

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
February 13, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:06 a.m. on Wednesday, February 13, 2013, 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 nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Nancy Davis, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Patrick Conmay, Division Chief, Records and Technology Division,
Department of Public Safety
Julie Butler, Records Bureau Chief, Records and Technology Division,
Department of Public Safety
Brett Kandt, Special Deputy Attorney General, Office of the Attorney
General and Executive Director, Advisory Council for Prosecuting
Attorneys
Eric Spratley, Lieutenant, Legislative Services, Washoe County
Sheriff's Office
Brian O'Callaghan, Government Liaison, Office of Intergovernmental
Services, Las Vegas Metropolitan Police Department
Tonja Brown, Private Citizen, Carson City, Nevada
Wesley Goetz, Private Citizen, Incline Village, Nevada

Chairman Frierson:

[Roll called.] We have only one bill today, but first we have a presentation from Patrick Conmay with the Records and Technology Division of the Department of Public Safety.

Patrick Conmay, Division Chief, Records and Technology Division, Department of Public Safety:

With me today are Catherine Krause, Chief Information Technology Manager of our Technology Bureau, and Julie Butler, our Records Bureau Chief. I am here today to present an overview of the Department of Public Safety's (DPS) Records and Technology Division, and how we relate with statewide law enforcement, other DPS divisions, the courts, and the public. [Read from written text ([Exhibit C](#)).]

Chairman Frierson:

In regards to visiting the website, I believe the bill we are hearing today proposes to remove the requirement that a log be kept of inquiries. Is there currently a log to record those individuals who make requests on the website, or is that an outdated provision in the statute?

Patrick Conmay:

Julie Butler is going to present that portion and she can probably answer your question more thoroughly than I.

Chairman Frierson:

Thank you, we can address that during her presentation.

Patrick Conmay:

Slide 13 discusses the Brady Point of Sale program. Brady is the name-based instant criminal background check on potential firearm transferees per the federal Brady Handgun Violence Prevention Act of 1993. [Continued to read from written text ([Exhibit C](#)).]

Chairman Frierson:

When someone applies for a job, what kind of employers can submit for a background check? Also, if someone has a record sealed, or has an arrest that did not result in a conviction, how is that reflected on a records request that an employer would receive?

Patrick Conmay:

If a record is sealed, that record is not accessible in the background check. We have a bill pending to try to ensure that records that have been requested or ordered to be sealed are not missed and are properly sealed. There were some loopholes in the process and we are trying to close those with a bill this session. There is a difference between a fingerprint-based background check and the civil name check. We are governed by statute and by federal requirements as to who can access a fingerprint-based background check. Julie Butler can discuss the civil name check.

Chairman Frierson:

If someone is filling out an application that asks if the individual has ever been arrested or convicted and the record has been sealed, what is the appropriate answer? If the individual says yes, and it is not on the record, is he or she over divulging? If he or she says no, is this misleading?

Julie Butler, Records Bureau Chief, Records and Technology Division, Nevada Department of Public Safety:

If records are sealed, the applicant is legally able to answer that he or she has never been arrested. It is as if the record goes away. We do have Senate Bill 45 this session to basically make sure the record is sealed in every entity that may have had custody of that record. We might seal the record in the repository, we will give the information to the Federal Bureau of Investigation (FBI) and they will seal it, but then possibly it is not sealed at the

agency where the arrest took place, or maybe the court that adjudicated it did not seal it.

In terms of fingerprint-based background checks, they are pursuant to a statute and are typically for occupational licensing or regulatory purposes, for example the State Board of Nursing or the Real Estate Commission. The civil name check is basically available to any Nevada employer who may wish to take advantage of it. It has to be for employment purposes, not for volunteers.

There are some requirements. In both cases the individual has to give his or her signed consent agreeing to the background check, understanding that we are going to check the criminal history records, and that we are going to share that information with the employer. If the individual believes the information is incorrect, he or she can challenge the accuracy and have it corrected.

Chairman Frierson:

Are the employers required to pay for that access?

Julie Butler:

Yes. The civil name check is \$20 per name. We set up a secure, virtual private network connection between the employer and our office. Typically the human resources office of the employer would enter the name of the applicant or employee. It is almost instantaneous, and if there is a hit, my staff will do research to ensure the subject of the record is the same person as the employee. If there is any missing information, like court dispositions, we will track that down.

Assemblyman Hansen:

Regarding the Brady background check, you are doing over 100,000 per year. What percentage is rejected because a felon is trying to buy a firearm?

Julie Butler:

In terms of denials, typically they run about 2 percent of our transactions per year. We had over 1900 denials for calendar year 2012, and about 24 percent of those were felons trying to buy firearms.

Assemblyman Hansen:

We had an interesting debate last session about DNA swabbing. Fingerprints are currently the primary way of identification. When DNA information becomes mainstream, will you have to set up a brand new repository, like you have currently for fingerprinting? Is there already development going on where DNA will be allowed to be used the same way we use fingerprints?

Julie Butler:

There may be a bill to create that process through the laboratory at the Washoe County Sheriff's Office Forensic Science Division. They are the official state DNA lab for samples. They are the ones that link to the FBI Combined DNA Index System. In terms of the criminal history repository [Central Repository for Nevada Records on Criminal History] it does not maintain the DNA samples. There is a flag in criminal history to indicate DNA is available for a particular subject and where it is available, either at Las Vegas Metropolitan Police Department's Forensic Laboratory or the lab at Washoe County Sheriff's Office Forensic Science Division. In terms of the proliferation of DNA samples and identification, there may be legislation coming up later to address that.

Assemblyman Ohrenschall:

When Brady checks are done, is that simply a criminal history or are there any mental health records in the Central Repository?

Julie Butler:

Pursuant to Assembly Bill No. 46 of the 75th Session, if the courts adjudicate an individual to involuntarily commit that person, or adjudicate that person as a danger to self or others or appoint a guardian, or the person is found guilty but insane, or not guilty but mentally ill, all of these different adjudications, the courts are to send that information to my office so that my staff can enter that information into the National Instant Criminal Background Check System of the FBI. We do get those records of adjudication; we do not get the subject's actual mental health record.

Assemblyman Ohrenschall:

Are those Nevada adjudications only or all around the country?

Julie Butler:

Nevada adjudications only.

Assemblyman Ohrenschall:

What about juvenile records? Do you maintain a juvenile delinquency record?

Julie Butler:

Those are handled by the Division of Child and Family Services of the Department of Health and Human Services. Our records are strictly for adult arrests.

Patrick Conmay:

I will return to page 16, the Uniform Crime Reporting unit. [Continued to read from prepared text ([Exhibit C](#)).]

Assemblyman Wheeler:

You say that the new dispatch division could be available to other agencies currently served. Are there agencies, such as Reno Police Department, Douglas County Sheriff, et cetera, whose dispatch could be consolidated into your Division?

Patrick Conmay:

There are no plans to consolidate other agencies into the Division. However, there are discussions currently underway to look at colocating dispatch functions, for example, Washoe County Sheriff's Office, Reno Police Department, and the Department of Public Safety in a single facility where communication would then be facilitated. There would be a number of benefits that could be realized by doing that. Command would not move, each would have their own command structures, but colocation would allow for much better communication and use of resources.

Assemblyman Ohrenschall:

What role does the Records and Technology Division have with the Division of Parole and Probation (P&P) when creating a presentence investigation (PSI) report in terms of correcting any possible errors?

Patrick Conmay:

The role that our division has at this point is the technology that supports the Offender Tracking Information System, which is the system by which P&P can collect the information necessary to complete the PSI reports. Beyond that, the preparation of the reports, if the accuracy is challenged, there is not much of a role for us unless that challenge has something to do with the accuracy of a criminal history record, then we could become involved in correcting that.

Assemblyman Ohrenschall:

If there is a challenge to a criminal history record that is in the Central Repository, what is involved in getting that corrected in your system so that it does not end up in the new PSI report?

Patrick Conmay:

Essentially the challenge would be the same as any individual challenging a record. That would be submission of a set of fingerprints, researching the record with the arresting agency or the adjudicating agency, and verifying that the record is in fact accurate or not. It involves some research for staff in order to confirm the accuracy.

Assemblyman Ohrenschall:

Would a request from the person suffice, or would he or she need a court order?

Patrick Conmay:

A court order would not be needed.

Assemblyman Duncan:

When there is a sentence adjudicated in Clark County, how is it that your organization communicates with that county to enter information into the Nevada Criminal Justice Information System, for example, and what is the time frame?

Patrick Conmay:

In an arrest event, fingerprints are submitted in connection with that arrest. Those fingerprints come to the Central Repository. They are processed and the record is created in that way. It is essentially related to the fingerprint cards associated with the initial arrest, which are processed and a record is created.

Julie Butler:

In terms of the final adjudication of the case, or disposition of the case, the court, once the case has been adjudicated, is to send us the disposition and we will enter that information onto the subject's criminal history. We are dependent upon the prosecutors, if it ends there, or upon the courts, if it ends there, to send us the information to update the subject's criminal history record.

Assemblyman Duncan:

Is there uniformity between all the counties? Is there an organization that is solely responsible for that?

Julie Butler:

No there is not. Every court and prosecutor's office has its own forms. There is not a lot of standardization, which makes it very difficult to enter a disposition and to ensure we have all the information needed to update the record. Recently we have undertaken a joint project with the Administrative Office of the Courts for coordination in sending us disposition information in a standardized format so that my staff can get used to looking in the same place on the form for the name, date of birth, social security number, arrest, et cetera. This will provide for faster data entry. It is still a manual process and forms are coming into us via fax. We have tried various pilot projects to automate the process. There are a lot of challenges in trying to get the data in one system to talk to the data in our repositories.

Assemblyman Duncan:

What is the average time for something that is adjudicated in a court to actually receiving that information in your office?

Julie Butler:

Federal regulations require that the information should be submitted within 120 days. We just recently became aware of 65,000 dispositions from some Carson City courts dating back to 2007 that have not been submitted to our office. The reports are supposed to be submitted as they are adjudicated, but they are not always done.

Assemblyman Wheeler:

Last session this body passed a law against distracted driving. Patrol cars have computers in them, which obviously is a huge distraction. Are there any plans in the future for a voice-activated system?

Patrick Conmay:

That would create some challenges. For example, the Nevada Highway Patrol has yet to get the first generation of computers, so no, there is no plan at this time for voice activation.

Chairman Frierson:

Are there any other questions? I see none. I appreciate the presentation. I will now open the hearing for Assembly Bill 30.

Assembly Bill 30: Revises provisions governing the statewide sex offender registry notification website. (BDR 14-344)

Julie Butler, Records Bureau Chief, Records and Technology Division, Department of Public Safety:

The intent of Assembly Bill 30 is to ensure the public has the most accurate, up-to-date information on registered sex offenders so that they may take the appropriate measures to protect themselves and their families. [Continued to read from prepared text ([Exhibit D](#))].

Chairman Frierson:

You said the law requires you to remove the information once the individual updates his or her information?

Julie Butler:

Once the offender has fulfilled his or her duty to register. For example, if an offender is required to register for 15 years and we receive a court order that says the offender's 15 years are up and the individual is no longer required to register, we need to remove the name from the community notification website. Our concern is that we have lost control of that information; if it is on a disk somewhere in a garage or basement, there is no way for us to know where that

information has ended up. We have lost control of it and cannot ensure that the name is removed.

Chairman Frierson:

Under what circumstances would someone only have to register within a certain time frame, as opposed to being a lifetime sex offender?

Julie Butler:

Some of the Tier I and Tier II offenses have a shorter duration of registration requirements. It depends on what they are convicted of and where they are assessed in terms of tier levels on how many years they are required to register.

Assemblywoman Fiore:

The 65,000 dispositions that you just received and have not yet been updated, is that going to have a big effect on the accuracy of the information you have today?

Julie Butler:

Yes, it is. We struggle with getting timely information from all the parties. We are essentially a data dump; we are dependent upon the partners in the criminal justice community to provide us the information. If they do not provide, those records are incomplete. The effects of that can be seen in terms of the criminal history background checks. It may delay someone getting a job. We also see that in our Brady unit, in firearms background checks. I have full-time staff that does nothing but research missing dispositions so we can get answers. If someone is exercising his or her Second Amendment rights, we do not want to stand in the way of that, but if we do not have the information, it will delay the process. It is a huge problem.

Assemblywoman Fiore:

Do you have any suggestions on how to fix that?

Julie Butler:

There is a section of statute in Chapter 179A of the *Nevada Revised Statutes* that states the agency that originates the record is responsible for providing the information to us. This sounds great in theory, but what it has led to in practice is everyone saying, "It is your job." Some entities say it is one facet of the criminal justice community's job and other agencies say it is another agency's job. As a result, we do not get the information. I do think that statutory improvements could be made, and we could impose time limits by which we should get the information. I think those are things that should be looked at.

Assemblywoman Spiegel:

Addressing your comments about your liability concerns, could they be addressed by a disclaimer on the website that says this material is only accurate as of this date in time? If there are printouts, have them reflect the same disclaimer.

Julie Butler:

The website is continuously updated. What we are trying to do with this bill is to tell people, if you want information on Nevada's registered sex offenders, go to the website. It has the most accurate, up-to-date information available. Please do not request it through a public records request because that information is dumped out on a list or a disk and is only good at the date and time it is printed. What we are seeing is, for example, if the record is sent off to Dollywood and they use it for employment background screenings, it is only good as of the date we printed the list. When they receive an applicant after that, the information on the report may no longer be accurate.

Assemblywoman Cohen:

Is that the purpose for the language having to do with subpoenas in the statute because you are trying to get people to go to the website?

Julie Butler:

We are trying to ensure that the public records statute not be used as a mechanism to get the information that is publicly available on the registry. Again, the registry is the official source of information that is publicly available to individuals.

Assemblywoman Cohen:

If someone is looking for information for a civil court case, and wants to use the records in court, getting a printout from a website is not effective. Will your department certify that the records on the website are accurate for presentation in court?

Julie Butler:

I do not know that we have ever been asked to do that. If we were directed to by a court order or something of that nature we would.

Assemblywoman Cohen:

Often if someone wants to provide documents to the court and does not want to get a subpoena, the person can get a signed copy of the records certifying they are accurate.

Julie Butler:

I do not have a problem doing that. The community notification website is the official, accurate, up-to-date record by statute of what we can share with the public.

Our second concern is that current law regarding the community notification website prohibits use of the information on the website for purposes related to insurance, including health insurance, loans, credit, employment, education, scholarships or fellowships, housing or accommodations, or benefits, privileges, or services provided by any business establishment. [Continued to read from written text ([Exhibit D](#)).]

Chairman Frierson:

Did you address the question that came up regarding whether or not we are currently keeping a log of the requests that are made online?

Julie Butler:

We are not.

Chairman Frierson:

Is that because it is an archaic requirement left over from when the statute was first drafted?

Julie Butler:

It is. It dates back to when people had to call in to find out if someone was a registered sex offender. Now, because the information is publicly available, anyone can look it up. We do have a warning on the site that people are not to use the information to harass the sex offenders or take the law into their own hands, or stalk the people, et cetera.

Chairman Frierson:

Also, in section 2 of A.B. 30, the provision that proposes to make these records not subject to subpoena or discovery, that struck me as different with respect to a criminal case. If there were ever a need, it would not be subject to subpoena in a criminal case. I understand your example of a dating website, which would be something we would not want to encourage, because it is being constantly updated. If, for whatever reason, the courts need to obtain or review the records, would this prevent the court from being able to do that?

Julie Butler:

That is not our intent. Certainly in a criminal case, we would follow a court order that directs us to do whatever. If we are directed to release a record for a certain case, we would comply with it. The intent is so people cannot access

these records through the public records statute; they need to go to the website.

Chairman Frierson:

I am aware of some lawsuits across the country, specifically regarding dating websites, where folks are suing stating they were not informed. I can see why a dating website would want to use this website out of caution. I believe there may be other statutes that delineate that the court is still able to obtain the records. This is something we address to ensure that any criminal investigation report can be looked at. For example, if someone, while not required to register now, may have needed to a year ago, that might be relevant in a criminal case.

Julie Butler:

I would be more than happy to work with you, if you feel that the language is not clear. We are not opposed to amending it and making it more clear.

Chairman Frierson:

I think the experts in the field can address that if necessary.

Assemblywoman Dondero Loop:

If it was subpoenaed in a court of law, this information could be released. Section 2, subsection 1, paragraph (a) states, "Are confidential, not subject to subpoena or discovery, and not subject to inspection by the general public." It is the word "not" that I am struggling with.

Julie Butler:

It sounds like perhaps we need to take this back and rework that to make it clearer.

Chairman Frierson:

For clarification, section 2, subsection 1 states, "Except as otherwise provided by specific statute . . . " so it may already be addressed and not necessary to make alterations. Are there any other questions? I see none. I will move on to anyone who would like to testify in support of A.B. 30.

**Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
and Executive Director, Advisory Council for Prosecuting Attorneys:**

I am in support of A.B. 30.

Chairman Frierson:

Do you have any concerns with the questions raised about a prosecutor's ability in a criminal investigation to be able to access a record of registration?

Brett Kandt:

I do not have any concerns with that.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:

I am here to express support of A.B. 30. One of our primary duties in law enforcement is the protection of human lives. The key to this is the ability of law enforcement and citizens to have accurate and timely information, especially information about potential sexual predators within our state. As you heard, with over 200,000 visits to the website each year, it is apparent that this is an important issue to all of our constituents. The bill before you provides for the community notification website to be the source of record. Also important to us is that our agency will get inquiries, and if we can make it known to the citizens of our state that there is one place to go for that, then there is consistency throughout Nevada. We support there being one official source of records so the citizens of Washoe County and throughout the state can obtain consistent and accurate information regarding sex offenders. Once again we would like to express our support for A.B. 30.

**Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

Me too.

Chairman Frierson:

Is there anyone who would like to speak in opposition to A.B. 30?

Tonja Brown, Private Citizen, Carson City, Nevada:

The Advisory Commission on the Administration of Justice has ordered an audit to be conducted on the Department of Corrections (NDOC) because of a computer glitch that went into the Nevada Offender Tracking Information System. I spoke with Mr. Paul Townsend, Legislative Auditor, Legislative Counsel Bureau, and he informed me that on February 25, the legislators are going to receive the official audit on the computer glitch that put false felony charges in inmates' files. I am asking this Committee, and all committees, that they do not consider anything right now dealing with any type of a computer programming software website until we know what is actually going on.

I would like to let you know about how this would affect somebody out on parole and the how the computer glitch has false information. In 2007, the software that was installed at NDOC flipped. This came out of a discovery by the former Deputy Director Don Hellings' testimony in 2011 when we were asking him about some charges that were in Mr. Nolan Klein's file. The inmates do not have access to their files. They do not know if there is false information

or if it is accurate. This information was presented to the State Board of Parole Commissioners and the State Board of Pardons Commissioners.

My brother was wrongfully convicted of a sexual assault charge, and after spending 21 years in prison, the evidence to prove his innocence was found. Hypothetically, let us say he actually got out of prison and was working. If someone wants to know something about him and looks on this website you are asking for, due to this computer glitch, it would show that while he was in prison, he committed two other crimes. That is the computer glitch; it never happened. There are inmates who are in for other charges, not sexual assault, who have continually gotten sexual assault charges in their file. According to NDOC, the document came from a national repository. There was another inmate, somewhere in another part of the county, with the same name, and it keeps showing up here. Every time NDOC removes it, it flips and comes back. There are problems. We cannot afford this.

I was sitting in as an onlooker in a case in Judge John Tatro's courtroom just a few months ago in which a Hispanic young man, in his early twenties, was present. He was there for contributing alcohol to a minor and lack of insurance on his vehicle. As Judge Tatro was looking through his file, he asked the young man if he had ever committed violent crimes. He actually warned this defendant. He said, "If you should ever get pulled over again, inform the officers you are not this person. You are not the person who is showing up in the records." Judge Tatro knew the person showing up in the records and he said he is a very bad person, he is very violent. Judge Tatro specifically instructed this defendant to make sure to tell the police officers that he is not the person showing up in their file. He had no idea how that information got into the defendant's file.

The Division of Parole and Probation is getting false information and they have no way of knowing it, because of this computer glitch. If the inmates had access to their files, which they should, they would be able to dispute it. There are inmates who do not have life sentences who are getting false charges in their files. The computer glitch was going back 30 years and picking up a crime from when they were arrested but never went to prison for, and it is reappearing in their files as though they are new crimes. This false information is going to P&P and they have no way of knowing it. Sometimes the presentencing report takes months to get.

Chairman Frierson:

We have a public comment portion on the agenda. I would ask you to address A.B. 30 at this time.

Tonja Brown:

And I am asking that you do not consider hearing this bill or doing anything that involves computers. Senate Bill 26 should talk about the liability. You have not seen S.B. 26, but I have. It deals with the computer glitch, and the notification that we discussed. Anything to do with public notification and the website, put a hold on it for as long as possible. Wait two years so we can find out what is happening. People are being wrongly convicted and charged. It is affecting the inmates. They are staying past their expiration dates. Information is being disseminated that is false. Somehow it is affecting the national database and the central repository. If you install these programs, it could happen again. I think we need to find out what is actually going on before we pass this bill, or Senate Bill 26, or Assembly Bill 43 until we see what the audit says. I think a two-year wait on any of these would be better. I have noticed over the last year so many computer glitches going on. We cannot take that chance if someone gets pulled over by the police and the person gets shot and killed because the police thought this person was someone else. We need to get a handle on what is going on. I am against this particular bill.

I have testimony from Laurence Wilgus that I would like to submit as an exhibit in opposition of this bill ([Exhibit E](#)).

Chairman Frierson:

It seems that your concern is there are computer problems and we should not do anything that would exacerbate any problems that may result from computer glitches until that audit comes out.

Tonja Brown:

That is correct. There is one part of the audit that is not going to be clear, which is from 2007 where people were denied parole and later were given parole because the right information went to P&P. That is going to be an area where we will never get any answers. Right now we are financially strapped, we do not need to be implementing new computer systems and installing them. If you look at S.B. 26, they are concerned about the liability on A.B. 43. They both are on victimization, false information, and that the state is not liable. They know there is a problem.

Chairman Frierson:

You brought up the cost, it seems to me that this program already exists, and I do not know if there is a cost associated with it. The bill is proposing to establish clearly that this is the official location and also limit access. If your concern is the unreliability of information through the computer system, it would seem to me that this actually supports your position in that it is limiting access

to the information so fewer people will have access to what you believe is potentially inaccurate.

Tonja Brown:

Yes, but section 2 talks about confidentiality. I stated before, hypothetically, if my brother was convicted of a sexual assault, which he was not, and he was released from prison, that computer glitch would show false information in his records and history.

Chairman Frierson:

I want to make sure that we understand each other. The information that you are discussing is already there. We are saying this information would not be subject to inspection by the general public. This bill is proposing to limit the number of people who have access to that information.

Tonja Brown:

I agree with that, but my concern is to wait until everything is resolved with the computer glitch. It is my understanding that when there is a problem with a computer, it is not NDOC who fixes the program. It is the company who owns the software, and we are paying them a contract to maintain it. We would be doing the same with this program as well.

Chairman Frierson:

This is not a money committee. Also, as a reminder to the Committee, we are precluded from considering bills that are not yet before us.

Assemblyman Martin:

While I can appreciate wanting to fix computer glitches, and making sure computers are working accurately, are you proposing that we maintain a manual system? That is going to be very outdated and even more inaccurate than the computer glitch that you are trying to fight. Your goal seems to push any type of computerization off for another two years. Certainly we need to address computerization issues, but are you proposing we stick with a manual system?

Tonja Brown:

I am proposing that we stick with what we have right now until we get some answers. According to Assemblyman Horne, and depending on what the audit reveals, it could lead to future investigations. Right now I have concerns that something is just not right. If the company that owns these software programs knows there are problems, there could be a liability issue. I agree with the computerization of everything, but there are problems and I think we need to fix them. I just want some time until we know what is happening and how it can be fixed before we implement anything new.

Judge Tatro was very concerned over his Hispanic defendant because of something that came through his courts. He knew it was the wrong man and he had no way to fix it. That is just one case, how many others are there? Who is to say that this person, if he gets pulled over again, does not get shot? There is a problem. I do not know how to fix it. I just think we need to do something. Maybe delay it by a few months or two years. We have to figure out how to deal with the problem, and I do not think we should do anything else with any of the bills coming up until everyone has thoroughly read the audit. That is all I am asking for.

Chairman Frierson:

Are there any other questions? [There were none.] I would like to ask Julie Butler to return to the table.

Assemblywoman Diaz:

What is the likelihood of identities being mistaken using the website? If somebody is looking for someone in particular, are there certain ways that it is foolproof and we are not mistaking identities? For example, there may be more than one Richard Carrillo, how do we know if we are identifying the right one?

Julie Butler:

The information that goes onto the community notification website is fingerprint based. When we get a record of sex offender registration, we do get a set of the registrant's fingerprints. They are identified to make sure that the individual who is the subject of the record is in fact that person. It is only Tier II and Tier III offenders that go on the website. There is also a photograph, if available, of the offender. We do put a caveat on a civil name check to warn employers that just because someone's name might appear on the website, they need to also submit a pair of fingerprints to be sure that it really is the subject of the record. Obviously names are not unique identifiers, but the information that goes onto the website and in our registry is associated with the subject's fingerprints.

Assemblywoman Diaz:

Initially, one can go to the website and identify a person by name. The second step is to confirm the identity of that person by submitting the fingerprints, is that correct?

Julie Butler:

Any individual can search the website; it is a public website. You can look to see if your neighbor, uncle, daughter's boyfriend, et cetera, is on the website. The only way to be 100 percent sure, is if an employer asks for a set of

fingerprints during an employment background check. We would send the employer a copy of that individual's rap sheet. For the general public, it is strictly for their information and personal safety, and to give them peace of mind about whom their neighbors are and who they are dealing with.

Patrick Conmay:

I want to make sure it is understood that no one is placed on the website before fingerprint submission and verification. Everyone on there has been identified through fingerprints. The general public does not have access to the fingerprints.

Assemblyman Ohrenschall:

Have there been examples where there was an error, where someone with a similar name had the record and it had to be corrected, either because of a simple mistake or a case of identity theft? I have seen cases where someone was prosecuted because he had been using another name and a crime followed him that had nothing to do with him because of that. Have you had to correct the Central Repository because of either identity theft or a simple mixup?

Julie Butler:

Yes, we have had to correct records before. It does occur occasionally where perhaps at booking the individual's fingerprints are not cleared out before a new subject is sent in, and sometimes you get names and fingerprints mixed up. This is pretty rare, but when we become aware of inconsistencies, they are corrected. We are not aware of anything in terms of the information on the website that has led to any sort of false prosecution. The individuals who are on the website have been convicted of these crimes. They have been identified through the fingerprint identification process, they are Tier II or Tier III offenders, which means their likeliness to reoffend has been adjudged to be great. The purpose of the website is community notification, so you as a parent, know who your neighbors are, and who is around your child's school. That is the purpose of the website: personal safety and protection.

Chairman Frierson:

Are there any further questions? I see none. Anyone else to testify in opposition to A.B. 30? At this time, I will close the hearing on A.B. 30 and move to public comment.

Wesley Goetz, Private Citizen, Incline Village, Nevada:

I would like to read a few paragraphs from the report, "Risk Assessment for Sex Offenders Paroling From Nevada Corrections," by Mary Perrien, Ph.D. ([Exhibit F](#)).

The current tool utilized by DPS is the State of Nevada Community Notification Risk Assessment and Rating Manual (SOAS). This tool was developed from the New Jersey Registrant Risk Assessment Scale, a rationally derived risk assessment tool. In other words, this tool was not developed as a direct result of empirical data, but as the result of individuals' interpretations of research and perceptions of important factors worth including in a tool. These two types of test construction (rational vs. empirical) are very different and empirically-developed tools are generally considered superior to rationally-developed tests. There is little psychometric data to support the use of the original tool or the modified version that Nevada uses (added approximately 7 items) currently. Some of the items have been shown to have little to no relationship to recidivism and should not be included.

Chairman Frierson:

If you would like for the Committee to see your report, you can submit it for consideration.

Wesley Goetz:

I would like to read this and then add my comment. Mary Perrien did this report on the tier level system and how to predict tier levels. I would like to read the next paragraph outlining the specifics and then go on to my public comment.

The staff currently conducting the tier classifications and scoring are very informed and know their tool quite well. They have identified a short-coming in the tool that occurs when time has passed and the offender would like his level reconsidered. The current tool used by DPS is not sensitive to change over time. It has a tendency to overstate risk. Unfortunately, this is the case with most static actuarial risk assessment tools too. Because of the nature of the task for DPS, it would be very difficult to get information to complete a tool like the STABLE-2007 with dynamic factors that would be more sensitive to change.

As you were discussing this bill, you addressed that Tier I offenders are not on the website, only Tier II and Tier III. If a person is a Tier II and he appeals to the tier level and it is lowered to Tier I, where does that information go? I also heard that some of this information goes into someone's garage. Why would this kind of information on a sex offender be in a garage? You can get social security numbers of a sex offender from the website. While you are talking about identity theft, they could use the social security number to make things more difficult for that sex offender. Those are things I would like considered.

This report ([Exhibit F](#)) has the recommendations of Mary Perrien. It recommends that DPS suspend using the current tool; it is outdated and was not developed through psychometrically sound research. What they should consider is using Static-99 or the Rapid Risk Assessment for Sex Offender Recidivism to complete the risk assessment and assign the tier level to the offender. It also says to revise existing guidelines and procedures for community notifications to include training from the Quality Measure/Indicator (QM/QI) certification or develop policies that address those areas as mentioned in recommendations above. Well written policy is very important for standardizing the process and for insuring that all staff are aware and understand the process. The policy should address training, the QM/QI, and certification. I am concerned, if a person has been reconsidered to appeal his tier level and goes down to a Tier I level and is no longer on that website, where does the information go?

Chairman Frierson:

Is there anyone else here today for public comment? I see no one. I will move on from public comment to introduce a bill draft request.

BDR 14-63—Revises provisions relating to sex trafficking. (Later introduced as Assembly Bill 113).

I am seeking a motion to introduce Bill Draft Request 14-63.

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE
BDR 14-63.

ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Frierson:

Today's meeting is now adjourned [at 9:33 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 13, 2013

Time of Meeting: 8:06 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Patrick Conmay	Records and Technology Division Presentation
A.B. 30	D	Julie Butler	Written Testimony
A.B. 30	E	Tonja Brown	Written Testimony by Lawrence Wilgus
A.B. 30	F	Wesley Goetz	Risk Assessment for Sex Offenders Paroling from Nevada Corrections