MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
February 28, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 9:04 a.m. on Monday, February 28, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Elaine Voigt, Executive Director, My Journey Home, Inc.
Eddie Floyd, Public Information Officer, My Journey Home, Inc.
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Mark Woods, Deputy Director, Division of Parole and Probation, Department of Public Safety
Larry D. Struve, Religious Alliance In Nevada
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Wesley Goetz

Chris Craig, Director, Citizens for Consumers Rights
Jeffrey Mohlenkamp, Deputy Director, Support Services, Department of Corrections
Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Division of Parole and Probation, Department of Public Safety
David Smith, Senior Hearings Examiner, State Board of Parole Commissioners, Division of Parole and Probation, Department of Public Safety

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 159.

SENATE BILL 159: Makes various changes governing offenders. (BDR 16-74)

SENATOR GUSTAVSON:
I have written testimony describing this bill and explaining the need for it (Exhibit C).

CHAIR WIENER:
Could you explain the process of bonding probationers and how it works?

ELAINE VOIGT (Executive Director, My Journey Home, Inc.):
I was appointed by the U.S. Department of Labor (DOL) as the administrator for the federal bonding program in Nevada. The federal bonding program provides a fidelity bond for ex-offenders that bonds them for theft, larceny, fraud and embezzlement. Nevada has not had a bonding program in place since 2005. When I called the DOL to ask about this, I was asked about my background in insurance; when I said I had nine years in insurance, I was appointed to the job.

This program is not just for ex-offenders. It is also open to people who were on welfare, had a dishonorable discharge from the military, had a history of drug or alcohol abuse or are otherwise considered a high risk for a fidelity bond. The program bonds those people for six months at no cost to the taxpayers, the employers or the employees. We have sponsors who will pay for the bonds as they are issued.

CHAIR WIENER:
Did the bonding program in place before 2005 require statutory language to work?

MS. VOIGT:
I do not believe it did, no. When I talked to the DOL about this, the gentleman I spoke with said he did not understand why it had been dropped in Nevada. He felt someone somewhere dropped the ball. He was so excited to have someone to administer the program in Nevada again that he gave us ten free bonds.

The program has been quite successful in placing people. There were two companies in Reno that would not deal with ex-felons or anyone who was a high risk. When I mentioned the bonding program, I was able to get two people hired. Now that employers are finding out that we have bonding available, they are ready to hire people because there is less of a risk for them.

SENATOR COPENING:
These changes seem good to me. There does not seem to be any existing law that addresses helping released felons find work. How did this bill come about?

SENATOR GUSTAVSON:
I am not aware what was in place before. Section 1 of the bill requires the director of the Department of Corrections (DOC) to inform inmates that this bonding program is available when they leave prison. They did not have to do this before. We wanted to make sure inmates were aware of the bonding program.

SENATOR COPENING:
What is the reasoning behind section 2, subsection 1, paragraph (b) of the bill? Is this provision here because you believe probationers need to pay restitution, but there is no existing law requiring them to do so?

SENATOR GUSTAVSON:
There is a provision in the law that they must pay restitution, but it does not say how that restitution is to be paid. This bill sets up a program where a trust fund must be set up to pay for "child support or any other obligation ... specified by the court." It is not mandatory, but it allows the court to order the probationer's earnings to be placed in a trust so money is set aside for restitution.

SENATOR COPENING:
This is not part of your bill. I would like to know if anyone plans to address the provision in the *Nevada Revised Statutes* (NRS) that offenders may be given up

to $100 when released. This is in NRS 209.511, subsection 1, paragraph (a). Is that as crazy as it sounds? There is not much we can do about it in our current budget situation, but that amount is so small. Sending released felons out the door with $100 is setting them up to fail.

SENATOR GUSTAVSON:
It used to be $20. I agree that the amount is too small. If we were in a better financial state, we could change that. However, now is not the time.

EDDIE FLOYD (Public Information Officer, My Journey Home, Inc.):
I am with Fox News, and I also volunteer as the Public Information Officer for My Journey Home, Inc. I support S.B. 159. There are very few programs that give ex-felons the skills they need to handle themselves, create a resume, interview well and get a job. As you said, we are setting them up to fail. The intent of the bill, the way I read it, was not to cost the Nevada taxpayer one red cent, if at all possible. If there is a way to have alternative sentences so offenders are not incarcerated—for example, if they are placed on house arrest and able to work during the day—the judge may, at his discretion, have their funds placed into a trust account.

SENATOR BREEDEN:
Section 2, subsection 2 of S.B. 159 refers to a Category B felony "which does not involve the use or threatened use of force or violence." Can you give me an example of a crime that meets this criterion?

SENATOR GUSTAVSON:
Shoplifting is sometimes charged as a Category B felony because it is classified as burglary.

BRADLEY A. WILKINSON (Counsel):
Burglary is the most common nonviolent Category B felony.

CHAIR WIENER:
If you recall, this is one of the areas the Advisory Commission on the Administration of Justice was concerned about.

ORRIN JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):
We are in favor of this bill. We are in favor of any measure that provides additional opportunities for redemption and honestly repaying monies owed. Paying for what they did in the most direct way possible is a necessary prerequisite for felons to earn that redemption. We are also in favor of any measure that keeps people out on the streets and learning to be productive members of society, as opposed to sitting behind bars at taxpayers' expense learning to be better criminals.

We initially had some concerns about section 2, subsection 1, which makes the creation of a trust account discretionary rather than mandatory. If this is not the intent, we are concerned that it might be read that way. This is a tool judges currently have, but we like the idea of putting it in statute so judges are aware of the tool. In cases where a lot of restitution is owed, the reasoning seems to be that since there is a doubt as to whether offenders will ever pay, we might as well punish them anyway. This gives us another way to make sure the victim is able to be made whole. It is one more argument for me or any other defense attorney to argue for keeping offenders out of prison so they can keep working.

There are other mechanisms for restitution in place. A probation or parole revocation hearing will sometimes lead to the offender being returned to prison, which is much more expensive. It is also a reactive method of getting that money paid back. Establishing a trust fund up front is a better option.

With regard to Senator Copening's statement about the $100, I agree that it is too small an amount. However, if you gave offenders $1,000 on release from prison, it would not necessarily help. Most of my clients are not savvy money managers or life-skills managers, which is often why they are my clients. It is programs like this that will set them up for success.

With regard to nonviolent Category B felonies, it is quite common to see shoplifting charged as a burglary. Any time you enter a house, a car or any structure with the intent of committing larceny of any kind or to obtain money by false pretenses, that is a burglary. Walking into a pawn shop with stolen goods is therefore considered a burglary. Burglary is a Category B felony with a sentence of one to ten years. Another example is unlawful transport of a controlled substance. Possession of a controlled substance is a Category E felony with mandatory probation in most cases. However, if you have a

controlled substance in your car and drive three miles down the road, you have now committed a Category B felony, which carries a penalty of one to six years in prison. We see that charge most often when there is a lot of the substance involved, but not enough to warrant a charge of trafficking.

MARK WOODS (Deputy Director, Division of Parole and Probation, Department of Public Safety):
We are in support of S.B. 159. It gives our officers another tool to help offenders succeed. As you have heard, it is difficult for probationers or parolees with few resources to succeed in trying to lead a law-abiding life if they cannot get a job or counseling. This bill is a tool to help those with limited resources make it on the outside.

With regard to the bonding program, I have been doing this for 28 years, and I was not aware of the bond program. The Division of Parole and Probation (P&P) has not had anything to do with bonds in the past. We do not know where the program went or how it disappeared.

CHAIR WIENER:
We will see if we can find some history. It is an issue that has been before the Senate Judiciary Committee in the past. Could it have been managed by the Department of Employment, Training and Rehabilitation (DETR)?

MR. WOODS:
That is possible. Since bonding did not affect P&P directly, we did not control it. There is a good chance it was out there somewhere else.

MS. VOIGT:
It was managed by DETR until 2005.

CHAIR WIENER:
We will do some research and see if we can find out why it was dropped.

LARRY D. STRUVE (Religious Alliance In Nevada):
The Religious Alliance In Nevada (RAIN) has been interested in the subject of prisoner reentry for several years. We were involved with the studies done by the Advisory Commission when Justice James W. Hardesty chaired it, and he invited us to become involved in finding solutions to the problems encountered by the people who are released from prison. We have reviewed S.B. 159 and

are happy to support it. We would like to publicly thank Senator Gustavson for bringing this bill forward.

I have written testimony describing our support of the bill and proposing an amendment to the bill to require the director of the DOC to provide either valid identification (ID) or information on how to obtain such ID to those being released from prison (Exhibit D). We have framed the amendment to be revenue neutral or of minimal impact. The DOC has grant funds it is using to produce IDs for prisoners preparing for release, though we do not know if those grants will continue.

We also support Assembly Bill (A.B.) 92, which would waive fees at the Department of Motor Vehicles to issue duplicate Nevada driver's licenses and ID cards. It would also waive the fee to produce a copy of a Nevada birth certificate. Any of these items would give an ex-offender the ID he needs to seek employment, apply for a bond, apply for housing and do many other things necessary to reenter society.

ASSEMBLY BILL 92: Provides for the waiver of fees for the issuance of certain forms of identifying information for certain persons released from prison. (BDR 40-598)

MR. STRUVE:
We have put our money where our mouth is with regard to the issue of ID for released offenders. Page 2 of Exhibit D is an insert for church bulletins that we have used throughout Nevada to raise funds for prisoner IDs. So far, we have raised $14,000 for this effort. When you consider the average donation is $10, that is over 1,400 people in Nevada asking you to pay attention to this issue. The amendment we are requesting would significantly enhance our efforts to deal with this problem.

CHAIR WIENER:
You mentioned this effort on the first day of this Legislative Session. It looks like you have been hard at work raising money since then.

MR. STRUVE:
Yes, we have. James G. (Greg) Cox, Acting Director of the DOC, has asked RAIN to continue in this effort. He has also asked us to be involved in developing a mentoring program that would work with ex-offenders to get ID,

find jobs and get housing. It has great potential, but people in the faith community will need training on dealing with ex-offenders.

I consider this a community problem, and we can address it by working together. I hope you appreciate the scope of the problem you are dealing with. Mr. Cox said over 5,000 prisoners are released back into society each year. If getting them valid ID saves even a handful of them from going back to prison, it will offset whatever minimal fiscal impact this bill has.

SENATOR GUSTAVSON:
This amendment sounds like it would be complementary with the rest of the bill. I have no objection to adding it to S.B. 159, as long as the rest of the Committee agrees and there is no financial burden on the State.

MR. STRUVE:
We will be happy to work with you on this effort.

SENATOR COPENING:
Is there any organization like RAIN in southern Nevada?

MR. STRUVE:
We are statewide. The RAIN board is comprised of ten people, two from each denomination; half are from southern Nevada and half are from northern Nevada.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
We support this bill. We think it is a sensible bill that will help ease the burden on the criminal justice system by lowering the recidivism rate and being more responsive to the needs of ex-offenders.

The one portion of the bill that gave us concern is in section 2, subsection 1, paragraph (b), which requires that "any earnings of the probationer be held in a trust." Requiring that "any" of the probationer's earnings be held in trust may result in a bureaucratic nightmare. Individuals who have just been released from prison need a hand up, and this could undermine their growth by requiring that the court administer their entire financial situation. I do not believe that is what Senator Gustavson was aiming for.

CHAIR WIENER:
Mr. Wilkinson, does the use of the word "may" in section 2, subsection 1, alleviate this problem? It gives permission to use this tool but does not require it.

MR. WILKINSON:
The requirement is certainly discretionary on how the court sets this up. The concern is that "any" might be interpreted to mean "all." I cannot imagine it would be imposed in that fashion.

CHAIR WIENER:
I would struggle with that as well. We will look at the language. Any qualifier could be interpreted the same way—if we change it to "a portion thereof," the portion could be 99 percent.

WESLEY GOETZ:
I am a former inmate who was convicted of a Category B felony.

Regarding restitution fees, when I was on probation I made good money installing chains on Highway 80. In those two months, I paid out $900 toward restitution and made enough to see a counselor twice a month. Being put back in prison put a dead stop on all my employment, and I could not pay anymore toward restitution. Putting me back in prison cost the State $200,000 to keep me there for ten years.

Regarding the difficulties of reentry, it is hard to find a job when you get out of prison. When I got out, I found that you have to apply for jobs online. I had to learn how to make a resume after I got out of prison. I had all this free time in prison that I could have used to learn things like how to find a job on Nevada JobConnect. Another way to fix that is have jobs in prison where you can actually make money. Even at $4 or $5 an hour, a person in prison for two years would come out with enough to get a place to rent, buy a car and buy tools for his job. That would save the State money because he is working for that money. It also gives the parolee enough money for counseling. My family had to support me for five months after I got out.

CHRIS CRAIG (Director, Citizens for Consumers Rights):
We support this legislation and believe it is a step in the right direction to help offenders move forward, find employment and repay obligations once released. I concur with the comments made about the proposed amendment.

Restitution is considered a judgment. Before that judgment is rendered, typically the debtor goes through a debtor's examination of some sort. Judgment creditors are only entitled to receive 25 percent of the debtor's disposable income. In addition, we work on a lot of foreclosures and bankruptcies, and we have had a number of clients whose businesses went under because one of their debtors was sent to prison. It is much better to keep a nonviolent offender from going to prison and have him in society earning a wage, keeping the family unit intact and keeping those bills paid. Community service and other alternative sentencing options are better options than throwing someone away. Granted, this is not the best time to release people, when we have a high unemployment rate. However, this country was founded on second and third chances.

JEFFREY MOHLENKAMP (Deputy Director, Support Services, Department of Corrections):
We have a small fiscal note attached to this bill. I would like the record to show a reduction in that amount. The cost of providing informational literature has not changed, but since we will not be hiring additional staff or contracting for this purpose, that cost should be eliminated. That makes the total fiscal note on this bill $1,957 for the first year, $2,610 for the second year and a total impact on future biennia of $5,220.

Regarding the proposed amendment, if it simply requires us to provide information on how to obtain ID, the DOC would have no additional fiscal note on this bill. If the requirement is for us to provide IDs, there will be a fiscal impact that we will have to assess.

CHAIR WIENER:
Will you be able to get that information to us in the next several days?

MR. MOHLENKAMP:
Yes.

SENATOR GUSTAVSON:
The fiscal note on this bill is minimal. If we had only one offender who did not go back to prison, it would more than cover this cost.

CHAIR WIENER:
I will close the hearing on S.B. 159 and open the hearing on S.B. 187.

SENATE BILL 187: Revises provisions governing parole. (BDR 16-640)

CONNIE S. BISBEE (Chairman, State Board of Parole Commissioners, Division of Parole and Probation, Department of Public Safety):
This bill removes the requirement that a prisoner convicted of certain sexual offenses be certified by a panel. Instead, it requires that before such prisoners are granted or continued on parole, they are to be evaluated by a panel as to their risk to reoffend in a sexual manner. The bill authorizes the State Board of Parole Commissioners to require an evaluation of a sex offender if it may assist the Board in making decisions related to parole. It clarifies that a prisoner does not have a right to such evaluation or reevaluation, and that the actions of the panel in evaluating or not evaluating a prisoner do not rise to the cause of action. Finally, it provides that certain meetings of the panel are subject to the Open Meeting Law (OML) and others are not.

I will go through each section of the bill. As the statute now stands, the psychological review panel is able to prevent the Board from making a parole decision by refusing to certify an offender. The language in section 1, subsection 1 of S.B. 187 requires the panel to evaluate offenders to determine if they are at risk to reoffend, while leaving it up to the Board as to whether they continue on or are granted parole.

Subsection 2 gives the Board the ability to require a panel to conduct an evaluation on a sex offender if the evaluation would assist the Board in determining whether parole is appropriate. The language in this bill is the result of work between the Office of the Attorney General, the DOC and the Board. This section does not grant prisoners the right to be evaluated or reevaluated. It also does not restrict the panel from conducting an evaluation if it may assist the Board in making parole decisions. This prevents a cause of action from being brought against the State's political subdivisions.

Subsection 4 is new and requires the panel to adopt regulations pertaining to the evaluation of prisoners. The panel will be required to report as to the validity of the evaluation instrument used.

As the law now stands, the panel tells us only whether they have certified the offender or not. This gives us only one piece of information: that the offender has a high risk of reoffending sexually, or that the offender does not have a high risk. Subsection 5 changes that to require the panel to rate the prisoner as a low, moderate or high risk to reoffend in a sexual manner.

Subsection 6 requires the panel to review the standards of assessment and regulations at least once every three years and make a finding as to the validity of the standard of assessment. That is similar to what the Board does with their risk assessment.

Subsection 7 gives the panel the ability to adopt a new standard of assessment if they find one that is more effective.

Subsection 8 lists the offenses that make a prisoner subject to evaluation by the panel. The offense in paragraph (d) is "Abuse or neglect of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation and is punished as a felony." When this statute was first written, an error was made in drafting leaving out the sexual aspect of the definition. Since that time, inmates convicted of abuse or neglect of a child are required to be evaluated to determine if they are a risk to reoffend sexually, when their original offense did not have a sexual component. This change is intended to restore the language that was originally supposed to be part of this section and correct that longstanding error.

Subsection 9 allows the Board to adopt regulations concerning the way evaluations will be used.

Subsection 10 defines which meetings of the panel are subject to the OML, as per the recommendation of the Attorney General. Paragraph (a) states that meetings to evaluate prisoners are not subject to the OML, and paragraph (b) states that meetings for any other reason are subject to the OML. When the panel evaluates a prisoner, this is a mental health evaluation. In participating in these meetings, representatives from the Office of the Attorney General have stated they do not feel that is an appropriate subject for the OML.

Subsection 11 defines the terms "current term of imprisonment" and "reoffend in a sexual manner" to ensure that they are crystal clear.

CHAIR WIENER:
In section 1, subsection 3, you have removed the references to certification and replaced them with evaluations. What is involved in certification under current law?

DAVID SMITH (Senior Hearings Examiner, State Board of Parole Commissioners, Division of Parole and Probation, Department of Public Safety):
Certification requires that the person be under observation while confined to the DOC. In addition, existing statute restricts certification to those who do not "represent a high risk to reoffend based upon a currently accepted standard of assessment." The panel completes assessment tools for an offender, then meets with the offender. The panel then makes a decision as to whether to certify the offender. Changing this to an evaluation with three possible ratings—low, moderate or high risk—gives the Board more information about the offender upon which to base its decision.

CHAIR WIENER:
An evaluation seems to be a more complete process than certification. What is required for a certification? Does the panel observe the inmate for an hour? Can you explain that piece of it?

MS. BISBEE:
That is one of the problems: there is no definition of certification in the statute. This bill defines evaluation so that it can be done as it would be done in any psychological arena. The evaluators meet with the offender; they have the opportunity to observe the offender in treatment groups and counseling sessions; they review the inmate's record and history. Hours go into completing each assessment. Multiple assessment tools are available for the panel's use if needed. This is a much more realistic requirement, and one that a psychological professional could use to give us a report with some substance to it.

CHAIR WIENER:
As I understand it, under S.B. 187, the panel evaluates the prisoner and the Board makes the decision on parole. That is different from the current situation, in which the Board cannot go forward with parole for an inmate if the panel does not give the green light. Is that correct?

MS. BISBEE:
Yes. That is inconsistent with the authority the Legislature has given the Board. You are essentially telling the Board to make the decision, while at the same time producing an entity that is supposed to be assisting the Board telling the Board it cannot do something. Of course, the Board would be foolish to ignore it if the panel told them an inmate was at a high risk to reoffend.

SENATOR COPENING:
Section 1, subsection 1 of the bill states that the Board shall not grant parole unless a panel evaluates the prisoner. However, section 1, subsection 2 states that the Board may require the panel to conduct an evaluation. Is there a contradiction between these two provisions?

MS. BISBEE:
No. Subsection 1 refers to prisoners convicted of one of the sex offenses listed in subsection 8. Subsection 2 allows the Board to ask the panel to evaluate sex offenders as defined by NRS 179D.095. This change was recommended by the Attorney General.

MR. SMITH:
The offenses listed in subsection 8 are specific to Nevada statute. The offenses in NRS 179D can include offenses from other states not listed in Nevada statute. This means, for example, if someone with a prior sexual offense in California is convicted in Nevada for possession of a controlled substance, we can request evaluation of the person's risk to reoffend in a sexual manner.

MR. JOHNSON:
We oppose this bill under the concept that if you are going to take away someone's liberty, you ought to do it openly. This bill allows a black cloth to be drawn over a procedure that will keep people behind bars for years. It keeps the decision of whether to release inmates away from the public eye and away from any kind of accountability, either through a lawsuit from the inmate or through the general public. Having dealt with a wide array of crimes, I can agree that some people ought never be paroled. However, if that is the case, we should not be afraid to have those hearings be open.

This bill was clearly written in response to *Stockmeier vs. Department of Corrections Psychological Review Panel*, 122 Nev. 385, 135 P.3d 220 (2006). That decision found that parole hearings are not a quasi-judicial proceeding and

thus are subject to the OML. The court did not just say it was a matter of policy; instead, it was discussed in terms of due process and constitutional protections deriving from rights that you have when you go to trial. The OML makes public agencies and public employees accountable because the light of the public shines on them. People have the opportunity to be heard and to be informed about hearings before they happen. In *Stockmeier*, the Nevada Supreme Court described the hearing in question as an ambush because the offender was accused at the hearing without proper notice of all kinds of new allegations against him, and then the panel relied on those allegations to keep him in prison.

The panel hearings are either subject to the OML, with notice given ahead of time and the opportunity for the public to be heard, or they are quasi-judicial hearings, with the right to call witnesses, cross-examine and appeal the decision. This bill places these hearings in a black hole between these two definitions, with no relief if the Board acts improperly. This bill gives the Board the ability to keep an offender in prison by refusing to request an evaluation by the panel. That was one of Mr. Stockmeier's problems.

This bill would create a situation in which that decision-making process is not subject to any review or any light of day. That is simply wrong. If you are going to make a decision that deprives someone of liberty, let us have it out in the open and have it subject to the OML. We believe current law provides adequate ability for the Board to keep someone behind bars if it is appropriate, but it also provides adequate ability for the person or the public to hold the Board accountable if it is not doing the right thing.

MS. GASCA:
We oppose S.B. 187. This bill would be technically unenforceable as a result of the permanent injunction handed down by a federal court in *ACLU of Nevada vs. Masto et al.*, Case No. 2:08-cv-00822-JCM-PAL, for which Maggie McLetchie, Legal Director, ACLU of Nevada, was the lead counsel. It sets aside that injunction, is improperly retroactive and fails to provide adequate due process. Finally, as drafted, S.B. 187 undermines the OML.

This bill raises important questions about how the Legislature should proceed in light of ongoing litigation regarding sex offender laws. In 2007, we filed suit against A.B. No. 579 of the 74th Session to prohibit its enforcement. This bill cannot be implemented as drafted because it incorporates and relies on the

enjoined law, particularly NRS 179D.095, which is referenced in section 1, subsection 2 of S.B. 187. There is more information on this in the booklet "ACLU v. Masto," which was published by the Legislative Counsel Bureau and is available on its Website: <http://leg.state.nv.us/Division/Legal/LawLibrary/ACLU%20v%20Masto/ACLU%20v%20Masto%20booklet.pdf>.

Since those sections of the NRS are null and void, changes made to them that incorporate those provisions are likewise null and void. Nevada is currently operating on the sex offender laws in existence before A.B. No. 579 of the 74th Session was passed. The federal Adam Walsh Child Protection and Safety Act, on which A.B. No 579 of the 74th Session was based, has itself been changed.

I will not get into the costs related to enforcement. I would like the record to reflect that Ms. McLetchie sat on the Advisory Committee to Study Laws Concerning Sex Offender Registration during the interim. The Advisory Committee heard extensive testimony about the cost and complexity of these laws and their enforcement status.

We see the expanded scope of the panels in S.B. 187 as unchecked power. By expanding NRS 213.1214, which lists the crimes that will cause offenders to be subjected to sex offender review panels, section 1 changes the existing language from being limited to only those released on parole to those granted parole or continued on parole. That could theoretically include prisoners who have served, are serving or have yet to serve their time. This is the main component of our challenge to A.B. No. 579 of the 74th Session, as far as applying it retroactively. There are huge due process concerns with this.

Section 1 of the bill expands the categories of offenses that subject offenders to evaluation. Under existing law, those offenses are limited to the offenses in NRS 213.1214, subsection 5. Section 1 would renumber that subsection to subsection 8 and include additional offenses listed under NRS 179D.095. Although there is some overlap, NRS 179D.095 is much more expansive to the extent that it lists any other offense involving any sexual act or sexual conduct with another. It even includes open and gross lewdness, pursuant to NRS 201.210, which for a first offense is not even a felony. This expansion further exacerbates the needle-in-a-haystack issue we brought up in our litigation. It is penny-wise, pound-foolish, and it is not a good way for the Legislature to move forward.

This bill also vests review panels with unchecked power, in that it provides no limits or even guidelines to the review panel requiring evaluation. It gives the panel carte blanche to use different standards of evaluation for different people at different times without any criteria beyond their own discretion. It goes beyond any limit on reasonable function by expanding the number of individuals covered, both in terms of the crime involved and the individual's current status. It also grants authority that is virtually unfettered discretion. The panels have unchecked power to establish and apply standards by denying people subject to review panels any right to challenge those findings.

Our prior board president, Richard Siegel, sat on the Advisory Commission during the interim and heard testimony relating to the psychological review panels. He noted that there was indeed often an acute privacy interest for some of the individuals reviewed by the panel because it innately deals with mental health and medical issues. As such, portions of the panel's work should likely be kept from the public's purview. However, this does not mean all of the panel's work needs to be kept hidden. As drafted, the bill specifies that the panel itself is not subject to the OML. That is therefore cause for concern.

We remain open for any discussion on this bill. We are interested in having the Legislature review these sex offense laws comprehensively so we can operate in the most effective manner that protects public safety while also protecting the U.S. Constitution.

CHAIR WIENER:
What laws currently cover the area of sex offenses?

MS. GASCA:
We are operating under the pre-2007 standard, that which was in existence before the federal Adam Walsh Child Protection and Safety Act of 2006 was enacted. Since that time, federal laws have changed, which means that we are operating under a different set of laws from those at the federal level.

MR. GOETZ:
While I was in prison, it was suggested to me that I find out if the psychologists staffing the sex offender treatment programs in the prisons are licensed by the State of Nevada. I discovered that they are not licensed by Nevada or any other state. This led to my being put in solitary confinement for six months for challenging the credentials of the therapists.

The individuals serving on the panel are licensed, but do we know what credentials or training they have in treating or assessing sex offenders? If they know how to treat sex offenders, they should know how to assess them. They need to have training on how to treat sex offenders to lower their recidivism rate or tier level. I have a copy of the audit report on the sex offender certification panel program from 2000 (Exhibit E). This report noted that in 2000, no formal training had been given or even planned for panelists and recommended it be done. This has still not been accomplished.

If sex offenders are to have a low risk to reoffend when they get out of prison, they must receive treatment from licensed and trained psychologists. These therapists should be able to go to the panel with information about the risk assessment tests they have given the offender, how the offender is being treated and what goals offenders have to change their behavior. This would give panel members the information they need to make a better decision about the offender. In my case, the three times I went to the panel, I was given 13 minutes to tell my story. My own licensed psychologist came to prison and spent 6.5 hours to give me 17 different tests. I sent these results to the panel the week before my review, and they would not even look at them.

MR. SMITH:
The Board's evaluation process uses a validated risk assessment for general recidivism. It does not predict potential for violence or future sexual misconduct. With regard to future sexual misconduct, we rely on information from the panel. Since the *Stockmeier* ruling, the flow of information to the Board in these cases has been limited. There are situations where a person has consecutive sentences. For example, a person might have two consecutive sentences, one for ten years to life and another for ten years, both for sex offenses. The Board gets little information on that life sentence as to whether to let offenders go on to the consecutive sentence. Part of this is to allow the Board to look at these evaluations as a whole. Knowing whether the risk is low, moderate or high is important for the Board, not just whether offenders were certified or not. That is why we recommended those changes about the level of risk.

With regard to standards being applied retroactively, it has been established that the Board can change the guideline it is looking at today. It is not ex post facto to apply a standard that was created today to an offender who was convicted years ago.

Mr. Johnson mentioned the *Stockmeier* decision and the question of whether the Board is quasi-judicial. The Nevada Supreme Court later ruled, under a different case, that the Board does operate as a quasi-judicial body, but it is not subject to the test cited in *Stockmeier*.

The OML exists to allow the public to participate in functions of government agencies that are expending public monies, creating public policy or making decisions that affect the public. When a panel evaluates a sex offender, it is talking about this person in particular and providing information to the Board. When we evaluate an offender, we have a single person do it. A panel has three people on it, which makes it subject to the OML. The Legislature has the authority to decide when the OML is appropriate and when it is not. We intended to address this by stating that when a panel evaluates an individual, it would not be subject to the OML; when it conducts business, it would be subject to the OML. I understand that subsequent to the discussion earlier, there would not be an issue if that section were stricken and all those evaluations continued to be subject to the OML.

MR. JOHNSON:
The *Stockmeier* decision is still good law. Another case that talked about parole hearings being subject to the OML was *Witherow vs. Board of Parole Commissioners*, 123 Nev. 305, 167 P.3d 408 (2007). The decision in that case states: "In *Stockmeier*, we concluded that quasi-judicial proceedings were exempt from the Open Meeting Law, but that psychological review panel certification hearings are not quasi-judicial proceedings." That decision did not overrule *Stockmeier*. We therefore understand that business meetings of the Board are subject to the OML, even with this bill. It is the status of the panels that is still in question.

Having said that, I have spoken with those who presented the bill, and we are happy to work out some language that will address our concerns and still comply with the intent here. We read the bill differently than was intended.

CHAIR WIENER:
Please also work with Ms. Gasca on this effort as well.

Is there any public comment or any further business to come before the Committee? Hearing none, I will adjourn this meeting at 10:44 a.m.

RESPECTFULLY SUBMITTED:

_____
Lynn Hendricks,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 159	C	Senator Gustavson	"Introductory Remarks on Senate Bill 159"
S.B. 159	D	Larry Struve	"RAIN Support for SB 159 with Proposed Amendment"
S.B. 187	E	Wesley Goetz	*Audit Report: State of Nevada Department of Prisons Sex Offender Certification Panel, 2000*