

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
June 2, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 11:10 a.m. on Sunday, June 2, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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
Ilena Madraso, Committee Secretary

OTHERS PRESENT:

Steve Yeager, Office of the Public Defender, Clark County
Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Vanessa Spinazola, American Civil Liberties Union of Nevada

Chair Segerblom:

I will open the hearing for the Senate Committee on Judiciary, and we will hear Assembly Bill (A.B.) 423.

ASSEMBLY BILL 423 (2nd Reprint): Revises provisions governing reports of presentence investigations. (BDR 14-741)

Steve Yeager (Office of the Public Defender, Clark County):

This bill came from the Advisory Commission on the Administration of Justice. This bill deals with presentence investigation reports—documents prepared by the Division of Parole and Probation, Department of Public Safety. The report is used by the sentencing judge to decide, among other things, what the appropriate sentence would be for an offender who has been found guilty or pleads guilty to an offense.

Chair Segerblom:

Is the sentence for any offense, or is it a felony?

Mr. Yeager:

Typically, it relates to felony offenses.

Assembly Bill 423 seeks to put into statute time lines regarding when the report would be prepared. The time line regarding when the report will be prepared is not defined in statute—just that it will be prepared prior to sentencing. This bill has a provision that states effective October 2014, those reports must be prepared 21 days before sentencing. The majority of reports are completed 3 or 4 days prior to sentencing. From a Public Defender's perspective, the difficulty is that short time line. We need enough time to look at, digest and check the report for accuracy.

The genesis of this bill is a recent Nevada Supreme Court case, *Stockmeier v. State*, 127 Nev., Advance Opinion 19 (2011). The *Stockmeier v. State* case set the proposition that once sentenced by a district judge, the defendant cannot go back and make corrections to the presentence investigation report. Those corrections must be made prior to sentencing. The hope is that this bill will give all the parties involved more time to look at the reports, and if there are concerns of inaccuracy, they can be addressed and fixed. We are not given enough time to scrutinize the report—sometimes having been given the report the day of sentencing—and our client has not seen it until the morning of the court hearing. If the client notices an inaccuracy, the sentencing must be continued out 2 weeks, 30 days or even 60 days for all the parties involved to convene and determine if the inaccuracy is a mistake and how best to correct the report. The goal is to avoid those continuances by proactively doing the

work on the front end. The goal is that by October 2013, we would receive those reports 7 working days before sentencing, as mentioned in section 1 of the bill. In section 3.3, the provision then steps up to 14 working days prior to sentencing, effective March 2014. By October 1, 2014, section 3.7 stipulates the presentencing reports be disclosed 21 working days prior to sentencing.

Part of the problem is Parole and Probation is doing as much as it can with the resources it has. It is understood that time is needed to ramp up to the 21 days. The Public Defender's office is willing to do what we can to help Parole and Probation. We hope that by working together we can reach the goal of 21 days.

The bill came out of the Assembly Committee on Judiciary and then was passed to the Assembly Committee on Ways and Means because of the significant fiscal note. Through negotiations with the chair of Ways and Means, the fiscal note was removed with the understanding that Parole and Probation will try to accomplish these provisions. The understanding remains that Parole and Probation may have to approach the Interim Finance Committee if unforeseen issues arise from this bill's implementation.

Under federal jurisdiction, federal courts are required to have presentence investigation reports available 35 days prior to sentencing—that is by statute. The 21-day provision is the compromise to the federal government's 35 days.

Senator Brower:

Phil Kohn, Clark County Public Defender, and I have been working on this for a long time. It seems that this provision makes sense. Has there been any opposition to this compromise?

As we have seen throughout the Interim, there must be some workable guidelines for the timing of these presentencing reports for the system to be fair. State presentencing reports are much shorter than federal ones, but it is understood that time and effort are required to compile them. It is important for defendants and defense counsel to have enough time before the sentencing hearings to fully read and digest the reports. If we are all comfortable that this is a good compromise, I am content with it as well, and I appreciate your hard work on this bill.

Senator Hutchison:

Do you believe that 21 days is the target time to have presentencing reports available, or would you want to come back in subsequent sessions to lengthen the amount of time closer to the 35 days similar to federal regulations? I am always amused and concerned when Nevada uses the federal government as the benchmark. In Nevada, we have to balance our budget, and we cannot print money or borrow from foreign jurisdictions like the federal government does. Do you expect to get to the federal length of time, or will the 21 days be reasonable?

Mr. Yeager:

We are comfortable with 21 days and have no intention of lengthening it to 35 days. The real goal was to have enough time to get the report to the client. I do not anticipate needing to lengthen the time to 35 days. Senator Brower rightly said that the federal reports are more lengthy. Twenty-one days was a good compromise which resulted from discussion with the Advisory Commission. The initial proposal was 35 days; however, 21 days is the length of time everyone felt comfortable with.

I do not believe that there is anyone opposed to A.B. 423. In the Assembly, the objection was based on financial grounds and not policy. Parole and Probation, as well as local governments, were opposed because the local governments are responsible for 70 percent of the costs of the reports. Now that the fiscal note has been removed, no one is opposed to this bill. At the end of the day, we want to make sure that we have the best process and that the process is accurate.

The importance of the presentence report has many factors. First, it may influence the sentence the judge imposes—the judge looks to the report for prior criminal history. Second, it affects people when they enter the prison system. It affects their classifications, prison locations, opportunities for programs within the prison system, etc. And finally, it is important to have the report be accurate prior to sentencing. The report follows the inmate throughout the process, including in front of the State Board of Parole Commissioners. Accuracy is the key and incorporated into that is time.

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

My comments are primarily informational regarding what the Department of Public Safety envisions. In northern Nevada, Parole and Probation specialists attend court, and in southern Nevada, they do not. In southern Nevada, the work load is greater than in the north. This budget session, because conviction numbers were falling, for whatever reason, 12 positions are slated to be laid off in the presentence investigation specialist ranks. This bill adds another mandate to the Department, and we cannot make something out of nothing—if the resources are not there, we will fail to meet these new requirements.

Chair Segerblom:

I understand, but is your objection financial as opposed to constitutional or something of that nature?

Mr. Curtis:

Yes. My employees can do this if we have the resources to do it, and that has to be understood.

Senator Brower:

What we are working toward is a baseline due process fairness rule that makes sense and does not unduly burden your Division. We will not lengthen the time to the 35 days of federal regulation. That amount of time does not make sense. My concern is that without a regulation, the defense counsel could theoretically receive the report the day of the hearing. The attorney cannot effectively represent his or her client in that scenario.

Mr. Curtis:

We have no objection to the language of A.B. 423. We are just letting you know that we may be back next Session if the resources are not available to accomplish the goal of this bill.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

The ACLU of Nevada supports this bill. By providing more adequate notice to the defendant and defense counsel, we hope that the result will be fair sentencing and an opportunity to correct any errors in presentence reports.

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Chair Segerblom:

Seeing no further comments, support or opposition, I will close the hearing on A.B. 423.

SENATOR FORD MOVED TO DO PASS A.B. 423.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:

Seeing no public comment, I will close the hearing on the Senate Judiciary Committee at 11:26 a.m.

RESPECTFULLY SUBMITTED:

Ilena Madraso,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	2		Attendance Roster