

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

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

The Senate Committee on Judiciary was called to order by Tick Segerblom at 9:04 a.m. on Wednesday, February 13, 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

**GUEST LEGISLATORS PRESENT:**

Senator David R. Parks, Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

Mindy Martini, Policy Analyst  
Nick Anthony, Counsel  
Lindsay Wheeler, Committee Secretary

**OTHERS PRESENT:**

Connie S. Bisbee, Chair, State Board of Parole Commissioners  
Greg Cox, Director, Department of Corrections  
Tonja Brown  
Laurel Stadler, Rural Coordinator, Northern Nevada DUI Task Force  
Bernard Curtis, Chief, Division of Parole and Probation, Department of Public Safety

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Rick Gimlin, Division of Parole and Probation, Department of Public Safety  
Pam Del Porto, Inspector General, Office of the Inspector General, Department  
of Corrections

Tony DeCrona, Deputy Chief, Division of Parole and Probation, Department of  
Public Safety

Tod Story, American Civil Liberties Union of Nevada

Christopher Frey, Washoe County Public Defender's Office

Wesley Goetz

**Chair Segerblom:**

Our first item under discussion is Senate Bill (S.B.) 71 authored by Senator Parks.

**SENATE BILL 71**: Revises provisions governing sentencing of certain criminal offenders and determining eligibility of certain prisoners for parole. (BDR 14-447)

**Senator David R. Parks (Senatorial District No. 7):**

I will read from my written testimony ([Exhibit C](#)).

**Chair Segerblom:**

This bill was here last Session. What happened to it?

**Senator Parks:**

Last Session had S.B. No. 265 of the 76th Session passed out of the Senate and referred to the Senate Committee on Finance. It stalled because of the cost to change the electronic data system for the Department of Corrections Nevada Offender Tracking Information System. It did not get a hearing until late in the Session. The bill was exempt from Senate Finance. It had a hearing in the Assembly Judiciary Committee but was not brought up for the work session.

**Chair Segerblom:**

Will it go back to the Finance Committee this year?

**Senator Parks:**

There is no fiscal note or effect.

**Chair Segerblom:**

The bill appears to save money.

**Senator Parks:**

During the 2009 Session A.B. No. 474 of the 75th Session passed. The bill came from the Assembly Committee on Corrections, Parole and Probation and was similar to S.B. 71 in regard to aggregating sentences. Commissioner Bisbee can address the success of A.B. No. 474 of the 75th Session.

**Senator Hutchison:**

What is the Governor's position on this bill? Are there concerns, and how would this bill address those concerns?

**Senator Parks:**

It will make the length of an inmate's service, and the process the inmate must comply with run more smoothly.

**Connie S. Bisbee, (Chair, State Board of Parole Commissioners):**

This bill got caught up last Session because we ran out of time. I have a presentation which has been provided for your review ([Exhibit D](#)).

Consecutive and concurrent sentence structures are different. For example, an inmate may be sentenced to two concurrent 3- to 10-year sentences which is essentially one sentence because the sentences run together as one. In contrast, a consecutive sentence runs the time as if the inmate was sentenced to two 3- to 10-year terms. The terms are served separately, generally one after the other. The inmate would first serve one 3- to 10-year sentence. Once paroled or the first sentence expires, the inmate begins serving the second 3- to 10-year sentence. In Nevada, there are judgments of conviction which may include a combination of concurrent and consecutive sentences.

**Chair Segerblom:**

If sentenced to a 3- to 10-year sentence, an inmate would become eligible for parole if serving a concurrent sentence? It is not an automatic process? An inmate would have to request parole unless the inmate stays for the full 10 years?

**Ms. Bisbee:**

Yes. The Department of Corrections (DOC) notifies the State Board of Parole Commissioners. The Board places the inmate on an agenda for hearing regarding parole eligibility. For an example of this sentencing structure, reference [Exhibit D](#).

The benefit of aggregating consecutive sentences is it simplifies the sentencing. It reduces confusion and lack of confidence in the criminal justice system. There are a lot of sentencing combinations an inmate may receive on a judgment of conviction. Please refer to Examples #1 and #2 in [Exhibit D](#), pages 2 and 3, for additional explanation of the breakdown of the sentence time periods.

**Chair Segerblom:**

Is there a minimum of three hearings instead of one?

**Ms. Bisbee:**

Yes. At a minimum, there would be three parole hearings as opposed to one. For example, an inmate may be eligible for parole after serving only 6 months based upon good time credits and other sentence-reducing programs within the system. However, the victim was getting notices from the Parole Board that the inmate is eligible for parole after what seems to be such a short period of time. That becomes very upsetting to the victims. Most people do not understand the consecutive and concurrent sentencing structure. Additionally, family members who are supporters of the inmate are also confused by the sentencing structure. Those family members and friends become upset thinking the inmate may be granted parole and come home. That is not the case.

**Senator Brower:**

There seems to be a lot of confusion on the part of the victim and inmate's families. Would it be better to have a determinate sentencing system so on the day of sentencing there would be no confusion as to the actual sentence?

**Ms. Bisbee:**

It is not what we have. In theory, it would be better to know what the inmate will serve. However, there are additional factors to consider such as 510 credits and good time credits.

**Senator Brower:**

That is my point. We just do not know how much time any one inmate is going to spend based upon the sentencing structure. A determinate system similar to the federal system, and which many states have moved to, seems to be better for everyone involved.

**Ms. Bisbee:**

I agree with that. However, it is not what we have. That is one of the major issues that led Senator Parks to develop this bill. We are looking at what we can do within the framework of Nevada law while not interfering with the credit system and other credit programs and make it as easy as we can for all parties involved.

**Senator Brower:**

I feel the sentencing structure does not make sense and is confusing. It needs to be changed.

**Senator Ford:**

Judicial discretion may be the benefit of our system versus a more determinate system. Relative to other states and the federal government, what is the benefit of our system?

**Ms. Bisbee:**

The Nevada system as it is, or with the change?

**Senator Ford:**

Senate Bill 71 does not shift Nevada to a more determinative system. What is the benefit of our system? The only benefit I can see is that we have more judicial discretion.

**Ms. Bisbee:**

In your example, would a determinative system remove the parole aspect completely?

**Senator Ford:**

I have not researched the removal of parole in regard to a determinative system.

**Chair Segerblom:**

Is there a benefit to having a parole system as opposed to a determinative system?

**Ms. Bisbee:**

If you get rid of parole, you still do not get rid of a parole board. There are thousands of people who would still be entitled to parole. Our system has a built-in credit system. Due to that system, if an inmate has a 2- to 10-year

sentence, due to credits earned, the maximum that person will do is 4.97 years regardless of the determinative sentence.

You already have inmates with a 100 percent determinative sentence doing less than half of that maximum time due to the credits. Add in parole with a grant rate of approximately 60 percent. Of the 100 percent of inmates who do 50 percent of their sentences, another 60 percent of that 50 percent will do less than the 50 percent time. That is what keeps the prison beds empty and keeps Nevada from having to build new prisons.

The federal sentencing system is good based upon an inmate understanding the determinative system. The inmate does the time the judge determines. The inmate will additionally have a mandatory tail at the end of the sentence. The problem is the federal government can print the money to pay for those inmates. The State does not have that ability. If the State went to a determinative system, it would require building new prisons. The 60 percent of the people who already do only 50 percent of their maximum sentences are going out on even earlier release. If the State kept that entire 100 percent of inmates for 85 percent of the sentence, we would have increased the amount of time they spend in prison by 35 percent. If the State had the financial resources to do so, we would. It is not realistic. The federal government has wonderful prisons and aftercare. I think it is fiscally impossible for a small state such as Nevada to implement.

**Chair Segerblom:**

This State already has overly harsh penalties. It is important to reduce the amount of time spent in prison.

**Senator Brower:**

Judges have more judicial discretion in the determinative federal system. The entire system is based upon judicial discretion. It does not mean the judge has to sentence the inmate to prison. The judge recognizes that there are many crimes in which probation is the appropriate sentence. When the judge does decide to impose a sentence, it is a determinative sentence. There is no confusion. I do not understand how our system works. If I do not understand it, others do not as well. It leads to great disappointment and confusion to everyone involved. A determinative system is possible without building new prisons.

**Senator Hutchison:**

Senate Bill 71 does not affect minimum sentencing? This bill aims to do several things: minimum sentences will be served for all consecutive crimes; time will be served before the prisoner comes before the Parole Board; and the process ceases to traumatize family members and victims. Will the State save money if there are no additional hearings?

**Ms. Bisbee:**

The bill allows on July 1, 2014, a person being held to opt into this system. New inmates will automatically be included. Over 4,900 inmates in our system have consecutive sentences. There are 3,300 inmates who could choose to opt into this new system once implemented. The cost to the State is approximately \$22,000 per year, per inmate. The marginal cost of feeding and providing medical services is \$6.69 per day, per inmate; \$2,442 per inmate, per year. If 20 percent of eligible inmates opted into this system and were released 6 months earlier as a result of the aggregate sentencing, the marginal savings to the DOC would be over \$800,000. That is based upon 3,300 times 20 percent, which would equal 668 inmate days, or \$1,221 per inmate, which is \$805,860 in total savings. There is additional savings as S.B. 71 places a longer term of supervision in the community, which is drastically cheaper than incarceration.

**Senator Hutchison:**

Does the Governor support this bill?

**Ms. Bisbee:**

Yes.

**Greg Cox (Director, Department of Corrections):**

The DOC supports this bill. This bill will help a lot with the misunderstandings. We have reviewed the numbers. This bill is in line with Ms. Bisbee's analysis.

**Tonja Brown:**

I have an amendment to S.B. 71 ([Exhibit E](#)) based upon information presented to the Advisory Commission on the Administration of Justice as authored by Dr. James Austin. When inmates reach the age of 50, their health begins to deteriorate. Those inmates become a fiscal burden upon the State. Many of the crimes committed by these older inmates occurred when they were young. The male brain does not fully mature until approximately age 26. These inmates

have been in prison for 20 to 30 years and are no longer the same person. I would like to see the bill amended as provided in [Exhibit E](#).

There are inmates who have maintained innocence going before the Parole Board and are being denied parole after being incarcerated for over 30 years. There are several other examples of minimal crimes in which inmates are serving harsh sentences. These inmates should be granted parole. Conversely, other inmates who have committed far more heinous crimes, such as murder, have served far less time and been granted parole.

Based upon the fiscal impact on the State, when inmates reach the age of 50 and have completed programming and are not the same people, why should they not be given parole?

**Laurel Stadler (Rural Coordinator, Northern Nevada DUI Task Force):**

The Task Force is opposed to this bill. There would be no incentives for an inmate to behave while in prison and be granted early parole if sentences become aggregated. The Parole Board provides an incentive to inmates to behave. The confusion is in regard to the sentencing structure. We should correct the confusion on the part of the victims instead of changing the sentencing structure. It is not difficult to understand the straightforward sentencing system.

If sentences are aggregated, the victims may not be available that far in the future to come and testify at a parole hearing. Many times, a victim likes to make a presentation to the Parole Board and face the perpetrator. This happens a lot in DUI cases. It is important in the victim's recovery to come in and face the perpetrators at a Parole Board hearing. Oftentimes, the perpetrators make themselves into the victims by not seeing victim's families for many years. If the sentences are aggregated, it would remind the offenders why they are in prison.

**Senator Parks:**

The problem is when inmates go to the first parole hearings only to be dumped and told they have to serve the additional sentences. It will save the State money by avoiding these types of hearings which have no bearing on an inmate's actual ability to be paroled.



In the 2007 Session, A.B. No. 510 of the 74th Session was passed. It changed the good time credits, also known as 510 credits, of which Ms. Bisbee spoke. This bill encourages those inmates to gain good time credits and behave while in prison.

**Chair Segerblom:**

Are there programs within the system which encourage good behavior besides the possibility of parole?

**Senator Parks:**

Yes. Good time credits are such a program.

**Mr. Cox:**

I will give a presentation regarding the Department of Corrections ([Exhibit F](#)). We have several facilities throughout the State. A majority of the inmate population is located in Clark County. We also have several conservation camps throughout the State. Our mission is to protect the public by confining convicted felons according to the law while keeping staff and inmates safe. Our vision is creating a safer Nevada. Our philosophy is we pursue our mission with integrity, acting in an ethical and professional manner, being responsible for our actions and raising the Department to the highest standards. Our goals are to operate the Department according to the best practices, ensure the best use of Department resources, educate stakeholders and improve communication.

The Department is similar to a small city as described in [Exhibit F](#), page 4. We have major business activities. We spend a vast amount of the taxpayers' money on making sure our facilities are safe and secure for our staff and inmates.

We are tracking close to expectations in regard to projected population of inmates for the future. A detailed explanation of the historical and projected population is on page 6 of [Exhibit F](#). The courts have taken a hard look at the female population and the crimes females commit. This has increased the female inmate population in the last year and A.B. No. 510 of the 74th Session has had a direct result on the chart in regard to the total prison population. I feel the bill did what it was intended to do.

Page 7 of [Exhibit F](#) refers to the historical and projected custody distribution throughout our different levels of facilities. The State has a maximum and close

facility at the Ely State Prison. The medium facilities are High Desert State Prison, Southern Desert Correctional Center, Warm Springs Correctional Center, Lovelock Correctional Center and Northern Nevada Correctional Center. This is in addition to the minimum facilities, such as the conservation camps located throughout the State. Reno has a restitution center, and there is a transitional housing center in Las Vegas.

**Chair Segerblom:**

Your chart indicates a projection of an increase in the minimum facilities and a decrease in the medium facilities. What would be the reason for that?

**Mr. Cox:**

Those projections are based upon historical data and the projection of criminal activity. People will be more than likely placed in a minimum facility because of the sentencing structure received. This is tracking fairly close to the national level of 17 percent to 18 percent. There is a decrease in the medium population based upon that information. The classification system is working well in placing people in different custody levels.

**Chair Segerblom:**

Does the DOC make that classification? Does it come from the courts or the sentences received by the courts?

**Mr. Cox:**

No. It is based upon the Department's sentence management review of an inmate upon intake and various factors, such as the judgment of conviction and presentence investigation report. A risk assessment is made based on these various factors.

Page 8 of [Exhibit F](#) details dangerous offenders. These offenders are tracking evenly across time. We are seeing fewer violent crimes. This reflects nationally. Female inmates are tracking evenly. There is a slight decrease in the offenders with security threat group affiliation, such as gang members. We believe this is due to individuals being more sophisticated in hiding affiliations and behaviors. It is critical during the intake process that we get the affiliation correct. The courts are active in litigation regarding individuals with a security threat group affiliation. There has been a lot of litigation on that issue. Important information is provided by law enforcement and parole and probation officers regarding the

behavior and affiliation of an individual as an affiliated member of a security threat group.

Page 9 of [Exhibit F](#) details how we spend our money. I feel it is critical for the public to understand how the DOC spends our money. If the DOC has data that indicates certain programs do not work, we remove those programs. We do not continue to spend money on programs that do not work. The DOC has many challenges, such as the loss of key management personnel. Some states are raiding departments in other states. The baby boomers are leaving. Several other challenges that we deal with are defined on page 10 of [Exhibit F](#). The general trend across the Nation is trying to get the DOC in compliance with the federal Prison Rape Elimination Act of 2003 (PREA). Successful integration into the community is also a challenge in order to reduce recidivism.

The DOC has a lot of opportunities. There have been improvements in connecting inmates to community-based services, such as mental health, substance abuse programs and transitioning parole to the DOC. The transitioning of parole is a critical component in reducing recidivism and reducing costs. Only five states operate parole and probation programs similar to those in Nevada. We have the OPEN program in southern Nevada and the PRIDE program as an intermediate sanction to divert people from prison and jail. Video visitations and telemedicine for mental health provide for the needs of the inmates and reduce the costs of psychiatric services. The DOC is a high user of energy. We work closely with the Office of Energy and Director Stacey Crowley on how we can reduce our energy use. We have a focus on preventative maintenance.

**Senator Jones:**

Can you tell me what percentage of the prison population has mental illness and what you do to help that population?

**Mr. Cox:**

There is a different way to look at the mental health needs of our population. Substance abuse figures in 82 percent to 84 percent of our population. We have extended care units at the High Desert facility for members of our population with severe psychiatric or mental health needs. We have inmates with mental health issues who were placed in our facilities starting in the mid-1980s, in addition to individuals committing crimes and being sent to prison.

**Chair Segerblom:**

We will now introduce Senate Bill 32.

**SENATE BILL 32**: Revises various provisions relating to the Department of Corrections and the Division of Parole and Probation of the Department of Public Safety. (BDR 16-317)

**Mr. Cox:**

This is a housekeeping bill. We want to clarify in statute the provision in S.B. 32 that allows for the payment of fines and restitution from funds deposited in inmate accounts. The DOC has been doing that for a number of years. The DOC determined if we are compliant with the requirements, we would like the statute to reflect that compliance. It allows certain residential confinement inmates to pay bills and manage money without having to go through the DOC. The bill clears up the ambiguity that allows the DOC to transport safe keeper inmates for the rural counties. The bill clarifies that inmates must remain in the State for residential confinement. We have several inmates under interstate compact. Those inmates want to do residential confinement in another state. I do not agree with that. If you are going to do residential confinement, it has to be done in this State. You commit the crime in our State, and you should do the time in our State. The bill clarifies that.

**Chair Segerblom:**

How would the DOC be paid if an inmate were to do residential confinement in another state?

**Mr. Cox:**

Other states would like us to do the same for them. We do that with inmates from other states who are in our facilities. The DOC does not do it for residential confinement. You cannot manage residential confinement in another state very well.

**Senator Brower:**

What is the reason for the prisoner exchange program with another state?

**Mr. Cox:**

We use it to reduce operational costs due to security threat group inmates. We look at what the specific threat is in receiving an individual with a high security threat. Many are gang members. An inmate may come from a group that has a

high threat rate in our State but not in another. We will swap that inmate with another inmate who may have a high threat rate in another state but not in our State. It has been fairly effective, especially in cases coming under the Racketeer Influenced and Corrupt Organizations Act.

**Senator Brower:**

This is used to move inmates away from outside influences, similar to the federal system.

**Mr. Cox:**

The interstate compact is a good tool to help reduce problems with high security threat inmates.

This bill additionally allows individuals who have been convicted of a DUI while operating watercraft to be included in the residential confinement program. We are trying to clean up the language and allow this class of conviction into the program in order to reduce litigation. The bill also simplifies disbursement of restitution payments to the Division of Parole and Probation, which is an ongoing practice of the DOC. The Prison Revolving Account needs to be abolished due to the fact the DOC has not used it in over 7 years.

**Ms. Brown:**

I have an amendment. There needs to be further measures to adjust time credits for parolees who are injured, with doctor's excuses, and are given work credits for attending school and college. This amendment is based upon a computer glitch which occurred in the prison system.

**Chair Segerblom:**

I am not sure this bill deals with the amendment you would like to propose.

**Ms. Brown:**

I will withdraw it until the appropriate bill is presented.

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

We are in support of S.B. 32. It cleans up the provision in which we pass back restitution to the victims.

**Chair Segerblom:**

Does the Department pull the money out of a prisoner's account and give it to the victim?

**Rick Gimlin (Division of Parole and Probation, Department of Public Safety):**

Yes. The DOC has an account in which inmates accumulate funds. The DOC transfers those funds to the Department and distributes them to the victims.

**Chair Segerblom:**

If a parent were to provide an inmate with money, may you take that money?

**Mr. Gimlin:**

That may be a different program. We receive the funds directly from the DOC and distribute those funds to the victims.

**Ms. Stadler:**

We support section 5 of the bill which allows a DUI regarding watercraft with other DUI provisions.

**Chair Segerblom:**

Do you know how many inmates with DUIs relating to watercraft are in prison?

**Ms. Stadler:**

I do not. We support those laws being equivalent.

**Chair Segerblom:**

I will close the hearing on S.B. 32. I will now introduce S.B. 33.

**SENATE BILL 33:** Revises provisions governing voluntary sexual conduct between a prisoner and another person. (BDR 16-320)

**Mr. Cox:**

Many states, including Nevada, are trying to become compliant with federal law in regard to the Prison Rape Elimination Act of 2003 (PREA).

**Chair Segerblom:**

By implementing these changes, does Nevada receive federal money? Can Nevada be penalized by not implementing these changes?

**Mr. Cox:**

There is a potential for a 5 percent funding cut from the Department of Justice for law enforcement. There will be increased litigation throughout the State because of noncompliance with this bill. We need to move toward compliance.

**Chair Segerblom:**

The Act was passed in 2003. Why have we waited 10 years to implement these changes?

**Mr. Cox:**

There were issues with the cost of implementation throughout the State in the cities, counties and various agencies. When PREA was passed, it was strongly opposed by correction officials and facilities throughout the Country. These agencies, including those in Nevada, wanted information from the federal government on how to comply. We were unable to achieve compliance due to financial constraints. It would have cost the taxpayers millions of dollars to implement the Act. We have developed a plan on how to implement the Act and to come into compliance.

**Chair Segerblom:**

Is this bill going to cost the State money? Do you have a letter from the federal government that states if you do not comply by July 1, the DOC will be subject to reduction in federal monies?

**Mr. Cox:**

No. The federal government is developing a questionnaire. Auditors will come to the DOC in every state and determine the steps being taken to become compliant. The Department's progress will be documented. There will be a tremendous amount of litigation if the State does not become compliant.

**Chair Segerblom:**

Do you have an estimate of how many Category D felonies would be prosecuted in a year under PREA?

**Pam Del Porto (Inspector General, Office of the Inspector General, Department of Corrections):**

There have been nine substantiated claims since 2008 regarding nonconsensual sex acts between inmates. There have been eight nonconsensual sex acts by staff since 2009. The standards which apply were not posted by the federal

government until 2012. The first audit is to occur this August. We have been informed that this audit will determine our level of compliance for every department. That is a lot of work to complete in a year.

**Chair Segerblom:**

These acts are not already illegal? Nonconsensual sex is not already illegal?

**Ms. Del Porto:**

*Nevada Revised Statute 212.187* relates to the Department of Corrections. We seek to add specific federal language to include the various violations.

**Mr. Cox:**

The bill follows the federal statute and law regarding what we need to add to the statute to make it compliant.

**Chair Segerblom:**

It is a Category D felony?

**Ms. Del Porto:**

Yes.

**Senator Jones:**

The definition of sexual conduct in NRS 212.187 is the same as in NRS 201.263, the sale of pornography to minors. If we are changing the language in this statute, is it appropriate to change it in all other sections? In NRS 201.520, similar conduct between students and teachers, the definition is different. Are we defining sexual conduct three different ways?

**Mr. Cox:**

This bill is aimed toward the correction facilities and coming into compliance with PREA. I suggest looking how the federal government views the statute's definitions. The definitions may need to be revised.

**Senator Jones:**

Is the language regarding intent required under the federal law?

**Mr. Cox:**

Yes.



**Senator Jones:**

Does that intent language create a barrier to prosecution? We are requiring an intent element. The bill contains language of an intent to abuse another person or arouse, appeal or gratify the person's sexual desires. It seems to be an additional hurdle.

**Ms. Del Porto:**

We are stuck with the language coming from the federal government. Please reference my three handouts for PREA ([Exhibit G](#), [Exhibit H](#) and [Exhibit I](#)). The language may create an extra burden, but we have to apply the language.

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

The Division supports this bill to ensure Nevada's compliance with PREA.

**Tod Story (American Civil Liberties Union of Nevada):**

I will now read from my written testimony ([Exhibit J](#)). Most of our concerns are with the language regarding consensual and nonconsensual sexual activity, in particular, in the bill on page 2, under lines 16 and 17. We would also propose to strike and eliminate the term homosexuality from the statute. It is archaic and is being referenced as a sex act.

**Chair Segerblom:**

Is there any objection to the language added in this bill by the DOC?

**Mr. Story:**

I would disagree that the bill reflects the language and terms of the Act. There may be some difference between the statute and the language of consensual and nonconsensual sex. It is our belief that the PREA focuses primarily on nonconsensual or forced sexual activity.

**Chair Segerblom:**

You would agree with the descriptions of the sexual activity included in the bill?

**Mr. Story:**

We would change some of the language.

**Christopher Frey (Washoe County Public Defender's Office):**

We are opposed to the bill. We agree with the ACLU regarding particular language. The definitions contained in the bill do not match with the federal Act, such as: masturbation, requiring another to expose his or her genitals, kissing and caressing, invading the privacy of another person by watching the person change clothing or use a shower, toilet or urinal. That language seems to exceed the language in the Act. This bill seems overly inclusive and not necessary to achieve the desired result. I believe it will create a massive amount of litigation in regard to the intent language. It sets up a sparring match regarding who said what in regard to the intent of another person. That would be routinely litigated.

The definition of "sexual offense" per NRS 179D becomes a required registration sex offense. Under this bill, there will be increased costs to the State, based upon additional persons added to the registration rolls for simple acts such as consensual kissing. A person would become a registered sex offender based upon consensual kissing. I would recommend that the law stay intact in its form and strike some of the language such as homosexuality as a prohibited act. I would not adopt the language and revisions as proposed by the DOC. This bill goes beyond what is required for compliance. I would recommend striking language but still allowing for compliance. This bill should not exceed what is required.

**Senator Brower:**

Nevada law provides that consensual sex involving a prisoner is a felony. This bill does not change that. It changes definitions.

**Mr. Frey:**

It appears from the definition section of the federal Act that the intent of the Act is to address forcible rape. If you refer to section 10, carnal knowledge and sexual assault are defined, and both require an element of lack of consent. It has to be forcible in nature. The bill appears to criminalize consensual acts.

**Senator Brower:**

The bill is aimed at bringing the State into compliance with the federal law. The prohibition on consensual acts is not included in this bill and is already addressed in the statutes.

**Mr. Frey:**

This bill goes beyond the definition of sexual intercourse and sexual conduct that is abusive in nature, adding language which is to gratify the person who is committing the act on the other person.

**Chair Segerblom:**

The federal law requires intent, but our State does not require intent. The bill includes the federal definition, expands the sexual activity and adds a voluntary aspect.

**Mr. Frey:**

The core of my concern is this bill seems to exceed the language from PREA. I do not see a definition in PREA where the term masturbation, requiring another person to expose his or her genitals, kissing or caressing another are listed.

**Chair Segerblom:**

Does the federal law require intent?

**Mr. Frey:**

My reading of PREA states that there is an intent to gratify, but this bill goes beyond what is required for compliance.

**Senator Ford:**

Masturbation may exceed what PREA requires. Was it not already defined as a prohibited sex act prior to PREA?

**Mr. Frey:**

If it were, it would seem to duplicate what is already on the books. It would seem that we are compliant. That should be removed from the bill.

**Senator Ford:**

It looks as though the term masturbation is stricken in section 1, subsection 3, paragraph (a) but is added back in at section 1, subsection 3, paragraph (a), subparagraph (1). I do not think this bill is duplicating something already in the statute. It appears we have consensual sex as illegal and masturbation as a defined sex act that is prohibited. Every other new prohibition offered in order to comply with the statute should be the only items for discussion.

**Mr. Frey:**

Masturbation and homosexuality are listed in the statute. I think the language regarding kissing and caressing should be removed. These are not listed as prohibited acts under PREA.

**Senator Ford:**

Do you object to any other acts listed in the bill?

**Mr. Frey:**

"Invading the privacy of another person by watching the person change clothing or use a shower, toilet or urinal." That language seems to go beyond the scope of PREA. It is very troubling. Hypothetically, if an inmate were to lock eyes with another inmate in the shower, that inmate may be subject to prosecution. That will then lead to litigation as to what the intent was as to the gaze. It becomes problematic on many levels.

**Senator Ford:**

I agree there may be some intent issues. In regard to PREA, the federal Act can set a base. As a State we can set a ceiling. We can go above and beyond the federal Act itself.

**Mr. Frey:**

Yes.

**Chair Segerblom:**

How does this law apply to county or city jails?

**Mr. Frey:**

It naturally extends to any confinement or incarceration environment.

**Ms. Del Porto:**

I have the federal regulations that were posted by the federal government last May that outline the requirements ([Exhibit K](#)). Title 28, Code of Federal Regulations, part 115 is the prevention and planning regarding limits on cross gender viewing and searching.

**Chair Segerblom:**

Do you know of any states that have adopted language to become compliant with PREA?

**Mr. Cox:**

We have been working with other states to develop this language.

**Chair Segerblom:**

Do the states have the same or different language?

**Senator Ford:**

Is it not true that PREA is a base that we have to subscribe to in order to maintain compliance? It seems the DOC is trying to exceed the requirements. Would you be willing to remove the language that exceeds the requirements in PREA in an amendment?

**Mr. Cox:**

We want to move toward compliance. We would be amenable to considering changing that language.

**Chair Segerblom:**

If a person is convicted under this statute, he or she would become a Tier 3 sex offender. Will that require lifetime supervision?

**Ms. Del Porto:**

I have not looked into the registration issue in regard to this bill. We have had staff prosecuted under the law for kissing and caressing. This bill adds definitions for the Attorney General for prosecution. We are trying to combat a crime. We have taken a proactive stance prior to the enactment of PREA.

**Senator Jones:**

This bill does not limit prosecution to only correction officers or does it apply to anyone?

**Mr. Cox:**

Senate Bill 33 applies to all staff and anyone who works in our facilities. We have to provide training to everyone.

**Senator Jones:**

Where in the bill does it say this is limited to people within the Department?

**Ms. Del Porto:**

It is not limited to just the Department of Corrections. It includes visitors who come to our camps. Engaging in any sexual act with an inmate is and has been a felony.

**Senator Jones:**

For example, say my girlfriend works for the DOC and I came to visit her at work and kissed her. I would be guilty of a Category D felony.

**Ms. Del Porto:**

If the Attorney General decided to prosecute you for that act, yes. The final decision to prosecute rests with the Attorney General's Office. I am sure the Office would take into account aggravating and mitigating facts.

**Senator Jones:**

I could be prosecuted under section 1, subsection 3, paragraph (a), subparagraph (5) for "attempting, threatening or requesting to engage in any act that constitutes sexual conduct." If my boyfriend or girlfriend is in jail, and I send him or her a letter stating I would like to have sex with him or her when he or she is released, that would be a request to engage in sexual conduct.

**Mr. Cox:**

In my almost 32 years with the DOC, we have not prosecuted a visitor for kissing a loved one in the visiting area.

**Senator Jones:**

That is because you did not have a statute to do so, and now you do.

**Mr. Cox:**

In 2003, there were similar arguments in regard to the Act. We are working toward compliance with the federal law, looking at the serious nature of this business and trying to reduce the problem of rape in our facilities. We are intent on bringing Nevada into compliance with the federal law.

**Senator Brower:**

The DOC needs to articulate how this bill goes beyond PREA. The Committee may be willing to pass a bill that goes beyond PREA, but we need more understanding as to how it does and the implications of doing so.

**Senator Hutchison:**

I suggest you look at the definition of sexual conduct. I do not believe you can be prosecuted under this statute for kissing your girlfriend in prison. The definition of "sexual conduct" contains an unauthorized act. Under this bill, it has to be unauthorized. I am concerned how you enforce subsection 3, paragraph (a), subparagraph (4); "invading the privacy of another person by watching the person change clothing, use a shower, toilet or urinal." Based upon my understanding, everything in prison is done in public. There will be tremendous litigation with prisoners asserting that someone watched them change when it is an act required to be done in public.

**Chair Segerblom:**

I will close the hearing on S.B. 33 and open the hearing for public comments.

**Ms. Brown:**

I will now read from the written testimony provided by Larry Wilgus ([Exhibit L](#)).

On February 25, you will be provided a copy of an audit upon the Department regarding a computer glitch which put false felony charges in inmate files. It may have affected everyone with a life sentence. Additionally, there are several mental health issues in regard to the DOC. A former DOC doctor wrote a letter about these various issues.

The Department is transporting and transferring inmates who are mentally ill to institutions which are not equipped to deal with those issues. Inmates are committing suicide. The DOC is taking inmates who have medical issues to Northern Nevada Correctional Center for treatment. Inmates are there for weeks and months, and that takes a toll on their mental state. There is litigation regarding religion and the availability of information for inmates. Inmates do not have access to other inmate cases dealing with similar litigation. One inmate may have won a case, but another inmate would not be aware of such victory. Under the DOC, an inmate with a Wicca religious affiliation is listed as a gang member. I want to know how much money we as taxpayers have paid for defending the DOC regarding this type of litigation.

**Wesley Goetz:**

I am concerned about the funding portion of S.B. 32 in taking money from the inmate to pay restitution to victims.

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**Chair Segerblom:**

The DOC denied that, so I am not sure where that money comes from.

**Mr. Goetz:**

Money sent in is the inmate's money, and I do not think the DOC should be able to take it for those payments.



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**Chair Segerblom:**

I agree with that. I will now close the hearing at 11:08 a.m.

RESPECTFULLY SUBMITTED:

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Lindsay Wheeler,  
Committee Secretary

APPROVED BY:

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Senator Tick Segerblom,

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	4		Attendance Roster
S.B. 71	C	2	Senator David R. Parks	Written Testimony
S.B. 71	D	10	Connie S. Bisbee	Presentation on Aggregated Sentencing
S.B. 71	E	1	Tonja Brown	Amendment to SB 71
S.B. 71	F	12	Greg Cox	Presentation
S.B. 33	G	19	Pam Del Porto	Prison Rape Elimination Act of 2003
S.B. 33	H	7	Pam Del Porto	Presentation on the Prison Rape Elimination Act of 2003
S.B. 33	I	7	Pam Del Porto	General Definitions
S.B. 33	J	3	Tod Story	Written Testimony
S.B. 33	K	11	Pam Del Porto	Executive Summary of the Prison Rape Elimination Act of 2003
S.B. 32	L	1	Tonja Brown	Written Testimony of Larry Wilgus