sections 49 through 53, the DMV and GCB issues. Would S.B. 452 in regard to sharing information impact your concerns?

[SENATE BILL 452](#): Revises provisions pertaining to Central Repository for Nevada Records of Criminal History. (BDR 14-612)

MAJOR WIDEMAN:

Senate Bill 452 relates to an oversight board for the Nevada Criminal Justice Information System, which is the computerized network shared by law enforcement agencies; therefore, S.B. 341 and S.B. 452 are related.

MIKE EBRIGHT (Acting Deputy Chief, Division of Parole and Probation, Department of Public Safety):

There are problems regarding the laws ordering lifetime supervision for certain sex offenders and the manner in which S.B. 341 will alleviate them. A law was passed in 1995 ordering lifetime supervision for some sex offenders. It took a couple of years to realize the ramifications of that law. There was confusion regarding people on lifetime supervision and how P&P was going to control and enforce the law. The law not only created confusion for P&P, but also the State Board of Parole Commissioners (Parole Board), judges, district attorneys,

defense attorneys and policemen on the street. The confusion has to do with where and how violations of lifetime supervision are prosecuted.

Because certain sex offenders are prosecuted by filing new felony charges at a Category B level and not in the manner of a parole and probation violation, even the most minor violation must be handled as a Category B felony. *Nevada Revised Statute* (NRS) 213.1243 states the term of lifetime supervision begins after a term of parole, probation or prison sentence has ceased; therefore, very few offenders are placed on probation as ordered by a court. After completing probation, offenders fall under the authority of the Parole Board or are ordered by the Parole Board to certain conditions of lifetime supervision. At that point, the Parole Board loses control, other than issuing the orders and conditions, because violations must be handled as new crimes and not violations of parole.

The statute states lifetime supervision shall be deemed a form of parole, but it is not true parole. Therefore, a parole hold cannot be placed on an individual who is stopped by local law enforcement for peeking in windows at 2 a.m. Law enforcement is confused when told the person should be arrested for a new felony, which constitutes a new crime report.

The statute also creates problems transferring offenders to other states through the Interstate Compact. Most states will deny supervision when we request an offender be transferred to that state. Nevada lacks the ability to hold offenders accountable, as well as requiring other states to supervise them. There have been some successful transfers to other states; however, there is a problem if the offender commits a violation in the other state. Nevada lacks the ability to return the offender to Nevada and file new felony charges for violations that occurred in another state.

Senate Bill 341 addresses some issues, fixes some problems and eliminates some confusion, but it is not perfect. Several individuals have perused the bill and concluded S.B. 341 is the best that can be done regarding the problems of lifetime supervision.

Page 4, section 3 of S.B. 341, allows a person placed on lifetime supervision to be released from supervision. Initially, only the court of jurisdiction where the person resided could allow release; consequently, if the person was in another state, the law said the other state had the ability to release the offender. That is unacceptable. Senate Bill 341 states the person can go to the sentencing court

or Parole Board. It also reduces the time period from 15 years to 10 years in which the person can be considered for release. Within the next few years, certain compliant sex offenders will reach the ten-year mark and be considered for release. A provision is requested that a trained psychologist or psychiatrist determine whether or not an offender would pose a threat to the safety of the community in order to recommend release to the court or Parole Board.

CHAIR AMODEI:

Is the language satisfactory, as written, with respect to this area of S.B. 341? If so, would you want to add something to the Nevada State Board of Parole Commissioners?

MR. EBRIGHT:

No; however, there is concern regarding the word shall on page 4, section 3, subsection 3, line 32 of S.B. 341. If a person who approaches the court or Parole Board is deemed by a trained psychologist to not be a threat, the court or Parole Board "shall" release him or her. The language provides no discretion.

SENATOR WIENER:

If an offender is paroled to another state, does the Nevada Parole Board have jurisdiction over the time line or action?

MR. EBRIGHT:

The law says an offender can petition the district court in which jurisdiction they reside. Senate Bill 341 corrects the problem of supervising out-of-state offenders who will now be allowed to petition the Parole Board or sentencing court in Nevada that ordered lifetime supervision.

SENATOR WIENER:

Is there reciprocity between states in regard to revocation or release from lifetime supervision?

MR. EBRIGHT:

There is courtesy supervision across-the-board. The other state only has authority to supervise and report violations to the sending state, which has decision-making authority on revocation or release.

Page 5, section 4, subsection 1, paragraph (a) of S.B. 341, contains the search-and-seizure clause. There is a general search-and-seizure clause for

parolees, but a void regarding a similar clause for probationers. We request added language for a general search clause only for sex offenders on probation with P&P.

There is also a void regarding attempts to commit a sex offense. The Committee may consider whether an attempt to commit a sex offense, which falls under NRS 193.330, be included in S.B. 341 to also fall under the same provisions as offenders ordered lifetime supervision.

Page 35, section 44, subsection 1 of S.B. 341, addresses the offense of solicitation of a minor to engage in acts which constitute the infamous crime against nature. There is no minimum sentence imposed; it only refers to life. The Committee may wish to consider including a minimum sentence for that offense.

Page 36, section 47 of S.B. 341, addresses the Interstate Compact, removes the confusion regarding jurisdiction and where to hear violations and addresses minor violations.

There was a case in Carson City involving a minor violation at a school committed by a sex offender. The offender was arrested and charged with a felony. There was confusion as to the location of filing. The offender was in the Carson City jail because he committed the violation on school grounds in Carson City. Carson City did not want to hear the case because it deemed the charge should be filed in the court of jurisdiction that ordered the offender's lifetime supervision, which was Lyon County. The offender was moved to the Lyon County jail, and an attempt was made to file charges. Lyon County indicated the charges could not be filed there because the violation occurred in Carson City. The offender was returned to the Carson City jail to remain in custody for approximately three months while an attempt was made to determine what entity would handle the situation. The violation was minor and the offender was placed on probation. Consequently, the offender is now on probation, as well as lifetime supervision.

Senate Bill 341 addresses the handling of minor violations, which are at a misdemeanor level. Major violations, listed on page 37, section 47, subsection 5 of S.B. 341, are handled as Category B felonies. It is appropriate to address those violations in that manner and in the court that ordered lifetime supervision. That section allows P&P to return offenders transferred out of state

and then back to Nevada to prosecute new crimes in the court that ordered lifetime supervision. Therefore, P&P has the control and ability to hold the offenders in another state accountable for subsequent violations.

Page 37, section 48 of S.B. 341, addresses the inability to place a sex offender in the diversion program. Other offenses are listed regarding violent offenses, trafficking controlled substances and such; however, sex offenses are not listed. We want to ensure sex offenders will not be placed in diversion programs.

CHAIR AMODEI:

The Committee was provided a letter from State Gaming Control Board Chairman Dennis K. Neilander ([Exhibit F](#)) regarding their concern about fiscal rather than policy issues; the letter will be made part of the record.

TODD WESTERGARD (Senior Research Specialist, State Gaming Control Board):

I would like to comment on three areas conveyed in Mr. Neilander's letter, [Exhibit F](#). First, the GCB supports the goal of S.B. 341. Second, the GCB requests an amendment to make the program workable within the existing framework of the GCB's Centralized Gaming Employee Registration Program. The amendment will contain a fiscal note of \$300,000 over the coming biennium and \$200,000 thereafter. The GCB is prepared to accomplish the intent of S.B. 341 and willing to work with the DPS on the amendments. Third, the GCB has an alternative proposal with the same intended results but no fiscal impact. The GCB is willing to work with the DPS to create an efficient plan agreeable to both agencies.

CHAIR AMODEI:

Please describe the amendments.

MR. WESTERGARD:

The amendments address the direction of information flow.

MARC WARREN (Senior Research Specialist, State Gaming Control Board, Nevada Gaming Commission):

When the statute for the gaming employee registration was adopted last Session, the GCB created a computer program that tracks registration of all gaming employees. The program can be accessed by licencees at this time. We suggest the DPS have access to it as a Web-based program. The DPS could access the program, input identifying information on an offender who is not in

compliance with the Sex Offender Registration Program to find out whether or not the person is registered. If registered, the DPS can notify the GCB, and the GCB would take necessary steps to make sure the person is no longer employed in the gaming industry. An available program exists, and the GCB would like to pursue it with the DPS.

JOE BERTOLONE (Chief Administrative Officer, Gaming Control Board):

I echo Mr. Warren's comments. There is a way to accommodate the DPS to accomplish its goal of checking individuals who may be objectionable from a standpoint of gaming employee registration. The two agencies should get together to work out details of the work process and flow of the program; it is a viable solution.

JOAN E. NEUFFER (Staff Counsel, Administrative Office of the Courts, Nevada Supreme Court):

The Administrative Office of the Courts is neutral on S.B. 341 but has concerns. The courts are not complying with certain provisions of existing law; therefore, our concerns regard sections 1 and 2 of S.B. 341.

Section 1, subsection 1, paragraph (a) of S.B. 341 states, "If a defendant is convicted of a crime against a child, the court shall, before imposing sentence ... notify the Central Repository" There is identical language in section 2, subsection 1, paragraph (a) of S.B. 341. The courts were not complying because sentence had not been entered and they were awaiting the final sentence to be entered. The following language is suggested: "If a defendant is convicted of a crime against a child, the court shall, following imposition of sentence, notify the Central Repository."

CHARLES M. MOLTZ (Chief, Information Services, Office of the Attorney General):
I presented an amendment ([Exhibit G](#)) which replaces some language in S.B. 341. Community notification Web site means the Web site on the Internet established and maintained by the DPS pursuant to section 5 of this act. The DPS requested to keep the Web site within the DPS.

CHAIR AMODEI:

Are you satisfied with not duplicating Web sites?

MR. MOLTZ:

Absolutely, they are doing a fine job.

MICHELLE YOUNGS (Sergeant, Sheriff, Washoe County; Nevada Sheriffs' and Chiefs' Association):

Washoe County supports the intent of S.B. 341 with suggested amendments ([Exhibit H](#)) that affect or support law enforcement in tracking sex offenders. Washoe County requests the references to multiple addresses within a jurisdiction remain as existing language. Page 15, line 19, section 25 of S.B. 341 says, "'Resides' means the place or places where an offender resides ... ," "or places" is the proposed change. The existing language should remain to ensure that offenders do not register in multiple areas or jurisdictions. Offenders must show a primary address where they reside and not be allowed to manipulate the system with two or three addresses. When law enforcement checks a person's address and whether or not he or she is in compliance with registration, one address is needed to prevent confusion.

Washoe County has suggestions regarding the Web site on which it can work with the DPS. Washoe County proposes to increase the penalty for subsequent violation. At the local level, offenders reoffend and are placed on probation many times. Offenders should not be granted probation for subsequent violations and given a Category C felony. Washoe County supports raising the penalty, adding the offense to the prior conviction and not granting probation at that time.

SENATOR MCGINNESS:

Are the amendments supported by both the Nevada Sheriffs' and Chiefs' Association and Washoe County?

Ms. YOUNGS:

Yes.

ROBERT RSHAK (Sergeant, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):

The Las Vegas Metropolitan Police Department echoes Ms. Youngs' comments.

DONNA COLEMAN (President, Children's Advocacy Alliance):

I will present my written testimony ([Exhibit I](#)) in support of S.B. 341.

SENATOR WIENER:

Why do you suggest removing section 15, subsection 2, paragraph (f) of S.B. 341 which says, "The number of the street block, but not the specific street number, of any location where the offender is currently ... "?

MS. COLEMAN:

I want to make certain the addresses, not just the block, are listed.

CLAY THOMAS (Deputy Director, Department of Motor Vehicles):

The DMV echoes earlier testimony regarding the need to protect the citizens of Nevada and is willing to work with other entities to find the best methodology. The DMV is neutral on S.B. 341. We have worked with the Nevada Highway Patrol and appreciate their interest and willingness to work with the DMV to find solutions that not only assist the DPS in administering this, but also assist us in getting the job done.

The DMV has concerns with S.B. 341, as written. There are points we would like to bring to the attention of the Committee before decisions are made on the issue. The first has to do with the declaration. Senate Bill 341 does not require the DMV to verify the declaration. The DMV is not law enforcement, and neither verifies the declaration nor addresses on driver's licenses. The DMV would rely on the Repository for permission to issue driver's licenses from information obtained from law enforcement.

In addition, the DMV is concerned with yearly issuance of driver's licenses and identification cards to sex offenders. Prorating fees is a concern. The DMV set a precedent on this issue and does not prorate driver's licenses or identification cards. An example would be an individual who obtains one of those documents via a visa because they are living in this country. The DMV is concerned about programming needs and the ability to make it work. The DMV prorating specific individuals for specific situations opens the door and lends itself to problems with other situations that are less than a four-year issuance.

The requirement that sex offenders must come to the DMV before their licenses will be reissued means approximately 11,000 sex offenders would be required to come to the DMV. Obviously, the concern is increased waiting time. Sex offenders are not allowed to use alternative services, such as the Internet or kiosk machines, because of the documentation. Also, the DMV would have to face programming issues to make the necessary changes. We are willing to

issue driver's licenses with no problem; however, the Committee needs to understand the potential impact on DMV offices.

Another concern is data transfer. A potential scenario would be an offender who enters the Reno Police Department, the Las Vegas Metropolitan Police Department or the Carson City Sheriff's Office, registers and immediately goes to the DMV to comply with the law. If the system does not operate under real time, the DMV records would not indicate the individual had complied. In that event, the offender would be turned away to return later, or there would be a confrontation between the offender and DMV staff, who would defend the position the DMV database did not reflect the offender's information.

The DMV submitted a fiscal note of approximately \$50,000 to deal with programming costs. The issue of a shared contract was discussed with the Nevada Highway Patrol and determined the best way to proceed. The DMV is willing to work with the Highway Patrol to determine a way to do the job that will either reduce or eliminate the fiscal note.

CHAIR AMODEI:

Regarding your concern about lag time between data transfers, perhaps there could be a reference regarding registration which would allow lag time of ten days to be certain the person is in compliance before contacting the DMV.

ALEJANDRA LIVINGSTON (Department of Corrections):

The Department of Corrections is neutral on S.B. 341; however, there are concerns regarding the fiscal impact. The bill proposes to make changes to the sentence structure of sex offenders. We were not asked to do a fiscal note, but we are researching fiscal impact and will decide whether or not to submit a fiscal note.

RONALD P. DREHER (Peace Officers Research Association of Nevada):

The Peace Officers Research Association of Nevada supports S.B. 341 with the amendments submitted by the Sheriffs' and Chiefs' Association and Sergeant Youngs ([Exhibit H](#)).

TERRI MILLER (Nevada Coalition Against Sexual Violence):

I will present my written testimony ([Exhibit J](#)) in support of S.B. 341.

HOWARD BROOKS (Nevada Attorneys for Criminal Justice):

As a citizen, I believe there is a lot in S.B. 341 that is good. The driver's license provisions are well thought out. I have discussed the bill with other defense attorneys, and we have several concerns. The first concern pertains to section 15, which establishes the Internet Web site for sex offenders, and section 16, which provides that an offender shall not access or view the Attorney General's sex offender Web site.

If there is information about a person on the Internet, that person has a due-process right to view it and determine whether or not the information is correct. Senate Bill 341 states it is a gross misdemeanor for people to look at their information on the Web site, which would not withstand constitutional scrutiny should there be a criminal prosecution.

Our other concern is section 28 of S.B. 341, which provides a procedure whereby a juvenile court can determine whether or not a juvenile must register as an adult sex offender. The juvenile court does not have the power or jurisdiction to order a juvenile to do something once he or she is an adult. If the proponents of S.B. 341 want to establish a procedure for this, it needs to be done differently. The procedure must be established by requiring something to happen in district court in order to establish jurisdiction over the person. There might be constitutional problems with that, as well. Section 28 of S.B. 341 is an invitation for litigation. The procedure that existed before this bill was declared unconstitutional by the Nevada Supreme Court. The specific issue of jurisdiction was not addressed.

Testimony indicated that people are receiving multiple probations in sex-offense cases. I would like to see documentation on it. In Clark County, P&P is tough on sex offenders. I do not believe sex offenders are receiving multiple probations. I also question the allegation that the average sex offender has had 110 victims.

PAT HINES:

I am a tax-paying citizen, an advocate for criminal-justice reform and the parent of a man who has been in the criminal justice system in the State of Nevada. I am not opposed to S.B. 341; however, it lacks four things and needs a different perspective. The first is the fact that everything in the bill is punitive. Statistics are lacking on sex offenders in Nevada. How can Legislators make decisions on something so critical without statistics? One statistic would be easy to obtain through the list of parole violations and revocations, which would

include absconders, new arrests, convictions and parole violations. Several states added a new criterion under new arrests or convictions which provides input regarding sex offenders' new arrests, convictions or other criminal categories.

The second thing lacking is public education and prevention. Brochures are needed to address sex offense prevention. The articles submitted by Senator Titus, [Exhibit D](#), contained good and bad points. The best point regarding families and inmates would be a list of "do's and don'ts" for parents and children. I suggest brochures to prevent sex offenses, such as those we have on substance abuse. There is an advisory committee on problem gambling, but we have nothing for sex offenders. There is also a lack of treatment for sex offenders within the Department of Corrections.

The third lack is clarification of language in laws regarding sex offenders. Perhaps the Legal Division of the Legislative Counsel Bureau could clarify the law. Violent crime or violence should be defined. Child, minor and adult should be defined and differentiated. There is no consistency in the laws regarding the definition of a child. Some laws define a child as under age 14; some, under age 16; some, under age 18; and some, under age 21. The definition should be clarified.

The fourth lack is confusion with words such as must, shall and can. The language requires more specificity. The statutes should confirm the difference between the use of violence and the threatened use of violence. There are no categories for sex offenders in Nevada as there are for murder one, driving under the influence, and so forth. There is a common misconception that tier levels are categories of sex offenders. Tier levels do not come into play until after an individual has been sentenced, imprisoned and released on probation or parole. There is also a tier level regarding violation of registration for community notification. I understand there are currently four tiers.

The myriad of amendments presented today are confusing. A short-term goal is needed to help people do what is already in the law, as well as a long-term goal to peruse sections of S.B. 341 that expand the Tier 3 level of notification. An interim study is needed to consider the issue from the point of sentencing through lifetime supervision of sex offenders.

There are many barriers for sex offenders in the community. It is outrageous to require them to pay for driver's licenses every year. Perhaps they should pay it every 4 years because \$10 or \$15 is a lot of money to these people. A young man was recently released from prison, moved into a halfway house and assigned by the Parole Board to the same counselor with whom he failed for three years before he was resentenced to prison for parole violation. He pays the halfway house \$150 for rent and the mandated counselor \$160 a week. He cannot return to his original skills and now works as an electrician's helper for \$8 an hour. He earns approximately \$320 a week, and \$310 must be paid for room and board and the counselor.

Sentencing should be the first thing considered in an interim study. It is difficult to handle all these issues during a 120-day Legislative Session. I call your attention to a law in effect since 1977, NRS 209.481, which excludes sex offenders from eligibility for minimum facilities. This is disgraceful. Nothing is done for this criminal class. Sex offenders need transition, rehabilitation and help with reentry, just as any other human being who has erred and is considered a criminal.

Page 11, section 15, subsection 2, paragraph (e) of S.B. 341 says, "The complete address of any residence at which the offender resides." The address of a sex offender is not necessary, and many states do not require it. A state survey of sex offender registries indicates that many states have come to the conclusion a sex offender's address need only be known to law enforcement and repositories. The Web site in Nevada shows zip codes, which should be adequate for the general public and satisfy the curiosity of most. Abnormal behavior should be reported to the authorities.

Another area left out of S.B. 341 is in regard to vigilantism. Penalties for people who take matters into their own hands have been removed from the community notification for adult offenders. I would like it reinstated. If information taken off the Web site is used in an illegal manner, offenders should be made to pay the consequences. People in positions of trust and authority should have better standards than the general public.

My biggest concern is the expansion of Tier level 3, in which the amendments of all determinant sentences for sex offenders are being deleted. Page 32, line 8, section 39, subsection 2, paragraph (a), subparagraph (3) of S.B. 341 is

removed and the word "life" substituted. There are about seven sections in which the determinant sentence has been removed and replaced with "life."

Page 31 of S.B. 341 contains excellent points regarding children before adjudicating them as an adult, or putting them under adult supervision. There is nothing regarding the risk factor in adult sex offenders. The current tier level was established in 1996 to be used for presentencing in the courts. Questions on page 31 of S.B. 341 regarding a child that are not asked include whether psychological or psychiatric profiles indicate a risk of recidivism. The law that requires qualified people to perform evaluations indicates a psychiatrist must practice medicine and be certified by the Board of Medical Examiners, a psychologist only needs to be licensed in the State. There is a holistic picture on this issue.

In conclusion, I oppose the requirement of the complete address of sex offenders being shown on the Internet, as well as expansion of Tier level 3.

CHAIR AMODEI:

The hearing is closed on S.B. 341 and opened on S.B. 451.

SENATE BILL 451: Revises provisions governing indemnification of certain persons in civil actions by State and other governmental entities. (BDR 3-107)

STAN MILLER (Tort Claims Manager, Litigation Division, Office of the Attorney General):

I will present my written testimony ([Exhibit K](#)) in support of S.B. 451.

CHAIR AMODEI:

Members of the Senate Committee on Judiciary have served on interim committees addressing litigation scenarios that involved employees. A specific scenario involved several employees of the Colorado River Commission of Nevada, which is a political subdivision of the State. That entity, through the course of litigation related to utility trading and so forth, incurred significant legal bills. Senate Bill 451 indicates the State does not want to pay if there was a criminal act. Parts of the litigation revolved around acts which, if true, were probably outside the course and scope of employment.

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Has any thought been given to the State's obligation to pay for legal representation for employees of political subdivisions when they are out of the course and scope of employment?

MR. MILLER:

Currently, the statute indicates the State is not required to indemnify an employee who acts outside the course and scope of his or her job.

CHAIR AMODEI:

Does it also apply to legal fees regarding the cost of defense for the employee?

MR. MILLER:

The statute includes legal fees, but the State is not required to provide a defense.

CHAIR AMODEI:

Regarding the Federal Energy Regulatory Commission litigation in the *Colorado River Commission of Nevada v. Nevada Power Company* (2004), there were agenda items that addressed appropriating funds for counsel. The Attorney General's Office and several deputies were involved. Would you research the litigation and submit a brief report regarding what the State paid for the defense costs of the individuals, why it was done and by whose authority?

MR. MILLER:

Certainly.

CHAIR AMODEI:

The Committee will process S.B. 451 irrespective of receiving the requested information.

SENATOR WIENER:

When Senate Bill 451 addresses state or federal law, does it include the State and all its political subdivisions? Are there acts addressed by a lesser jurisdiction or subdivision of the State that might have a criminal penalty attached?

MATTHEW L. JENSEN (Senior Deputy Attorney General, Office of the Attorney General):

It does not appear to encompass something like a violation of municipal code.

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SENATOR WIENER:

Would a municipal code violation have a criminal penalty attached?

MR. JENSEN:

Criminal penalties attach to some municipal code violations, and perhaps that could be included in S.B. 451.

CHAIR AMODEI:

I assume Senator Wiener's intent is to cover all criminal activity. Please submit a suggested amendment to our legal counsel to meet that intent.

MR. JENSEN:

I will do that.

MADELYN SHIPMAN (Nevada District Attorneys Association):

The verbiage in Senate Bill 451 does not capture the intent of the bill and is in the wrong section of the statute. I am opposed to S.B. 451 because the new language is not only too broad, it does not deal with unintentional or unknowing violations, including faulty interpretations of the law. The section of NRS in which the language is being placed is in regard to whether or not the employee is indemnified on a civil action brought forward against a local government. We have no problem if the intent is to make persons responsible for criminal fines based upon a traffic citation.

A civil action brought against a public entity could be based on personal injury in a minor accident. A scenario could be an employee on county business who pulls out of the parking lot of a county building, misjudges the distance of a car, causes a minor accident and a personal injury suit is filed. Because the accident happened during the course and scope of employment and the employee was not acting wantonly or maliciously, but negligently or had an error in judgment, the employee is entitled to not only the defense of the official attorney but also indemnification if any award is granted against him or her.

Another concern regarding the law of unintended consequences with this added language would give an employee no defense or indemnification. It spawns a new case called "failure to train" against the county and a personal injury case against the employee. With joint-and-several liability, the cap no longer applies, and the local government is potentially responsible for the full ramification of any damage determined in the lawsuit.

There is concern with unintended consequences coming from S.B. 451. The intent should be in a separate section in the law, not under the civil action section. It should specifically say that criminal penalties and fines will not be paid by a local government on behalf of an employee or officer.

I am unfamiliar with the Colorado River issue; however, there is a requirement in the law regarding special interrogatories.

CHAIR AMODEI:

Are you are willing to work with the Attorney General's Office on an amendment to S.B. 451 that would address your concerns and accomplish your objectives?

MS. SHIPMAN:

Yes, as long as it is removed from this section and placed in a different section.

When a governmental entity is sued, the normal process is to receive the request for defense and do an initial investigation to determine whether the violation was in the course and scope of employment and whether it was wanton or malicious. Those are the two bases under which there is no defense or indemnification. If there is a question, defense is normally offered. If at some point during trial or deposition there is a conflict, outside counsel is hired to represent the county or government entity. There is a requirement in the law that a special interrogatory be presented to the jury in a trial to specifically determine the question of whether the employee was acting within the course or scope of employment or acting maliciously. Provisions are already in the law in which the case does not go to a judge verdict, but requires a jury verdict to have a special finding as to the two questions regarding indemnification.

DEREK W. MORSE (P.E., Deputy Executive Director, Regional Transportation Commission, Washoe County):

I echo Ms. Shipman's comments. We support the intent of S.B. 451, but do not think it is what the legislation says. There could be a host of unintended consequences and a chilling effect on our ability to attract and retain employees to do the public's business. We would also be willing to address our concerns with the Attorney General's Office.

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STEVE K. WALKER (Truckee Meadows Water Authority):

I signed in supporting S.B. 451 and would like to change to opposing the bill, as written. I echo Ms. Shipman's concerns. The legal counsel of the Truckee Meadows Water Authority indicated S.B. 451 is too broad. Specifically, the U.S. Environmental Protection Agency law in the Surface Water Treatment Rules could possibly be an issue wherein an operator could have a criminal complaint and the State would not want to defend it.

CHAIR AMODEI:

The hearing is closed on S.B. 451. There being no further business to come before the Committee, the hearing is adjourned at 10:22 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____