MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
March 4, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:03 a.m. on Friday, March 4, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

Assemblywoman Olivia Diaz (excused)
Assemblyman Tick Segerblom (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jean Bennett, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Danielle Barraza, Intern for Assemblyman William C. Horne
Lisa Rasmussen, Chairperson, Nevada Attorneys for Criminal Justice
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Laurie P. Johnson, State Affiliate Leader, Citizens For Legislative Change America
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Tierra D. Jones, representing the Office of the Public Defender, Clark County
Rex Reed, Ph.D, Administrator, Offender Management Division, Department of Corrections
Keith G. Munro, Assistant Attorney General, Office of the Attorney General
Harold Cook, Ph.D, Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services

Chairman Horne:
[Role was taken. The Chairman reminded Committee members, witnesses, and members of the audience of Committee rules and protocol.] Today we have Assembly Bill 181 on the agenda. The Vice Chairman will be chairing this hearing on A.B. 181. I am going to move to the witness table, together with my intern, to present this bill. [Chairman Horne left the Chair to present a bill. Vice Chairman Ohrenschall assumed the Chair.]

Assembly Bill 181: Provides for the involuntary civil commitment of sexually dangerous persons. (BDR 39-95)

Vice Chairman Ohrenschall:
Good morning, Chairman Horne. Thank you very much for presenting this bill today.

Assemblyman William C. Horne, Clark County Assembly District 34:
Before the Committee today is Assembly Bill 181, which provides for civil commitments of people who are currently incarcerated, who will eventually be released from prison, and whom evaluation has determined to have a high risk to reoffend. This bill will address that issue and will provide a mechanism on how to civilly commit persons who are still a danger to the community and to themselves. Sitting to my right is my intern, Danielle Barraza. She has worked on this bill and will be doing the presentation this morning as part of her experience through the Legislature. She is currently a student at University of Nevada, Las Vegas (UNLV).

Vice Chairman Ohrenschall:
Thank you very much, Chairman Horne. Ms. Barraza, thank you very much for presenting the bill today. Will you please state your name for the record and begin.

Danielle Barraza, Intern for Assemblyman William C. Horne:
I am here today as the Chairman's intern, to present Assembly Bill 181. This bill provides for the involuntary civil commitment for sexually dangerous persons. I will begin with an overview of this provision and then will present a profile of civil commitment (Exhibit C) around the country and then go to a brief presentation (Exhibit D) that explains why civil commitment of sexually dangerous persons would benefit Nevada.

As background, A.B. 181 came about because of the growing number of states which have been implementing civil commitment programs for sexually violent and dangerous offenders. There are currently 20 states in the United States that have civil commitment programs. The Chairman thought this was a serious issue that the Nevada Legislature should visit and consider adding to the state statutes.

Section 12 of the bill provides a three-part definition of the term "sexually dangerous person." First, a person must have been convicted of a sexually dangerous offense. Second, the person must suffer from a mental condition. Third, the person must be dangerous to the public because of a high likelihood to commit a sexually dangerous offense upon release. From this definition you can see that we are talking about a small group of the entire sexual offender population. The group would likely consist of only Tier 3 offenders, which is the highest risk sex offender. Sex offenders are placed into a tier system based on the risk of recidivism. There are currently just over 200 sex offenders in Nevada. We are looking at a very small population.

Section 15 of the bill authorizes a district attorney to file a petition seeking a civil commitment of a sexually dangerous person. Being civilly committed means that a person would be placed into a treatment program established by the Division of Mental Health and Developmental Services. Section 16 provides that a person named in such a petition has the right to counsel and, if the person is indigent, counsel will be appointed for them. Sections 17 and 18 explain that after the petition is filed, the court will hear evidence to determine if there is probable cause to find that the individual is a sexually dangerous person. If probable cause is found to exist, a hearing will be scheduled before a 12-person jury to determine if that person is a sexually dangerous offender.

Under section 19, the district attorney is required to prove by clear and convincing evidence that the person is a sexually dangerous person, using the three criteria set forth in section 12. The district attorney must also prove by clear and convincing evidence that the person named in the petition requires commitment to the program. Proof must be provided that an alternative course of treatment is not in the best interest of the person, or will not adequately protect the public. The jury hearing the matter will have three options. First, to find unanimously that the person is sexually dangerous and requires commitment to the program, in which event, the person will be taken into custody and placed into the treatment program. Second, to find the person to be sexually dangerous but not requiring the civil commitment program, in which case the person will be provided with an alternative course of treatment. Third, if a unanimous jury cannot find the individual to be sexually dangerous or to require treatment, the person will be released from prison on their scheduled release date.

Section 20 authorizes the court to hear testimony of all professionals who have examined the person including experts retained by the person named in the petition, and other witnesses. Section 21 explains that, if the person named in the petition is subject to an examination by a qualified professional, that person can also obtain their own qualified professional to examine them. Section 22 requires the Division of Mental Health and Developmental Services to have a qualified professional evaluate the mental health of the person at least once a year after they are committed. If the person is determined to no longer be suffering from a mental disorder, and the person is no longer dangerous to the public, and the person is suitable for an alternative course of treatment (meaning a less restrictive course of treatment), there will be a hearing to determine if the person can be conditionally released. The person who is civilly committed can file a petition every six months asking to be released. After the petition is filed, there will be a hearing to determine if the person can be conditionally released.

Sections 25 through 30 of the bill explain the hearing process. During this process, in order to find the person not fit for conditional release, the district attorney must prove the person remains a sexually dangerous person and requires continued commitment to the program.

Section 31 requires the Division to establish a program for the secure commitment of sexually dangerous persons, establish alternative courses of treatment, and determine the professional qualifications required to evaluate the individuals in order to determine that the persons are, in fact, allegedly sexually dangerous persons.

People who are civilly committed will be confined in a way that is somewhat different from prison. They will wear their own clothes, keep their own possessions, have visitors, and use the telephone among other things.

Sections 32 through 52 add the revised sections into internal references and the last section will apply all amended provisions to all persons convicted of a sexually dangerous offense, regardless of whether the offense was committed before October 2011, whether the person was sentenced before October 2011, or whether the person was released from confinement before October 2011.

Exhibit D looks at civil commitments throughout the United States, although it was created before New York State had civil commitments. The exhibit shows the number of people who are committed in each state, the year the law mandating civil commitment was passed in each state, how many persons have been discharged from civil commitment in each state, and the average cost for each state per person committed.

The second slide, “History of Civil Commitment” (Exhibit D), looks at the history of civil commitments throughout the United States since 1990; the year Washington became the first state to put in place a civil commitment program. Since then, 20 states have passed laws providing for civil commitments. In the Fall of 2006, there were 2,694 people under civil commitment for sex offenses and only 252 have ever been discharged from commitment. Clear and convincing evidence is the level of proof this statute would require to commit a person, which is a lower threshold than reasonable doubt. [Witness continues to read from presentation (Exhibit D).]

Therefore, that is some information on why Nevada could be a good state in which to implement this bill. With all of that being said, the Chairman has spoken with the Division of Mental Health and Developmental Services and it has been ascertained that during this economic time, implementing this bill at this time is not achievable financially. What is achievable and feasible is putting

together an interim committee as Dr. Cook has suggested with members of this Committee and also the Senate, working together to try to come up with a more feasible plan to monitor and treat these people because it is an issue that needs to be addressed.

That concludes my testimony and the Chairman and I are here to answer any questions.

Vice Chairman Ohrenschall:
Thank you very much, Ms. Barraza, for that excellent presentation. I am sure that your professors at UNLV are very proud of you. We are indebted to you on the Judiciary Committee for all of your help. One question I have pertains to slide 9 of your presentation (Exhibit D), which concerns the treatment given to sex offenders who were civilly committed in Massachusetts. Was that treatment in a facility, was it outpatient treatment, or was it a combination of both?

Danielle Barraza:
I do not have that information in front of me but I can obtain it for you.

Vice Chairman Ohrenschall:
Thank you very much. Are there any questions from the Committee for the witnesses?

Assemblyman Hammond:
Thank you, Mr. Vice Chairman. I only want to point out that this is the largest bill, or equal to the largest bill we have heard so far in the Judiciary, and I noticed it was handed off to you and that you did a great job presenting that to the Committee.

Assemblyman Frierson:
Thank you, Ms. Barraza and Chairman Horne, for an informative and pointed presentation. I am excited about the thought of an interim committee to look at this issue. I share the concern that this is an important issue that we need to review. I do have a question about Texas. I noticed that Texas has an outpatient program and I presume this is because of a lack of facilities or resources. Do we have information on the success of Texas, considering they are the only state that has an outpatient program? Are they just as successful as some of the other states?

Assemblyman Horne:
We do not have the information on the degree of success they have had. We only know that they went strictly to an outpatient program where they utilized

GPS monitoring. It is my hope that the interim committee will review which models to choose from, and that we can gain more detail into other jurisdictions and how those programs work and which program is the most successful. Perhaps we could look at parts of different programs which could then be combined to make one program for Nevada.

Assemblyman Daly:
I understand that because of the money issue we will go forward with an interim committee. I wanted to reiterate what some of my colleagues have expressed. After reviewing this bill, I have a concern about the emotional factors that go into the issue, based solely on the subject matter. I want to make sure that people who are predisposed to be negative based on the subject matter, even before they hear any testimony, will not give any less benefit of the reasonable doubt, whether that is the standard or not. Page two of your presentation states that the release rate is relatively low. I wonder if the low release rate is because a certain segment of society will always assume that sex offenders will always remain inclined to reoffend. Coming from that point of view and knowing the Chairman is a reasonable, fair, and unbiased person, and so that I can have a better understanding, can you give us an example of the problem we are trying to fix? As I understand it, the purpose of the bill is to have an internal review, or extra review, before releasing an inmate who is up for parole because he has served his sentence, and is ready for release. This is because some people are concerned that, if released unconditionally, the person is still a threat to society. Such a review will allow for additional civil treatment, if all of these conditions are met.

Assemblyman Horne:
The purpose is to focus on the worst of the worst among those individuals coming up for parole, and who are terming out. These people are getting out of prison and are being released back into the community. Currently, there is a very limited notification and registration component. Even if we were to have lifetime supervision and placed a GPS monitor on each person who is released, the majority of the public does not understand how GPS monitoring works. If you ask members of the public, they will tell you that, yes, we need more of the GPS monitors on these individuals. The majority opinion among the average citizen is that with the GPS monitoring there is someone at the police station who has a screen up, that screen has blips on it for each device, and the police are watching those blips and know when each individual is getting close to a park that is near a school. They also believe the police will send an officer over to the park because an ex-felon is hanging out there. It does not work that way. The way our system works is that when an incident occurs, an investigation will begin. The investigation will start by identifying known reasonable suspects. The investigation will determine if there are any sex

offenders, parolees, et cetera, living in the area. The police will obtain a printout of where the people wearing GPS monitors were at the time the crime occurred.

The GPS system points out that a person is released and that they are being monitored to see if they have a job, if they are paying their fees and fines, et cetera. However, they are not getting the treatment that is needed. Some of these people are highly dangerous and are a high risk to reoffend. If you make the determination that a person falls into that category, this bill would provide a mechanism to have that individual civilly committed in order to obtain continual treatment until such time as the individual is no longer rated as having a high likelihood to reoffend.

As you heard in Ms. Barraza's testimony, the Supreme Court has already ruled that that civil commitment is not deemed a further punishment for these individuals, and is a reasonable mechanism that states can use to protect the public. The problem is that many high-risk offenders, even after treatment or after a period of time, are not released because they do not reach the lower threshold of less likely to reoffend. This is one reason for the high fiscal costs. So they are in prison, and either they never get released, or it takes a long time for them to be released. In that time you are adding more people to the program, the prison population grows, and the need for a hard-bed facility becomes necessary. There has to be a place to house these offenders. There has to be staff and professionals to provide the treatment. That is why it is costly. To go out on a limb, that is probably why Texas has an outpatient model that uses GPS, in addition to requirements that the individual has to come in for treatment on a periodic basis. So that model could be discussed with an interim committee, in order to envision a direction that Nevada might go to both protect its citizens, and do so in an economically feasible manner.

Assemblyman Daly:
I appreciate that. I agree that for the people who have those propensities, we should have another mechanism going forward. I just want to make sure it gets done for the right reasons. Not to pick on any district attorneys, but there is potential that people will be unfairly treated if someone is trying to make a name for themselves. There is also pressure on the people doing the review, juries perhaps, to err on the side of caution. There are several other questions I have on the text, which I will discuss with the Chairman off-line.

Assemblyman Horne:
I appreciate your concerns. There are also mechanisms in this bill to allow for the person to have counsel and to have their own evaluation. This is not

a unilateral process. The individual can place evidence in the record to show they do not meet the standard. Ms. Barraza, did you have a question?

Danielle Barraza:
I also wanted to note that section 15 points out that the district attorney must have sufficient facts in order to bring forth these allegations. That can be through psychiatric evaluations done while the person is in prison. So the district attorney cannot just make allegations without having supporting evidence.

Vice Chairman Ohrenschall:
Thank you, Ms. Barraza, and thank you, Chairman Horne.

Assemblywoman Dondero Loop:
Ms. Barraza, you have done a wonderful job organizing this presentation. You receive an "A" from this teacher. This is an excellent example of why we need to continue to support public education in our universities.

My question is twofold. Slide 9 of your presentation states that ". . . of the most dangerous offenders who received treatment, 81 percent did not commit a new offense." Then it further states that ". . . of the less dangerous offenders, 61 percent did not commit a new offense." Is there a reason the less dangerous offenders are at a lower percent and do we have any numbers of what Nevada's population would look like? You can get back to me if that information is not readily available.

Danielle Barraza:
In the study from which those statistics came, there were only approximately 31 people studied who were less dangerous and did not receive treatment. There were 16 of those people who did not reoffend, which is why it states there were only 61 percent who did not reoffend. However, when you look at the entire group studied, almost half did not reoffend. I do not have the exact number of people in Nevada who would be entering this program. However, I was told the program would start with approximately 15 people.

Assemblyman Sherwood:
Thank you, Ms. Barraza. That was the best presentation I have heard since I arrived in the Legislature, it was outstanding, specifically, 200 Tier 3 offenders that are the scope of the problem. There are three issues we are dealing with: protecting the public, not bankrupting the state, and helping the offender. Many of these Tier-3 offenders know they have a problem and they want help. One of the things I would request the interim committee to look at is a voluntary chemical castration and real-time GPS satellite monitoring. Those are things

that are being done right now in California, Iowa, and other states. If the offenders are given a choice of whether to take away all of their rights except for telephone, visitors, and access to television, or to have an ankle bracelet placed on them and receive voluntary treatment with chemical castration, they would probably opt into this civil commitment plan and, by doing so, save the state money. For the record, those two options are being used in London as we speak. If the offender voluntarily opts into such a plan, and there is no issue that it is coerced, we might even "cure the person," and that is something we might look into. I am not suggesting we put a chip in the forehead.

Assemblyman Brooks:
Ms. Barraza, you gave a wonderful presentation. As a follow-up on Assemblyman Daly's question, would the psychiatric evaluation that determines whether or not an individual would be required to be civilly committed be the same psychiatric evaluation normally given to individuals who are going before the parole board?

Assemblyman Horne:
A psychological evaluation is given to inmates as part of their assessment when they will be going before a parole board. I anticipate that evaluation will be one of the determinative factors on whether or not a district attorney will seek to civilly commit that particular inmate based on how they do on their psycho-sexual evaluation. I know it has to be given by either a psychologist or a psychiatrist. If developed, that level of evaluation can be determined through the interim committee, if we want to proceed in Nevada to monitor these persons.

Assemblyman Brooks:
How long can an individual potentially be kept in this program? In particular, someone who has been determined to have a psychological problem? Do we know the average number of years people have been kept in these programs, in other states?

Assemblyman Horne:
To be frank, Mr. Brooks, they can be kept in these programs indefinitely. Like any other involuntary civil commitment, as long as the person is deemed a danger to themselves or to others, that civil commitment can be maintained. If, within two years or so, the person is deemed no longer to be a danger to themselves or others, then the person can be released. If it continues for three decades, and the person is still determined to be a danger, the commitment can be continued.

Assemblyman McArthur:
Just as a point of clarification, section 53 of the bill, in particular paragraph 3, seems to make the entire bill retroactive even for people who have already been released. Is that correct?

Assemblyman Horne:
That is how I read it also. It states, ". . . before, on or after October 1, 2011."

Assemblyman McArthur:
It might be a real problem to go out and locate those people who have already been released from confinement.

Assemblyman Horne:
That could be a lot of trouble. That can be corrected and would be one of the recommendations for the interim committee to visit. As I stated before, we could not pass this bill today as it is. The fiscal note attached to this bill is enormous. We are recommending that an interim committee be created to see how we can proceed and in what scope. Civil commitment of people already released from confinement would be one of the points to be considered. To attempt to pull someone into the system who has been a law-abiding citizen for the last 30 years with no infractions would be an unintended consequence.

Vice Chairman Ohrenschall:
Thank you. I have a question about how other states that have implemented this plan are doing it. Section 24 of the bill allows a person who has been committed to petition the court every six months for release. Is that standard in the other states? If you do not know at this time, you can come back to us with that information.

Assemblyman Horne:
I am not certain what other jurisdictions are providing. I do not know which state our bill was modeled after when drafted. The purpose is to provide a procedural mechanism for the person so they can make their argument against being committed.

Vice Chairman Ohrenschall:
Thank you very much, Mr. Horne and Ms. Barraza, for an excellent presentation. Do we have any other witnesses either here in Carson City or in Las Vegas who would like to testify in support of the measure? [There were none.] We will start with the opposition to the bill.

Lisa Rasmussen, Chairperson, Nevada Attorneys for Criminal Justice:
Thank you, Mr. Vice Chairman. I am the chairperson of the legislative committee for Nevada Attorneys for Criminal Justice. We are the defense bar in Nevada. I submitted written comments to this committee (Exhibit E). This consists of a general outline of our opposition to the bill; first and foremost, being the fiscal issue. It appears that the bill is not going to pass today, so I thought I might talk about some of the things an interim committee should be addressing and why those things are important.

One question that was asked earlier in this hearing is how the provision for release is implemented in other jurisdictions. In 2000, I came to Nevada from California. I can speak about the California system. I am not suggesting that it is a model system in any way. I think in many ways it is quite broken. In California, a jury trial in the county of conviction is automatically provided every two years for each person who is under civil commitment. All of the offenders are in a facility located in Atascadero, a former federal prison. The jury makes one decision and one decision only: my community or Atascadero. This is why, as Assemblyman Daly pointed out, very few people are released. This is an emotional issue and these offenders are presented as dangerous sex offenders. Because of that, very few jurors are willing to release them. The chart provided for this hearing, indicates that only 59 of the 443 commitments in California have been fully discharged. That is consistent with my experience in California. Of those 59 people, at least 10 of them have died. Some people who did "earn" the right to release from a jury trial was because they were on their death bed. They were on the verge of dying and there was no risk that they could get out of bed, let alone injure anyone.

What you are being asked to do is very serious. It is something that needs a lot of effort and inquiry from you. This will have a major financial impact on Nevada as well as what it will mean to the justice community. No one is here to say that dangerous sex offenders do not exist. Nobody is advocating on behalf of dangerous sex offenders. However, there has to be some balance between what the provisions will be and how these persons will obtain their release. This commitment is not unlike a prison. First of all, I do not think anyone has identified what the facility will look like in Nevada. I can tell you what it is like in other states. When the proponents of the bill tell you this is not the same as prison, it is really not true. You cannot get in your car and go to 7/11 to buy a pack of cigarettes.

Vice Chairman Ohrenschall:
Pardon me for interrupting you, Ms. Rasmussen. Chairman Horne and Ms. Barraza mentioned an interim committee to study this issue. Would you and your group be willing to be part of that study?

Lisa Rasmussen:
Absolutely. There is so much that needs to be reviewed and your questions today are so good: How many people? What would it look like? How would people get released? The fact that you can petition every six months for release does not tell us how that would work. Do we get to go to a judge, or does the facility tell you, "No. You are not eligible now." All of these questions have to be addressed and answered. Therefore, I would relish the opportunity to participate in an interim committee.

Vice Chairman Ohrenschall:
That is great. I believe some testimony has been provided that in Texas, the people are not committed to a facility, but instead receive treatment on an outpatient basis.

Lisa Rasmussen:
I also note, Mr. Vice Chairman, from the data we were provided, that Texas has 4 to 8 hours of counseling per week, which is more hours than in California where people are actually in custody. Those are all valid issues that need to be addressed.

Vice Chairman Ohrenschall:
Thank you for your testimony. Are there any questions for Ms. Rasmussen? [There were none.]

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:
For the record I am the Legislative and Policy Director for the American Civil Liberties Union of Nevada (ACLU). We are here today in opposition to the bill. We are pleased that the Chairman has brought forward the idea of putting together an interim committee to address the substantive issues arising as a result of how this bill has been drafted. We find that forming an interim committee would be the most pragmatic approach to address this fairly complex issue. For the record, I want to note that during the last interim, there was an interim committee studying issues relating to sex offenders and our legal director, Maggie McLetchie, sat on that committee. That committee addressed a variety of issues including touching upon the treatment of sex offenders. We find that nationwide the treatment of sex offenders is substantially inadequate. If Nevada would take a thoughtful approach to addressing this issue, it is possible we could adequately address what is a very serious issue for the safety of Nevada's citizens.

I want to note that I appreciate the information put forth by the Chairman and his copresenter. Their testimony will be incredibly helpful for the Committee members, especially those who were not present for the discussions relating to Assembly Bill No. 579 of the 74th Session, and the 2009 discussions, particularly *ACLU of Nevada v. Masto et al*., Case No. 2:08-CV-00822-JCM-PAL (*ACLU v. Masto*) regarding the re-tiering of sex offenders. Moving forward with the interim committee is definitely pragmatic because so many of our laws are enjoined right now as a result of *ACLU v. Masto*. We believe that making substantive changes with regard to sex offenders would not be the best approach to take. Finally, I want to note that Virginia is a particularly interesting state regarding civil commitments. I hope that an interim committee will take the time to look into the substantive due process issues with which Virginia is embroiled, as a result of similar legislation they passed about a decade ago. Right now they are struggling with the costs of maintaining a program they have found to be quite inadequate at addressing the core problems of those who are civilly committed. We want to make ACLU available for addressing this concern as we move forward, not only with continued litigation with *ACLU v. Masto*, but also as a better way to address the core issues that are considered cruel and unusual and that deal with substantive due process issues, so that we make sure that the protections required under the *United States Constitution* are being permitted.

Vice Chairman Ohrenschall:
Thank you very much, Ms. Gasca. This Committee appreciates your organization's willingness to be part of the conversation in the interim. Are there any questions from the Committee of this witness? [There were none.] The next witness will be Laurie Johnson, Citizens For Change America, in Las Vegas.

Laurie P. Johnson, State Affiliate Leader, Citizens For Legislative Change America:
Good morning. I come before you as an extremely concerned citizen first and foremost, as well as to thank you for allowing me to go on record with some vital facts that must be considered in this bill. I really am excited about the way the conversations are going today, and the questions that are being posed, and with the idea of an interim committee as well. [Prepared statement entered as Exhibit F.]

As I reviewed Assembly Bill 181, and the description of the fiscal effects of the bill, I became alarmed at the additional costs our state is willing to incur without having properly reviewed all true facts and research available for the state's review. I have been corresponding with many professionals and I am offering to

provide them to you on a to-follow basis. I have spoken with them and they are willing to come in from across the nation on several of the bills.

Vice Chairman Ohrenschall:
Pardon me for interrupting you, Ms. Johnson. I just want to let you know that the proponents of the bill have mentioned that they are not planning to go forward with the bill today due to the fiscal costs, but would like the conversation to continue in the interim, in the form of an interim study. If you would be available to be part of an interim study, that would be very helpful.

Laurie Johnson:
I appreciate that. Thank you. I have researched this and one thing that stood out as to whether an individual would commit another sexual offense, is that each determination is made on an individual basis. I am familiar with our state determining sex offender dangers to our society on the crime for which they were convicted versus on an individual basis. Future sex offender policies must no longer be developed out of fear, hate, anger, or a vote, or creating the illusion of safety for the public. The sex offender policy has gotten out of control, mainly due to what I just mentioned. [Witness continues to read from prepared statement.]

It is a given that sex offenders must be treated. However, the cost to taxpayers in pushing for additional punishment over and above the current policy is not something I am interested in putting my taxpayer dollars towards. The current policy was created for dangerous, psychopathic, heinous, and sex offender killers. These offenders represent less than 1 percent of the sex offender population according to the U.S. Department of Justice statistics. The other 99 percent of the sex offender population are being treated the same way as the 1 percent. That is the reason I am adamant about individuals receiving treatment because of criteria they meet, and not just because of the crime for which they were convicted.

I have research by Dr. Jill Levenson available today. She currently shows Florida at a 1.7 percent recidivism rate. She is also the person who provided the 2008 Nevada Affidavit for the ACLU on Assembly Bill No. 579. In addition, I can provide research from Professor Eric Janus, Dean and President of William Mitchell College of Law and author of *Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventive State*, published in 2007. Finally, I have research from Charles Patrick Ewing, Ph.D, is a SUNY Distinguished Service Professor at The State University of New York at Buffalo, and author of *Justice Perverted*.

The question I ask the Committee to consider before voting on this bill, or any future bills, is this, "are these laws actually working?" I am able to provide this Committee with evidence-based proof that the current policy not working, while at the same time it is overworking our Department of Public Safety. The 2008 audit report of the Department of Probation and Parole lists over 20 failings, most of which are with the Sex Offender Unit. The failings include children as young as 6 years old who have been killed because the father is on a registry, with residence restrictions for all the public to see, and I can offer evidence of many other deaths in our own state due to the registry laws. Georgia and Florida have had two children, one 13-year-old and one 6-year-old, who are dead because of the registry policy. These and more innocent people are losing their lives and will continue to lose their lives. That is a major point to take into consideration during the interim committee discussions.

I would like to thank the Committee today for allowing me to speak and I will make myself available to work with any member or any committee, to prepare language that will protect all society, and to find ways to achieve cost savings to the taxpayers of Nevada.

Vice Chairman Ohrenschall:
Ms. Johnson, thank you very much for your testimony. If possible, would you email the studies you cited to the Committee? Your participation will be welcomed if there is an interim committee to study this issue. Are there any questions from the Committee for Ms. Johnson? [There were none.] The next witnesses are Mr. Orrin Johnson from the Washoe County Public Defender's Office and Ms. Tierra Jones from the Clark County Public Defender's Office.

Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office:
First, I would like to say that we appreciate the idea of an interim committee, as opposed to trying to pass this bill at this time. I want to share some of the specific impacts that public defender's offices will see from any bill that comes out of such a committee.

Washington State, the first state to implement a civil commitment program, has certain standards for public defenders and for any criminal defense attorney, as to how many cases they should be handling. The standards depend on the type of case. The recommendation for regular felonies is no more than 150 felony cases, per attorney, per year. For capital cases, or any case where there is life without the possibility of parole on the line, it is limited to 8 cases per year. For the type of case we are discussing here, the recommendation is that they only get 4 new cases per year, and that they handle no more than 12 active cases. As you have heard, each of these cases remains active

pretty much indefinitely. That takes up a lot of resources for a public defender's office and, in essence, makes these cases roughly equivalent to capital cases. One of the reasons for that expense and that time is that there are dueling experts who have to come in. Those experts are expensive and there are not a lot of them, so they have to come in from out of state. We have to hire them as a matter of due process.

Just as a point of comparison, a capital case costs about $250,000 before you get to the appeal process. In this particular bill, since the offender would be able to reapply once every six months, we would still have some of those same experts and same expenses each time. Those expenses would constantly increase because, as you heard, these offenders are not likely to be released. Certainly Texas might be a better model since they have the outpatient treatment program. Also, as food for thought, on page 3 of the bill where specific sexually dangerous offenses are listed offenses 1 through 4 carry a life tail. Even with offenses that have a possibility of parole, the offender is required to have an evaluation to determine their risk before that parole can happen. The parole boards are required to take that evaluation into consideration. There is a specific psychological panel to advise the parole board. As Assemblyman Brooks mentioned before, that law is likely to be modified this session through Senate Bill 187. One concern we have is whether any added expense for such a program is necessary, since we have multiple procedural protections in place for these specific dangerous crimes. Even in the other crimes, you are looking at 20 years they could potentially serve before being eligible for release. Those are some of the concerns we will bring to an interim committee. We appreciate the opportunity to work with the interim committee and provide whatever information that we can.

Vice Chairman Ohrenschall:
Thank you, Mr. Johnson. Are there any questions for Mr. Johnson from the Committee? [There were none.] Ms. Jones, please proceed.

Tierra D. Jones, representing the Office of the Public Defender, Clark County:
We do agree with everything stated by our counterpart in Washoe County and we would also appreciate the opportunity to participate in the interim committee.

Vice Chairman Ohrenschall:
Thank you very much. Are there any questions for Ms. Jones? [There were none.] We all appreciate your willingness to be a part of the conversation during the interim. The last witness signed in to speak is Rex Reed from the Nevada Department of Corrections.

Rex Reed, Ph.D, Administrator, Offender Management Division, Department of Corrections:
The Department of Corrections is neutral on this bill. I would like to point out for your consideration, a couple of items as the bill is currently drafted. The triggering mechanism mentioned on page 4, line 21, and page 5, line 23, states that the person has to be involved in the process about one hour from completing his sentence. I would like to point out the mechanics in this state. A person can have a sex offense conviction for which he is serving one sentence, to be followed by two or three sentences which the inmate must complete after the first sentence is completed. According to the language in this bill, when the inmate completes his first sentence, his civil commitment process would start. However, the inmate may still have two or three sentences to follow. Another example where it might be difficult for us to figure out how to handle the trigger mechanism is if a sex offender completes a program where he gets 180 credits. At that point, because those credits post immediately, the offender is closer to his release date, in which case the offender is beyond the one year limit. Those are some issues I wanted to point out to you about the trigger mechanism.

The other issue I have is with the language on page 6, line 29, and page 10, line 3, which talks about conditional release. I have been with the department since 1995, and the only conditional release of which I am aware is parole. Therefore, if this bill implies that we have some sort of authority over an inmate in a conditional sense when he is released, I want to point out that we do not. Even when an inmate is conditionally released on parole, our jurisdiction then transfers to the parole board.

In the first issue, where the triggering mechanism is discussed, the bill does not mention what is done when inmates are ready for parole. That is another form of release for sex offenders. Again, that triggering mechanism does not seem to address the issue about a trigger that occurs because the inmate is paroling. Thank you, Mr. Chairman and members of the Committee.

Vice Chairman Ohrenschall:
Thank you for your testimony, Mr. Reed. I hope that during the interim you and the Department of Corrections will also be available as part of the conversation. I do not see any questions from the Committee. I have one more witness who signed in as neutral to the bill, Mr. Munro from the Attorney General's Office.

Keith G. Munro, Assistant Attorney General, Office of the Attorney General:
Our office has had the opportunity to meet with the Division of Mental Health and Developmental Services and we also met with Chairman Horne about this bill. We signed in as neutral but we are supportive of Chairman Horne's efforts

to study this issue and present solutions to this body for best meeting the needs of our state. I would offer the services of one of our best deputies, Julie Slabaugh, to this Committee or to an interim committee, should it be formed.

Vice Chairman Ohrenschall:
Thank you very much, Mr. Munro. We appreciate that and we appreciate the Attorney General's attention to this important issue. I do not have anyone else signed in to speak. Is there anyone either here or in Las Vegas wishing to speak? Please come forward and state your name, sir.

Harold Cook, Ph.D, Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services:
I am the Administrator for the Division of Mental Health and Developmental Services (MHDS). I am responsible for the huge fiscal note that you see attached to this bill. This is the most complex fiscal note the Division has ever done. We normally turn fiscal notes out in three to four days. This one took us almost two weeks. If anyone has any questions with respect to the fiscal note, I will try to answer your questions. I appreciate Chairman Horne's efforts to further study this issue. I think it is very complex. Just to develop a secure treatment program will be something that will take months to do adequately. In conclusion, I would like to say that when I talked to the Chairman, I told him the fiscal note would be $170 million. Today, it is $155 million. If we looked at it again for another week it could go to $100 million, or it could go to $200 million. We need to take the time to analyze this issue and develop a good program.

Vice Chairman Ohrenschall:
Thank you, Mr. Cook. I have one question after looking at the fiscal note. Is most of the fiscal note based on capital costs of constructing a facility, or is it based on the costs of treating these committed sex offenders?

Harold Cook:
I think it is probably split about half and half. If you look at the first year of the fiscal note, there is a building and grounds capital cost of about $70 million or $71 million. That is to do two things: One, to renovate and harden a couple of existing vacant buildings that we have in MHDS. Two, the major portion of that cost is to build a new facility. We have a current design for a forensic facility in the South. We also have land that the State Public Works Board purchased around 2007 or 2008, upon which we could build the facility. Roughly, $70 million or $71 million of that cost is capital cost to build and renovate a couple of facilities.

Vice Chairman Ohrenschall:
If Nevada went to an outpatient-type facility, we would not have those capital costs. We would just have the treatment costs. Is that correct?

Harold Cook:
You are correct. It would just be the treatment costs. I can provide you with cost comparisons. In our research we found that secure facility-based costs, per individual, run somewhere around $90,000 to $100,000 per year throughout the country. In some states, it is $175,000 per year. The cost for Texas' outpatient program is roughly $27,000 per year.

Vice Chairman Ohrenschall:
It is my understanding that of the 200 Tier 3 offenders, there may be 15 or 20 who may actually qualify for this program. So was your fiscal note based on that number, or on a projection?

Harold Cook:
Our fiscal note was based on a guess. It did not include the current 217 Tier 3 sex offenders who are in the community. It was based on a guess that once the bill was enacted, Nevada courts could commit somewhere between 10 and 15 individuals per year to the program. At a maximum of 15, starting in fiscal year (FY) 2013, we would reach a caseload of about 115 or 120 by FY 2020. We also assumed that, like most states, we would have a very low release rate. So, our assumption was a caseload approaching 110 or 120 in 2020, with an average cost somewhere between $90,000 and $100,000 per year, per individual treatment.

Vice Chairman Ohrenschall:
Thank you for explaining that. Are there any questions from the Committee? [There were none.] Is there anyone else who wishes to testify on A.B. 181? Seeing none, I will close the hearing on A.B. 181 and I would like to hand the gavel back to our Chairman.

[Chairman Horne reassumed the Chair.]

Chairman Horne:
Thank you, Mr. Vice Chairman, for a thorough meeting on A.B. 181. We will bring that back to Committee on a work session document with the charge to create an interim committee study group to bring recommendations back to the next legislative session. I want to thank Ms. Barraza. As Mr. Hammond pointed out, it was a big bill and I passed it off to her for a learning experience. However, as I have learned, leaders utilize the talent that is around them.

She did a fantastic job, especially when you consider that this was her first time presenting before a committee and putting together such a presentation.

Is there any other business to come before this Committee? Hearing none, we are adjourned [at 10:18 a.m.].

RESPECTFULLY SUBMITTED:

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_____
Jean Bennett
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 4, 2011 **Time of Meeting: 9:03 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 181	C	Danielle Barraza, Judiciary Committee Intern	Civil Commitment Graph
A.B. 181	D	Danielle Barraza, Judiciary Committee Intern	Civil Commitment Presentation
A.B. 181	E	Lisa Rasmussen, Nevada Attorneys for Criminal Justice (NACJ)	NACJ Comments
A.B. 181	F	Laurie P. Johnson, representing the Nevada Affiliate, Citizens for Change America	Prepared testimony