

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

Seventy-Seventh Session

February 6, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:04 a.m. on Wednesday, February 6, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 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 Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Kimberly Madris, Deputy Chief (South), Division of Parole and Probation, Department of Public Safety
Tony DeCrona, Deputy Chief (North), Division of Parole and Probation, Department of Public Safety
Christopher Perry, Director, Department of Public Safety
Patrick J. Conmay, Division Chief, Records and Technology Division, Department of Public Safety

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

Chair Segerblom:

I will open the hearing today with a presentation from the Division of Parole and Probation, Department of Public Safety.

Bernard W. Curtis (Chief, Division of Parole and Probation, Department of Public Safety):

I will go through the handout ([Exhibit C](#)) and explain who we are and what we do at the Division of Parole and Probation, Department of Public Safety (DPS).

Chair Segerblom:

To begin, can you please explain the difference between parole and probation?

Mr. Curtis:

Pages 5 through 7 in [Exhibit C](#) explain the process that leads to either parole or probation. It starts with the arrest, then the charging by district attorneys, the arraignment, the trial or guilty plea and the presentence investigation, which is where we get involved. Our Division makes sentencing recommendations to district courts throughout the State. The division between probation for felonies and gross misdemeanors starts here. By definition, probation is a court decision suspending the sentence of a person convicted of a criminal offense and granting that person provisional freedom on the promise of good behavior. Parole is the conditional release of a person from prison prior to the end of the maximum sentence imposed.

Chair Segerblom:

Is the Parole Board independent?

Mr. Curtis:

Yes, the State Board of Parole Commissioners is independent and the members are appointed by the Governor.

Chair Segerblom:

To clarify, once a person has gone to prison, he or she then would go before the Parole Board?

Mr. Curtis:

For parolees, yes, or they expire their sentence and then do not go before the Board.

Chair Segerblom:

To further clarify, the difference between probation and parole is that probation happens when one is convicted but does not have to go to prison.

Mr. Curtis:

Alternatively, they serve a small portion of their probation or incarceration in county jails. You do not go to prison on probation unless your probation is revoked.

Chair Segerblom:

If someone went to county jail but never to State prison, would it then be probation he or she would serve?

Mr. Curtis:

Correct.

Chair Segerblom:

Do the parole officers deal with people on parole and probation, or do you have separate officers dealing with parole and probation?

Mr. Curtis:

We have a parole unit in southern Nevada and for the State, probation and parole officers supervise both types of offenders.

We have two commands in the State: one in the south that includes Pahrump, and one in the north that includes a rural command. Our headquarters are in Carson City.

Our caseload staffing ratios of offenders to DPS sworn officers are 30 to 1 for intensive supervision and residential confinement caseload supervision; 45 to 1 for sex offender caseload supervision, which includes lifetime supervision; and 80 to 1 for the general caseload supervision. Details of our caseload staffing ratios and administrative caseload banks are on page 9 of [Exhibit C](#).

Chair Segerblom:

Are there national norms or standards for caseloads?

Mr. Curtis:

Not that I can find.

Chair Segerblom:

How do you think we rank?

Mr. Curtis:

We rank strong in supervision. The past 2 years we have been successful filling open positions. Administrative caseloads are caused by open positions. If we do not have an officer to do the supervision, we put the lowest level offenders and long-term compliant offenders in that probation area.

Chair Segerblom:

Do all probation and parole officers have to be certified through the Peace Officers' Standards and Training (POST)?

Mr. Curtis:

Yes.

Chair Segerblom:

How long has that been the law?

Mr. Curtis:

A long time.

Chair Segerblom:

Do other states require this? It would be cheaper if you could have people who are not POST-certified, not a police officer or public safety officer.

Mr. Curtis:

However, would it be better?

Chair Segerblom:

When you are talking about supervising low-level offenders, maybe you would not need someone POST-certified.

Mr. Curtis:

We do use some low-level people in supervision of this area; we obtain them from our administrative caseload banks.

Kimberly Madris (Deputy Chief (South), Division of Parole and Probation, Department of Public Safety):

We have one sworn officer who oversees the administrative caseload bank and we have a specialist III civilian position to assist with the paperwork. We feel the officers should be sworn or POST-trained since these caseloads can include gang members needing intense supervision and sex offenders. If they were not sworn officers, Parole and Probation would be a burden to local law enforcement officers because we would have to ask them to pick up the individuals for whom we issue warrants. As it stands now, we do our own arrests and file new charges instead of burdening local law enforcement agencies.

Chair Segerblom:

Have you been subject to furloughs?

Mr. Curtis:

Yes. The Department has civilian staff monitoring Interstate Compact Unit offenders at a ratio of 250-to-1 parole and probation specialist. This is a clerical and administrative function for parole, prerelease and fugitive apprehension.

Chair Segerblom:

Do these specialists require a degree in criminology or psychology?

Tony DeCrona (Deputy Chief (North), Division of Parole and Probation, Department of Public Safety):

No, they do not require college degrees. They work out of our headquarters in Carson City and serve an administrative function. In the Interstate Compact Unit, specialists monitor caseloads for offenders with Nevada convictions being supervised by other states. For example, if a Nevada offender goes to Utah and is being supervised there, these specialists communicate with officials from that state regarding that offender.

The fugitive apprehension unit, also called our warrants unit, tracks and validates all the warrants. When a person is arrested, this unit makes arrangements for transport from anywhere in the Country. Our prerelease unit

works in conjunction with the Department of Corrections (DOC) to release individuals from institutions back to the community. These civilian positions are overseen by sworn officers.

Chair Segerblom:

Do most of your sworn officers start their careers with you or retire from other law enforcement offices and then come to you?

Mr. Curtis:

There is a mixture. I came from a local sheriff's office and Mr. DeCrona also came from that culture but has been with the DPS for 22 years. Ms. Madris was once with the Nebraska Department of Correctional Services. We get transfers in and out within the State system, and we have 17 individuals from the police academy who are working their first big jobs.

Chair Segerblom:

Do you run your own academy?

Mr. Curtis:

The Department of Public Safety academy located at the Stewart Indian School complex in Carson City is a shared facility with the Nevada Highway Patrol.

For the upcoming budget session, Governor Brian Sandoval has recommended the transfer of parole functions to the Department of Corrections. The Governor's Executive Budget proposal will transfer 105 positions and related operating costs to the new Division of Parole Services in the DOC, which will include 71 sworn and 34 civilian positions statewide. Parole is about 25 percent of what we do and probation is 75 percent of our workload.

Chair Segerblom:

Would this transfer require a statutory change?

Mr. Curtis:

Yes, it would require numerous changes. The bill draft request will likely come from the Office of the Governor.

Our glossary of terms—[Exhibit C](#), page 12—covers the main terms used in our business and should further clarify Chair Segerblom's earlier question about the difference between parole and probation. Regarding the Interstate Compact

Unit, people have asked many times why we do this. It is because many people who commit crimes in our State have residences and employment in other states. They come here on vacation, go out on probation. Nevada is a giving state, rather than a receiving state, which means we receive far fewer offenders into the State than we export. It is unavoidable for the Country but a good deal for our State.

Some offender programs, including the 305 Program for DUI offenders and the 317 Program for offenders of crimes other than DUI, have small numbers of participants. The 298 Program, for terminally ill offenders, is currently empty.

As a result of the enactment of S.B. No. 443 of the 76th Session, the Division is now billing counties for 70 percent of the costs of presentencing investigations. Because of this, many postconviction reports have been waived. Once a person has been sentenced to prison and is in the parole process, the Parole Board is supported with a postconviction report from our Division regarding the offender's overall behavior in the arrest, custody and incarceration processes.

A couple of sessions ago, I reported that we had more than 3,000 caseloads in the administrative caseload banks. Today, we have 1,107 as a result of increased staffing. During the Seventy-Sixth Session, we received 44 phased-in sworn officer positions. We are recruiting every day.

Chair Segerblom:

Do you feel the pay and benefits are sufficient to attract good people?

Mr. Curtis:

We lose certain people to agencies that pay more. That is a constant in State government. Local law enforcement, especially in southern Nevada, pay more than we do and offer more perks. We wish the economy was better, but we have a good staff. If we get a chance to steal good employees from another agency, we will do that.

Chair Segerblom:

My limited experience with your Division is in parole revocations, where the default seemingly puts the offenders back in prison. Are there programs that might discourage this tendency and instead try to find a different solution?

Mr. Curtis:

We have tried different things. One was Hawaii's Opportunity Probation with Enforcement (HOPE). We worked with the Department of Corrections in southern Nevada at the Casa Grande Transitional Center.

Ms. Madris:

The Opportunity Probation Enforcement Nevada program could be expanded, but we are not funded for staffing at this time. The program works by imposing an immediate consequence if an offender violates his or her probation. The offender is taken into custody; the judge sees him or her within 48 hours and decides the short-term sanction for the probation violation. We would like to expand this program as well as the HOPE program. We would need to involve local governments, such as Clark County and Washoe County, to use their holding facilities rather than utilizing DOC facilities because of limiting regulations on types of offender and how many can be housed in their facilities.

Chair Segerblom:

Would that require legislation to allow you to use county jails instead of a facility like Casa Grande Transitional Center?

Mr. Curtis:

We use the county jails now. It would take time to confer with local law enforcement agencies to see if they have room to allow for our offenders in their facilities. Many do. We just need some staffing and flexibility to implement these programs.

Chair Segerblom:

I have an intermediate sanctions bill that might help. I would like to work with you on that.

Mr. Curtis:

You could work with us on that. We also use Probationers Recovering Through Intervention and Drug Education, a transitional program to assist parolees in making good decisions before being released on parole. This was only a pilot program because we did not have continued funding.

Senator Kihuen:

Do you have a workplace development or transitional program for those offenders who have been incarcerated for 20 to 30 years and are ready to go

out into the workplace? Do you perform any mental evaluations before releasing people into the workplace?

Ms. Madris:

I would defer your question to the Parole Board regarding mental evaluations. I do know that sex offenders go through some psychosexual evaluations. Our Division does not have funding for transitional programs, but we work closely with organizations like the Las Vegas Urban League, Workforce Connections and other similar agencies in southern Nevada.

Mr. DeCrona:

In northern Nevada, we have transitional living programs like The Ridge House in Reno. These facilities offer substance abuse counseling and other assistance and support. For mental health counseling, if the Parole Board imposes a condition of mental health evaluation, we will do what we can to get the offender into a mental health provider for that treatment.

Mr. Curtis:

We also have had some federal grants that allow us to do counseling, but the parameters of those grants excluded many released offenders due to their previous criminal backgrounds. We used a voucher program to get some individuals additional counseling. We also worked with the Salvation Army and a reentry group called Going Home Prepared in Reno. The rural areas have limited programs and resources in this category.

Senator Kihuen:

Would you say limited funding is the main reason these programs have not been created or implemented?

Mr. Curtis:

Yes, and some of these agencies and organizations are privately funded.

Senator Hutchison:

Within the system, is there access to a psychologist or psychiatrist to evaluate these people? After spending so much time with these inmates, it seems like one would know who has mental issues. What is the follow-up? Are there even resources for a follow-up? Are there laws that require notification to law enforcement personnel about the release of someone with mental health issues

in the community? Have there been studies of repeat offenders with a mental illness who keep returning to the penal system?

Mr. Curtis:

We do not have a mental health professional on staff, but the DOC would have information about psychological services. You are right that officers who work with inmates get to know when they have mental issues. It is correct with all of law enforcement. We see these issues every day.

Senator Hutchison:

Do we let these people with mental health issues go back into society and into our communities with no check? Is there no law that requires the disclosure of someone with serious mental illness being released into a community? Does anyone get a heads-up that these people are coming back into society after a long incarceration?

Ms. Madris:

For a small portion of individuals identified with mental health issues, we have a mental health court. There are officers assigned to the court, and we work with the judges to assign officers who are sensitive to the special needs of handling offenders with mental health issues. Regarding notifying law enforcement, our Division has the Dangerous Offender Notification System which would show up on an individual's record if he or she was stopped for a traffic violation. The information about the individual being a parolee under our supervision and his or her priority level would show up on the person's record. For example, priority 1 is a high-level offender and priority 2 is someone with special conditions which would be defined on that record. There is also a flag for universal precautions and one for mental health. Both of these flagged areas include our comments specific to that individual.

Senator Ford:

What is your total population of parolees and probationers?

Mr. DeCrona:

As of November 30, 2012, it is 19,636.

Senator Ford:

What are the demographics of your population, both in terms of race and gender?

Mr. DeCrona:

We do not have that information, but we can get it to you.

Senator Brower:

We should get rid of parole altogether and go to a determinate sentencing system like the federal government and many states have done. The Governor has made a proposal to move certain of your functions over to the DOC. Could you clarify that proposal and your views on it?

Mr. Curtis:

The proposal is to move the parole function to the Department of Corrections. The motive is to have more of a continuum of care through DOC, a continuous process for the parole side of the Division. This has been a 9-month process with numerous planning sessions with DOC and our internal staff. The Department of Public Safety would handle about 75 percent of our work on the presentence and probation side, dealing with the district courts and the local law enforcement for probationers.

Senator Brower:

I agree that if we are to have the parole system function, it makes sense to make this shift. Do you agree that it is workable and can be done?

Mr. Curtis:

Anything can be done, given the resources needed for the task. Splitting an agency would not be easy, but it can be done. The DOC and the National Institute of Corrections have been involved in the planning.

Chair Segerblom:

What is the difference in cost between someone on parole or probation and someone in prison?

Mr. Curtis:

I would estimate it is about 10 percent of the cost of prison to have someone on parole or probation.

Chair Segerblom:

If we can keep people out of prison, then we are saving money.

Mr. Curtis:

I agree. We had fairly high success rates based on our criteria for success. Parole is generally shorter than probation. Our success rates have been close to 80 percent.

Mr. DeCrona:

In the past 5 years, we have averaged an 84 percent success rate on parole. This is due partly to the shorter parole terms. Our probation average over the past 5 years is about 65 percent. These individuals are with us longer and there is a greater chance for them to not comply and end up back before the judge.

Mr. Curtis:

We save the State money because of this rate.

Chair Segerblom:

When you speak of lifetime supervision, are you talking about sex offenders only?

Mr. DeCrona:

Lifetime supervision is special sentence-directing supervision to begin upon expiration of prison term, completion of probation or a parole term. This is strictly for sex offenders. If there is a violation, there is a new felony charge requiring us to do a crime report, submit it to the district attorney, request a warrant and proceed through that process.

Chair Segerblom:

What percentage of the 19,636 offenders statewide are sex offenders?

Mr. DeCrona:

I do not have that information.

Chair Segerblom:

I have heard the prison population is around 20 percent sex offenders. Do you have specialized parole officers who deal only with sex offenders?

Ms. Madris:

Yes, we do have officers assigned to the sex offender unit, and they deal with parolees and probationers and lifetime supervision cases.

Chair Segerblom:

We passed the Adam Walsh Child Protection and Safety Act of 2006 and it has been on hold. What impact is that going to have on your workload?

Ms. Madris:

We are in contact with the Attorney General's Office and will be doing training with the Office as soon as the law is finalized.

Mr. Curtis:

We only have about one-third or less of the sex offenders in Nevada. The sheriffs in local jurisdictions register the majority of those who are out on parole and probation.

Chair Segerblom:

Because of the different levels of sex offenders, do officers get assigned to a variety of tiered offenders?

Mr. DeCrona:

Caseloads are at a 45-to-1 ratio, with 45 offenders to one sworn officer. Our general supervision is 80-to-1 for nonsex offenders and 30-to-1 for intensive and residential confinement. There are various levels of severity in each category.

Chair Segerblom:

Would lifetime offenders be included in the 45-to-1 ratio for sex offenders? How many are there?

Mr. DeCrona:

Yes, and we have 1,014 lifetime offenders.

Senator Kihuen:

With good time credits, the time granted toward the probationers and parolees, can you define the financial obligations?

Mr. DeCrona:

Those financial obligations would go to payment of restitution, supervision fees and any other relevant charges. If the offender does not pay restitution to the victim, the offender then does not get his or her good time credits.

Senator Kihuen:

By “continued employment” in [Exhibit C](#), page 13 in your glossary definition of good time credit, do you mean just working at any job?

Mr. DeCrona:

It has to be lawful employment, no under-the-table jobs.

Chair Segerblom:

When the Adam Walsh Act goes into effect, is it going to affect your workload? I also have concerns about the separation of your Division. Would you still be in charge of probation?

Mr. Curtis:

I do not know. We will probably all be staying together; that is the proposal.

Christopher Perry (Director, Department of Public Safety):

I want to clarify that the first budget hearing on the Division of Parole and Probation will be February 19 in the Assembly Committee on Ways and Means. This will be the first time the information about the transfer of Parole to the Department of Corrections will be heard.

Chair Segerblom:

Will we see a bill to approve the transfer?

Mr. Perry:

It will be in that budget bill. Essentially, we are transferring a unit out to DOC, which will have to be approved.

Patrick J. Conmay (Chief, Records and Technology Division, Department of Public Safety):

I will give you a summary of how the Department of Public Safety, Records and Technology Division relates with statewide law enforcement, other DPS divisions, the courts and the public. I have submitted a hard copy of our presentation ([Exhibit D](#)).

The Division was formed in 2005 by informally merging two separate DPS entities: the criminal history repository and technology. The passage of S.B. No. 38 of the 74th Session codified the merger. Page 3 of [Exhibit D](#) is a schematic diagram of our organizational structure.

We have 79 full-time employees in the Records Bureau and 53 in Technology. There is a breakdown of our staffing and funding on page 4 of [Exhibit D](#).

Page 5 of [Exhibit D](#) shows the complexity and reach of the Nevada Criminal Justice Information System and demonstrates how the Division's responsibilities extend outside the State.

We operate on relatively old and outdated technology and are undertaking a records quality audit to establish a baseline of our records. We have had a recommendation to phase in a replacement system over the next 6 years at an estimated cost of \$18.8 million.

The primary responsibility of the Records Bureau is to provide the criminal justice community with information necessary to meet their goals and objectives. Other special services performed by the Records Bureau include running the State Sex Offender Registry and the Child Trust Account, which now receives \$15,000 yearly from the State General Fund, [Exhibit D](#), pages 7 and 8.

Pages 9 through 14 of [Exhibit D](#) illustrate our accomplishments and show the patterns of our activity since 2007 in criminal arrests, civil applicant fingerprints and the Sex Offender Registry <<http://www.nvsexoffenders.gov>>. We also have information on the Brady Point of Sale program for firearms and the Civil Name Check program.

Senator Jones:

Are we complying with federal and State law by reporting those deemed a danger to themselves or others to the National Instant Criminal Background Check System (NICS)?

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

Yes, we are compliant with A.B. No. 46 of the 75th Session that took effect January 1, 2010. Upon receipt of a special form we have adopted according to regulation, a court will adjudicate someone as a danger to self or others or unfit to stand trial. He or she can also be involuntarily committed, appointed a guardian or have a court-determined firearms prohibitor. When we receive that information, my staff enters it into the NICS of the FBI. As of January 16, we have entered 1,013 mental health entries into the NICS index.

Senator Jones:

Would you recommend improvements to the reporting for mental health?

Ms. Butler:

Our difficulty with this is that we are reliant on the courts to submit information to us. We cannot act until they report the information. If the law could be changed so we could get information from the Department of Health and Human Services or other sources, that would help.

Senator Jones:

If you do not get that form from a judge, then the FBI also does not get the information about the offender?

Ms. Butler:

That is correct.

Mr. Conmay:

Pages 15 and 16 of [Exhibit D](#) illustrate our work with the Nevada Criminal Justice System, National Crime Information Center and the annual *Crime in Nevada* report in a bar chart comparison on page 16 of crime rates from 2006 through 2011.

Chair Segerblom:

Are people notified of their ranking on the Nevada Sex Offender Registry?

Ms. Butler:

Yes, before release from incarceration, the DOC informs the offender of his or her tier level and the registration requirements. When the sex offender registers with local law enforcement, we get the case file and tier the individual.

Chair Segerblom:

With respect to the Adam Walsh Act, where you have gone back and retired people, have they been notified or do you have to wait until the Adam Walsh law goes into effect?

Ms. Butler:

We will have to wait until the law goes into effect before we can enforce it. The law was supposed to become active on July 1, 2008. Since then, we have been

in limbo, maintaining two case files on each offender: one if we could enforce the Adam Walsh Act and one under statute.

Chair Segerblom:

Once the Adam Walsh Act kicks in with the new three-tier classification system, if someone disagrees with how you have rated him or her, is there an appeal process?

Ms. Butler:

No, once the Adam Walsh Act goes into effect, it does away with the offender's ability to appeal his or her tier level because it will be conviction-based. After a certain period of time has passed, if the Tier 1 or Tier 2 offender has not reoffended, he or she is relieved of their duty to register. For Tier 3 offenders, it is a lifetime registration.

Chair Segerblom:

Under statute, can offenders ask to be moved to a different tier after 7 years?

Ms. Butler:

It depends on the conviction and the amount of time elapsed.

Chair Segerblom:

Is the reduction process through your department?

Ms. Butler:

Yes, a sex offender can appeal his or her tier level. That appeal then goes to a panel set up under statute or administrative code through the Parole Board. A mental health counselor and one other person on the board will help reexamine the offender's assigned tier level and make a recommendation.

Chair Segerblom:

With the Adam Walsh Act, the sex offender is stuck with his or her assigned tier level?

Ms. Butler:

Yes.

Senator Ford:

Regarding the recent efforts to require the extraction and maintenance of DNA from arrestees, would that information be stored in your Department? If so, have you begun contemplating how you would do that?

Ms. Butler:

The DNA sample is stored at the crime labs at the Washoe County Sheriff's Office or North Las Vegas Police Department crime lab. We get an indication to put a flag on a subject's criminal history that DNA is available.

Senator Kihuen:

How are you limited to accessing mental health records when someone applies to buy a firearm in Nevada?

Mr. Conmay:

When a person attempts to purchase a firearm from a federally licensed dealer, the law requires the dealer contact our Brady unit for a background check to determine if there are any disqualifiers preventing that person from purchasing a firearm. The NICS information includes mental health data that has been submitted. We would then be informed of that disqualifier and the purchase would be denied.

Senator Kihuen:

You are talking about a federal distributor. How would it work at a gun show if someone wants to purchase a firearm? Are you allowed to access mental health records in that situation?

Mr. Conmay:

If the purchase is between private parties or unlicensed dealers, there is no legislation requiring a background check.

Senator Kihuen:

Someone with mental illness can go to a gun show and purchase a gun or purchase one from a private party?

Mr. Conmay:

Yes.

Senator Brower:

A felon's transaction is under the radar? We have no way of knowing who is stealing weapons, who is selling them on the streets? That is not part of your database?

Ms. Butler:

If they are private party sales, there is no requirement that sellers contact us.

Senator Brower:

How many denials do you have for the past year?

Ms. Butler:

In 2012, we had 1,194 denials. Typically, the denials run about 2 percent of our total volume.

Senator Brower:

Can you break it down in terms of how many were ineligible because they were felons versus those with mental health issues?

Ms. Butler:

I could see if staff could break that down. We do keep denial information.

Chair Segerblom:

Do the background checks pay for themselves?

Ms. Butler:

The cost is \$25 per background check. We bill the federal firearms licensee at the end of the month for all the transactions they ran for that month.

Chair Segerblom:

If we were to require registration for private sales, would the \$25 pay for it? Would you need more staff?

Ms. Butler:

Yes it would, and we would most likely need more staff. New federal legislation requires background checks for ammunition sales, so it will likely require us to add more staff.

Chair Segerblom:

How large is your staff for investigating sex offenders and doing background checks for guns?

Ms. Butler:

I have 12 full-time employees in my Sex Offender Registry staff and 10 to 12 in the Brady unit.

Mr. Conmay:

I will continue with my presentation and address the Technology Bureau in [Exhibit D](#), pages 17 through 21. We provide technology support for statewide law enforcement and criminal justice users. Secondly, we also provide support for the Department of Public Safety technical computer operations.

We need to replace equipment. Our system supports the computerized criminal history, the repository and Sex Offender Registry, the Brady Point of Sale system, and Parole and Probation's system for preparing reports. If the system fails, we cannot serve the criminal justice agencies. It is important to start the replacement process now.

Chair Segerblom:

Is it in the Governor's Executive Budget?

Mr. Conmay:

The budget has \$2.3 million for us to begin the upgrade process in this biennium.

Pages 22 through 24 of [Exhibit D](#) include some of the proposed organizational changes for the Division. The Governor's Executive Budget includes the consolidation of technology services into the Division of Enterprise Information Technology Services, Department of Administration.

Chair Segerblom:

Since your information is confidential, are you concerned about merging it with other State databases?

Mr. Conmay:

None of the security requirements go away with this consolidation. We have had many meetings discussing this aspect, and we do not anticipate problems.

Page 23 illustrates the restructuring of the Records and Technology Division into a General Services Division since the Technology Bureau will move into the Department of Administration.

Chair Segerblom:

I will open the hearing on Senate Bill (S.B.) 38.

SENATE BILL 38: Revises provisions governing the dissemination by the Central Repository for Nevada Records of Criminal History of information relating to certain offenses. (BDR 14-343)

Ms. Butler:

The intent of Senate Bill 38 is to help protect Nevada's most vulnerable citizens from harm. This bill broadens access to criminal history record checks for employers serving the elderly and persons with disabilities. I will read from my written testimony ([Exhibit E](#)).

Chair Segerblom:

Does the person doing the background check have to submit a form for authorization?

Ms. Butler:

Yes, federal regulations require that an individual sign a consent form allowing us to check their criminal history. The form also notifies the person of his or her right to challenge the information and how we may use the information.

Chair Segerblom:

Is there a charge?

Ms. Butler:

The charge is \$37.50 for a State and FBI background check. Not just any employer can do this; it has to be done pursuant to statute. Typically, the background checks we do are for a licensing or regulatory purpose. This bill would allow access to the background check system by entities that do not necessarily license or regulate. Instead, the applicant may provide services to the elderly or another home care situation and employ people who serve the elderly.

Chair Segerblom:

How will you determine the entity fits into that category?

Ms. Butler:

There is an application process with our office. We determine what the entities are licensed to do and check with the Secretary of State's Office to confirm they meet the criteria of this bill.

Chair Segerblom:

Are there third parties that perform this service? Could an employer contract with them or do they have to go through you directly?

Ms. Butler:

Chapter 179A of *Nevada Revised Statutes* (NRS) allows for State criminal records to go to a third party. To use FBI criminal records for employment or licensing purposes, that information has to be obtained through a governmental agency. These background check requests would come to the DPS Records office for an employment suitability determination. We would confirm if the applicant has been convicted of a felony or a sex offense and notify the employer of our recommendation.

Senator Hutchison:

In your testimony, you said the effective date would be in October for the FBI to clear this bill because under federal law you can only release that information for personal purposes, not employment purposes. Is the entire federal law going to take effect by October 1?

Ms. Butler:

No, the federal law is not going to change. I am asking for an October 1 effective date because the FBI will have to review our bill, and we will have to make internal programming changes. This target date gives my staff time to make the changes and me time to contact the FBI for their opinion on our bill.

Senator Hutchison:

Will this bill then allow access to the federal criminal database as well as the State criminal database?

Ms. Butler:

The employers do not have direct access to that information, it has to come through the State repository. Upon submission of fingerprints, this would allow the FBI to release its records back to the repository to do a background check on the prospective employee or volunteer.

Senator Hutchison:

I understand this bill deals with those statutory employers who must conduct criminal background checks. Is there any provision for private employers who do not have a statutory obligation but nevertheless want to conduct a background check? For example, if an employee is going to carry firearms or be a private security employee, is there a provision in the law for that?

Ms. Butler:

That is not what this bill does. It is intended for employers who serve these vulnerable populations.

Senator Hutchison:

Would a separate law have to be enacted for that purpose?

Ms. Butler:

Yes.

Chair Segerblom:

I will close the hearing on S.B. 38. We will take public comment now.

Wesley Goetz:

You were talking about how the State uses tier levels for sex offenders. California Penal Code has a passage that addresses this: CPC 290.04.

... shall be to ensure that the [State-Authorized Risk Assessment Tool for Sex Offenders] SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated and cross validated, and is, or is reasonably likely to be, widely accepted by the courts. The committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate.

Connie S. Bisbee, Chair of the State Board of Parole Commissioners, had a grant that funded a recently released study by Mary Perrien, Ph.D., *Risk Assessment for Sex Offenders Paroling from Nevada Corrections* ([Exhibit F](#)). The end of the report says: "The DPS process appears to have worked well with other agencies and disciplines. They simply need to update their tool and revise their processes."

Chair Segerblom:

We are going to address this issue later in the Session. We are aware of your issue and that it needs to be discussed.

Mr. Goetz:

The California penal system also uses this *Level of Service/Case Management Inventory: An offender assessment system user's manual*. This reference is not just for sex offenders, it is for people on parole or probation. This system assesses the offender before and after sentencing, giving the Board a better assessment tool. It also helps predict if someone is going to reoffend. Additionally, it helps come up with a better treatment plan for that parolee or probationer. I just want to introduce this information as how California assesses probationers and parolees. It is a better system than Nevada has.

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Chair Segerblom:

I am closing the hearing of the Senate Committee on Judiciary at 10:50 a.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
	C	14	Bernard W. Curtis	Parole and Probation Presentation
	D	24	Patrick J. Conmay	Records and Technology Division Presentation
S.B. 38	E	4	Julie Butler	Written Testimony
	F	14	Wesley Goetz	Risk Assessment for Sex Offenders Paroling from Nevada Corrections