

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
March 5, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:01 a.m. on Tuesday, March 5, 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
Shawn Heusser, Deputy Legislative Auditor, Audit Division
Paul V. Townsend, CPA, CIA, Legislative Auditor, Audit Division
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Mercedes Maharis
Nancy Steele, Ph.D.
Connie S. Bisbee, Chair, State Board of Parole Commissioners
James G. (Greg) Cox, Director, Department of Corrections
Florence Jones, Nevada Citizens United for the Rehabilitation of Errants
Wesley Goetz
Tonja Brown
Steven Hines, Nevada Citizens United for the Rehabilitation of Errants

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Pat Hines

Ronald P. Dreher, Peace Officers Research Association of Nevada

John T. Jones, Jr., Nevada District Attorneys Association

Chair Segerblom:

I will call the meeting of the Senate Committee on Judiciary to order. We begin with a presentation by Legislative Auditor Paul Townsend of the Legislative Counsel Bureau who will be talking about a recent audit of the Department of Corrections.

Paul V. Townsend, CPA, CIA (Legislative Auditor, Audit Division):

The Department of Corrections (DOC) was on our biennial audit plan. As we were getting ready to commence the audit, I received a communication from the Chair of the Advisory Commission on the Administration of Justice who said there was testimony in one of the Commission meetings about some computer errors with the Nevada Offender Tracking Information System (NOTIS) causing inaccurate information to be included in inmates' records.

We developed four audit objectives which were to determine: if the data in the information system is accurate; if correct information is being provided to the State Board of Parole Commissioners; if inmate grievances regarding criminal history are being fairly resolved; and if access to the information system was controlled to reduce the risk of unauthorized changes.

We have done multiple audits of the DOC, including the classification system, which was closely linked to this audit. It gets complicated when you are examining multiple concurrent sentences, multiple consecutive sentences and the various statutes that apply to the applications of credits.

We primarily focused on a random sample of 300 inmates and traced information in NOTIS back to source documents. Two primary documents we looked at were the judgment of conviction (JOC) prepared by the court outlining the sentence handed to the inmate and signed by the judge; and the presentence investigation report prepared by the Division of Parole and Probation, highlighting the inmate's criminal history.

Our overall conclusion was that errors were occurring, and they were human errors. As we looked at the data in current offense information, which is the most significant data in an inmate's current sentence, we found about

4.5 percent of the data was in error. As we looked at prior offense information, which is less significant than the current offense information, we found more than 13 percent of the data was in error. As we looked at the information provided to the Parole Board, we found more than 13 percent of the inmates' reports had errors.

We wanted to find out the effects of the errors. As we did further analysis, we found that about 1 percent of the inmates were affected by the errors. In our sample, we had three inmates, two who were released several months early based on the errors, and one who had his parole hearing delayed for about 10 months because of an error. On the parole progress reports, there was no impact of the errors because the Parole Board corrected the errors as part of its review process. These errors should not be occurring. Our audit report makes ten recommendations aimed at reducing the number of errors and providing more accurate information.

Shawn Heusser (Deputy Legislative Auditor, Audit Division):

We have submitted the audit report we completed on the DOC ([Exhibit C](#)). The Nevada Offender Tracking Information System is the system the DOC uses to manage and track inmate information. I have submitted my written testimony outlining the audit report in detail ([Exhibit D](#)).

Senator Ford:

These mistakes are disconcerting. I am glad we now have safeguards in place to catch some of the errors earlier. Concerning tiering sex offenders and the lack of their opportunity to appeal and move to a different tier level, were there any mistakes found in that area?

Mr. Heusser:

We did look for that, but the errors we identified were not specific to tiering of sex offenders. We looked at whether the error led to a classification making an inmate eligible for minimum custody or whether the inmate needed to remain in medium custody. We did not identify errors causing an inmate to be in the wrong level of custody.

Senator Ford:

I do recall you said all the errors were human-caused in terms of input, etc. Is that right?

Mr. Heusser:

Correct. We discovered that as items were being entered into NOTIS, there were opportunities to correct those mistakes. For example, where the default was a Category B felony, but in fact the JOC stated it was a Category C felony; at that point, it was the DOC staff's responsibility to go in to the file and make sure that had been corrected from Category B to Category C. In the case of the offense dates, the goal was to be sure the offense dates were corrected to the offense date rather than the day the person was convicted.

Senator Ford:

We are lucky no one ended up being harmed. It gives us more reason to think about an appellate process for tiering those sex offenses.

Chair Segerblom:

Has the DOC agreed to your recommendations?

Mr. Townsend:

Yes, the DOC accepted all ten of our recommendations, and we will be following up.

Chair Segerblom:

I will turn the committee over to Vice Chair Kihuen as I present my bill.

Senator Kihuen:

I will open the hearing on Senate Bill (S.B.) 104. Chair Segerblom is going to introduce the bill.

SENATE BILL 104: Revises provisions governing parole. (BDR 16-241)

Senator Tick Segerblom (Senatorial District No. 3):

This bill deals with the DOC's Psychological Review Panel, more commonly called the Psych Panel. If you are in prison in Nevada for a sex offense, before you are allowed to be released, you must appear before the Psych Panel. Members of the panel evaluate your prospect for recidivism—whether you are a low, medium or high risk to engage in similar behavior for which you were convicted.

Over the years, I have had complaints that the Psych Panel is not professional and does not evaluate the correct characteristics that would be predictive of

whether someone would recidivate after leaving prison. Mercedes Maharis has looked at many of the videotapes of these Psych Panels and compiled a video we want to show.

Mercedes Maharis:

Meetings of the Psych Panels used to be videotaped, but they are only being audio-recorded now. I have reviewed many of these panels and compiled some for you to view and get a feel for how they operate ([Exhibit E](#)).

Senator Segerblom:

We wanted to show you the arbitrariness of these evaluations by Psych Panels. My proposal is to eliminate the Psych Panel, but we need something in place to reduce offenders' prospects for reoffending. In prison, officials evaluate you on the number of sex offender treatment programs you attend, but there are no programs offered. It is a Catch-22. You could not take the program because it is not there; but at your evaluation, you will be asked if you took it. We want to bring this to everyone's attention.

Nancy Steele, Ph.D.:

I am licensed in the State of Ohio as a clinical psychologist and have had more than 30 years of experience in corrections. I am retired.

The first page of the chart I submitted ([Exhibit F](#)) illustrates how the Psych Panel evaluated sex offenders. This is the best data we could get from the DOC, but it is incomplete. The panel evaluated 2,907 sex offenders between 2006 and 2012 and rated 38 percent of them as high risk to reoffend and 5 percent as low risk to reoffend.

Dr. Mary Perrien, a consultant with the U.S. Department of Justice's National Institute of Corrections (NIC), advised the Parole Board to rely completely on an empirical, objective risk scale. There are numerous studies showing clinical judgment does not work and can negate the results of a well-derived risk scale developed from data collected all over the world for decades.

We have a good, objective way to know the risk of recidivism for sex offenders, and it does not involve psychologists and someone's opinion. I am a psychologist with many years of experience, and even I cannot tell you exactly what will happen with any given offender after he or she is released from prison.

What we know from a large study done in 2007 is that, on average, about 16 percent of sex offenders in prison are probably at high risk to reoffend and about 28 percent are at low risk to reoffend. This is based on the administration of the Static-99 tool, which Nevada utilizes. Using only Static-99, the DOC would probably be in good shape predicting recidivism of sex offenders. The trouble is, the DOC is using the Psych Panel to augment that, and it has boosted the high-level risk numbers and minimized the low-level risk numbers. In my estimation, this has cost the DOC \$25 million a year for each offender kept in prison who probably does not need to be there. If an offender gets a 3-year deferral, that is 3 years at \$20,000 a year, and if you are talking about hundreds of sex offenders incorrectly diagnosed, that can run up quite a tab.

Pages 3 and 4 of my handout, [Exhibit F](#), describe the findings of the Psych Panel by year. The charts illustrate how the high-level offenders were inflated. This is done out of good intentions—to be safe and careful—but every study has shown that clinical judgment skews a risk scale.

On page 6 of [Exhibit F](#) is an example of the Static-99R Coding Form, which takes under 30 minutes to fill out. I have done hundreds of them. The form generates a score of minus 3 to 10. The lowest two scores are low-level risks and any offender with a score of 6 or above is considered at high risk of reoffending, which will usually be about 16 percent of the sample.

If the DOC would target treatment on this group of high-risk individuals rather than trying to treat every offender, it would yield the most significant result. I have included some suggestions for less expensive programs for the moderate-risk offenders. It would give the Parole Board something it needs, which is an objective and sound scientific instrument to measure the risk of a sex offender reoffending. One can easily score a sex offender at the time he or she enters prison. Nothing but age should change during his or her incarceration, and statistically, the risk of recidivism goes down with age. If an offender ages past 60, his or her score goes down. This does not take a psychologist or a doctor to administer. It could be given to the offenders in the reception area as they enter prison. Administering the Static-99 does take some training, and the information about the prior errors in the sentencing history is very important. The fact that the DOC is already cleaning up errors is a good thing and will give greater accuracy on the risk scale. Since the Static-99 Form is already being used in Nevada, it could be the sole source of information used

to assess the risk of a convicted sex offender reoffending upon release from incarceration.

Senator Jones:

Are you familiar with the recent study by Leslie Helmus, David Thornton, R. Karl Hanson, Kelly M. Babchishin and Andrew J.R. Harris, published in September 2012 in the academic journal, *Criminal Justice and Behavior*, that called into question the Static-99 evaluation tool?

Dr. Steele:

I am not familiar with that study, but I would say that no instrument is perfect. However, this is the most widely accepted one. If there is a better risk assessment instrument out there, I am not aware of it.

Senator Jones:

I am concerned because your testimony and documentation indicate this is the ultimate assessment tool. The original architects of the Static-99 are now calling into question their own evaluation tool. I am concerned about scrapping an existing program, which seems to have its own flaws, for another program, which may also have flaws.

Dr. Steele:

These instruments are evolving, and no doubt there have been changes since the Static-99 tool was first conceived and used. I am not totally up to date on the latest research, but sticking with an objective instrument is a good thing. I doubt any of the research will say that clinical judgment improves the evaluative instrument. My point is that picking a recidivism assessment instrument should be based on research. The assessment should also include the offender's criminal history. It should not be dependent on how a Psych Panel member feels about a certain offender or crime. That is not the best way to predict recidivism.

Senator Jones:

I do understand the interest in moving from subjectivity to objectivity, but I am not sure that we should scrap something that already exists for the sole purpose of achieving that objectivity, especially when the architects of the tool have questions about its current validity.

Dr. Steele:

The State already uses the Static-99 system and in my opinion, it is superior to clinical judgment from the Psych Panel.

Senator Hutchison:

Is it your testimony, based on your professional experience, that we should scrap the Psych Panel altogether and move to an objective document which can be filled out? Are you saying that if we do that, we will save money and have a more accurate tool?

Dr. Steele:

We should use the psychologists and mental health professionals for treatment. Research shows that treatment does improve an offender's success in the community. It needs to be constructive treatment, and NIC can help with improving treatment programs. The Parole Board also needs up-to-date information about how the offender is behaving in prison—if he or she is getting into fights, spending time in the hole, cooperating, going to school, etc. That information can come from mental health professionals instead of comments on the inmate's history. That is the past, it is there in the person's record, and it cannot be changed. What we really want to know is what the sex offender is doing now, and we want to hear it from people who are objective, positive and supportive in trying to help offenders improve themselves.

Senator Hutchison:

I do not see any category on the Static-99 Form you referenced for counseling or treatment in prison—how that would affect an offender's score for risk of reoffending. Is there a reason for that?

Dr. Steele:

The Static-99 is supposed to do only one thing: give a prediction of the likelihood of a sex offender reoffending. The people who wrote it know that treatment helps and should be done. If it is the right kind of treatment and good reports come in from the professionals doing the treatment, the offender's risk can be diminished some and should be considered by the Parole Board.

Senator Hutchison:

Are you saying the Static-99 is an important tool, but the human element cannot be removed from the equation?

Dr. Steele:

We want to assess how the offender is behaving today, not when he or she first walked in the door of the prison.

Senator Ford:

What is the common opinion for requisite licensure for those participating on a panel with the responsibility of determining someone's recidivism risk?

Dr. Steele:

We should not use a Psych Panel to guess a sex offender's recidivism risk.

Senator Ford:

But if you do use a Psych Panel for that, what kind of licensure or certification requirements should be required of Panel members?

Dr. Steele:

You are better off to have licensure and certification. Even to use the Static-99, one needs certification. It would be worth reading Dr. Mary Perrien's report on risk assessment for sex offenders ([Exhibit G](#)) because she explains how better data comes from the objective risk scale.

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

This issue is something the State Board of Parole Commissioners has been involved with during the last few years. Two years ago, I was one of 12 parole board chairs in the U.S. who applied through the NIC for training and a possible grant for an issue we have here in Nevada. In the process, we were to present an issue or problem to the NIC in Washington, D.C., in 2011. I presented a report on recidivism and risk assessment for sex offenders in Nevada. We got a technical assistance grant awarded to Dr. Mary Perrien. This is the report from that grant, [Exhibit G](#). The Parole Board then drafted an amendment to S.B. 104 on her findings.

Senator Kihuen:

What are the qualifications for someone to serve on the Psych Panel? Who makes the appointments?

Ms. Bisbee:

If you look at *Nevada Revised Statute* (NRS) 213.1214, the members of the Psychological Review Panel in Nevada are the administrator of the Division of

Mental Health and Developmental Services of the Department of Health and Human Services (DHHS) or his or her designee; the director of the DOC or his or her designee; and one State-licensed psychologist or psychiatrist. We have always had licensed psychologists or psychiatrists on the Panel, and they have been the designees of the director of DHHS.

Many years ago, because statute stated the designees would be from the DOC, they were associate wardens, including myself. They are degreed individuals, but not experts on sex offenders, and it scared us to be on the Psych Panel determining whether someone was going to be a risk to reoffend sexually. At that time, the DOC designated two of its psychologists as designees, but there has never been a requirement that panel members be licensed psychiatrists or even psychologists.

In Dr. Perrien's report, she found the Psych Panel members to be dedicated and interested in making the right decision. She also found that much of the decisions are made by gut decision, and going by gut decision to determine something as important as predicting recidivism is not the best tool. Through studies, it has been found that the actuarial risk is the best determinant in predicting this behavior. Static-99 is used by the State and is internationally considered the best instrument for establishing risk levels of sex offenders. Like any tool, there are those who are happy with Static-99 and those who are not. In general, it is the most accepted tool.

Static-2002 is an updated tool Dr. Perrien references in her report. Her caution is that there are not enough longitudinal studies of its efficacy to be fully committed to recommending it now.

The Board is in support of this bill to abolish the Psych Panel. It will not save the State a lot of money, but it will allow those three psychologists to do their other duties. Lake's Crossing Center in Sparks has been minus a psychologist for one week out of the month for the last several years so that a professional could participate on the Psych Panel. This bill would allow the reinstatement of that mental health professional to the maximum-security forensic mental health facility. The two psychologists from the DOC would also plug back into the treatment of inmates for that extra week every month when they would be relieved of their Psych Panel duties.

We have an amendment to the bill ([Exhibit H](#)) allowing the DOC to evaluate each prisoner convicted of a sexual offense pursuant to subsection 5. That subsection lists the definitions of sex offenders. This would aid in determining the sex offender's risk to reoffend using a currently accepted standard of assessment.

The DOC has hired Dr. Darcy Edwards, an expert in evidence-based programming, who is looking at the entire system of programming and taking over the behavioral health programming within the Department. Dr. Edwards is qualified to determine whether a better tool than Static-99 exists and if so, to help DOC staff with a proper implementation.

The completed assessment from our amendment, [Exhibit H](#), results in risk level of low, moderate or high. The DOC director would then ensure that the assessment is available to the Parole Board prior to a parole hearing. We do get Board reports as well as Psych Panel risk assessments. The reports inform us of behavior in prison, programming, past history, parole plans, release plans and the offender's behavioral adjustment. For this reason, the Parole Board is recommending the removal of the Psych Panel. The replacement would be to use the trained mental health professionals already in place by utilizing the Static-99. We also recommend an appeal process for any cases where there is an error. The Parole Board would use all the information—including the risk assessment and whether the offender has had any treatment—to make the best educated guess as to whether the offender is appropriate for parole. I encourage you to abolish the Psych Panel and replace it with our amendment, given Dr. Perrien's report.

Senator Kihuen:

How long are the terms on the Psych Panel?

Ms. Bisbee:

There is really no limit. The DOC psychologist has been on the Panel for 10 years.

Senator Jones:

I am not suggesting we should not do away with the Psych Panel, but I am still concerned that Static-99 is an outdated tool. Last year, the original authors of the studies cited by Dr. Perrien seemed to cast aspersions on their own research. In the September 2012 article, the authors said their research was "a

gross simplification ... evaluators interested in reporting absolute recidivism rates estimates must not only calculate a static score but also make a separate professional judgment concerning which sample the offender most closely resembles." They seem to be saying a simple calculation by someone just filling out a form does not work. I am concerned we are scrapping one thing and putting something else in its place over which the architects are expressing concern.

Ms. Bisbee:

This phenomenon also happens in the area of addictions, which I have worked in for many years. There is often a change in the assessment tools, and study authors will say they need to look at things differently. This is why in the amendment, [Exhibit H](#), we did not name the risk assessment tool to be used. We wanted the flexibility to look at the most current research and choose the most accurate tool.

We do know, however, that gut judgments do not work. This is why we want an actuarial assessment. It is difficult to refrain from bringing one's own prejudices and biases into a judgment situation like a Psych Panel, so keeping it as actuarial as possible is better. When it comes right down to it, I cannot tell you that we can accurately assess sex offenders.

Senator Hutchison:

Did you say the Parole Board is fully behind this with the amendments? Are you here representing Governor Brian Sandoval, meaning he is also behind it?

Ms. Bisbee:

Yes, the Board is in support of S.B. 104 and abolishing the Psych Panel with the amendments. The Governor's Office has been made aware of the amendment and has not prevented me from being present today.

Senator Ford:

Subsection 2 of the amendment says, "The Director shall ensure employees of the Department who complete assessments pursuant to subsection 1 are properly trained to assess the risk of a prisoner to reoffend in a sexual manner" I asked earlier about whether licensure or certification is required for people to serve on the Psych Panel. I am still not convinced that we do not need licensed psychologists as opposed to staff that is, as in the passage I just read, "properly trained to assess" to decide if a sex offender is likely to reoffend. The

wording in the amendment seems to leave open the possibility that you could have unlicensed or uncertified personnel evaluating these sex offenders. If I am wrong, correct me and if I am right, tell me why this is okay.

Ms. Bisbee:

That wording allows the DOC to determine who will supervise. Most of the mental health professionals are certified or have licensure.

Senator Ford:

But are they licensed and certified to deal specifically with sex offenders' recidivism?

Ms. Bisbee:

They are licensed or certified to administer the Static-99 tool. Dr. Perrien points out that as long as you have a master trainer doing the training, and there is follow-up training, you can properly train anyone. The staff member has to be supervised and keep up with certification, but he or she does not need to be a licensed psychologist.

Senator Ford:

You are talking about the manual aspect of administering the Static-99. I am speaking of the subjective component that the Psych Panel currently performs. Are we removing that with this bill?

Ms. Bisbee:

Yes, the subjective component would be gone. It would not prevent the person administering the instrument from writing the Parole Board with specific opinions on the individual being evaluated.

Senator Ford:

The Psych Panel members would then be able to do other jobs. Would that include counseling with sex offenders, trying to prevent recidivism, prior to their taking the Static-99?

Ms. Bisbee:

Long-term sex offenders, or those with multiple sentences, will have assessments done many times. There is room for change or improvement in their assessments over time as the inmates take classes, have counseling, etc.

We support this bill and think it is a long time coming. I thank the members of the Psych Panel for the years they have put in and doing their best.

James G. (Greg) Cox (Director, Department of Corrections):

We support this bill and the amendment. The Psych Panel has never been funded, and the participants have never been paid but have taken on the role and done a great service to the State and the Department of Corrections (DOC). I object to the film, which goes back to 1999. I object to the way it was edited and the information provided. Two very good employees from this Department have taken on this job and its duties for a number of years. I certainly believe in best practices and that we could request the National Institute of Corrections to continue to help us. Dr. Edwards has done a very good job. I brought her here from Oregon. I represent the DOC, and we fully support the members of our staff and the mission they have done for years providing the Psych Panel service to the State despite the Panel being an unfunded mandate.

Florence Jones (Nevada Citizens United for the Rehabilitation of Errants):

I support this bill but have not looked at the amendment. I am thankful for the Committee's succinct questions on this issue. I think there is an agenda far deeper than what we are discussing here. From what I can see, there is a plan to just transfer the operation of the Psych Panel over to the Parole Board with possibly some specific requirements and maybe even some objective testing. This could also be called a Psych Panel because employees of the DOC will be administering the objective test. All the DOC or the Parole Board needs to do is put these suggestions into this Psych Panel.

One important issue needs to be brought to the attention of this Committee: the Nevada Open Meeting Law applies to the Psych Panel. It is the only arm of this operation that is still under that guideline. Getting rid of the name Psych Panel would eliminate that problem for the Parole Board and the DOC. I do agree that we need a more objective evaluating system for these sex offenders, but eliminating the title may not be the answer. Possibly putting in some specific criteria for evaluation and making sure everyone involved is credentialed would be more relevant. Also, revenue and appointment sources could be helpful.

Senator Kihuen:

We are taking this bill to work session in the next couple of weeks so you will have a chance to review the amendment.

Wesley Goetz:

I was in the Nevada prison system and have been before the Psych Panel three times. Each time I had the feeling the Panel members were more like the Gestapo. They were asking questions and down-beating me. When I first went in 2001, the assistant warden asked me all the questions. She was not a licensed psychologist. It seemed like the people who asked the most questions worked for the DOC and were not licensed. The Panel basically concluded that I knew everything but did not say it from my heart, so they did not pass me. I have a 2012 letter from the Parole Board to submit ([Exhibit I](#)).

The second time I went was in 2004, right before I found out all the psychologists in the prison setting were not licensed psychologists. They found out I knew that information and put me into solitary confinement for 6 months. To me, they were biased then. I had two evaluations from Dr. Earl S. Nielsen, a licensed Reno psychologist who assesses and treats sex offenders. The Psych Panel would not look at the evaluation by Dr. Nielsen, and that made me feel they were biased. They did not pass me.

The third time I went to the Psych Panel was in 2008. They asked me questions about whether I had had any sex offender treatment. I told them that in 2001 I wrote to Robert Scofield, the unlicensed psychologist working for the DOC, asking to get into the Sexual Treatment of Offender in Prison (STOP) program. He repeatedly gave me excuses saying the program would consider me, but the Panel knew I was aware of the sex offender treatment, and the program did not want me in its groups.

In 1997, in response to Megan's Law, which included a mental health treatment, the intent of the Legislature was to have structured and responsible sex offender treatment programs while inmates were incarcerated. It is now 2013 and there still is not a program that successfully reduces a sex offender's tier level or recidivism. I wrote a letter ([Exhibit J](#)) to Glen Whorton, the Assistant Director of the DOC in 2004, stating why psychologists should be licensed. I also wrote a letter ([Exhibit K](#)) to Dr. A.T. Vogt, then the head psychologist for the DOC. I asked him if he would be my psychologist while I was in prison to give me professional sex offender treatment since he is a licensed psychologist. He said I should join the STOP program for sex offenders.

I have another letter ([Exhibit L](#)) I wrote in 2006 to Dorothy Nash Holmes, the Deputy Director of Correctional Programs for the DOC at that time. I explained

to her that the STOP program was informal, and she wrote back that taking the STOP program had nothing to do with tier assessments or the Psych Panel passage ([Exhibit M](#)).

What I would like to see as an amendment to this bill is that if you get rid of the Psych Panel, put in a professional, intensive treatment program for sex offenders while they are incarcerated. The way to do that would be to possibly have University of Nevada, Reno (UNR), use videoconferencing to get sex offender treatment into the prisons. I have already consulted with UNR's Department of Psychology.

Tonja Brown:

I concur with Ms. Jones and her group. The DOC psychologists need to be licensed. They are not. For example, if you maintain innocence, you are denied. As long as you maintain innocence and do not admit guilt, you will never be passed. My brother, Nolan Klein, maintained his innocence for many years. Finally, on the advice of counsel, he went before the Psych Panel and informed them he would neither admit nor deny guilt. That was the only way he was able to pass. He was a high-profile case.

Regarding the errors from the DOC audit report, there was an inmate who never had a rape conviction, but due to the 2007 switchover, he had a sexual assault appear in his file. It was removed but reappeared last year.

Another inmate wrote a letter to the Parole Board asking about his records because of mistakes in his file. Here is the response he received ([Exhibit N](#)). There was an erroneous rape charge in his file. What if it was not caught or reappeared? You write to the Parole Board members, they see this false information and there is no way to go back to court. It can take years before a correction; by then, the inmate has already been to the Parole Board.

The Psych Panel absolutely needs to be licensed. I sat in on a Psych Panel a few months ago and found it interesting. The members were offended because one of the inmates appearing before them had a degree in psychology specializing in sex offenses. He was more qualified than they were.

I support S.B. 104 but have not read the amendment. I agree that if the DOC gets rid of the Psych Panel, it will take the process out of the requirements of

the Open Meeting Law. I feel the Parole Board is looking at that as to ultimately eliminate transparency in government.

Steven Hines (Nevada Citizens United for the Rehabilitation of Errants):

When I went before Psych Panel members, I was asked why I was convicted of murder. I did not commit murder. They asked me about my tattoos, and I told them I did not have tattoos. They finally realized they had the wrong person. There is no communication between the Parole Board and the Psych Panel. I would like to see the Psych Panel terminated, but I would also like to see those same psychologists used in an evaluation. Mary Harrison was my counselor while I was in treatment in prison. She was very good. I asked her to give a recommendation to the Psych Panel about me, but she said she was not allowed to do that. I found that disturbing. I would like to see the Psych Panel help me with my treatment and give a written evaluation to the Parole Board. I support this bill.

Pat Hines:

I support this bill. I have heard pros and cons today, but I did not hear enough about treatment plans. Treatment programs in the DOC have been sporadic and done by unlicensed individuals. When the STOP program was dropped in October 2012, many of the inmates were close to completing it. For 3 months they have been in limbo, wondering why the program was discontinued. If treatment programs are so important when sex offenders get out and counseling is a requirement to be paid by the offender, why does the DOC not have treatment programs more available in prison?

Director Cox said the Psych Panel is not funded and that is true. I have been an advocate since 1984. Although the Psych Panel is not funded, you can look up the salaries of the panel members, who came from other areas to serve on the Psych Panel, and see they have been highly paid.

I appreciated that Dr. Steele said the evaluators of these sex offenders do need training, and it is important to support and help the sex offenders who are doing their best and trying to get out of prison. Look at what they are doing in prison to help themselves and achieve their goals.

Ronald P. Dreher (Peace Officers Research Association of Nevada):

I respectfully oppose this bill for a number of reasons, not the least of which is the fact that when you repeal a whole section of a law, it has an impact. On

behalf of 26-plus years of law enforcement in Reno as a major crimes detective, dealing with a number of people mentioned and listed today, I want to speak for the victims who are concerned about the release of these individuals back into society.

I think the Psych Panel members do as good a job as they can, and you can see what they put up with from the video. It is tough; they do not have a lot of training, and they need it. The amendment waters the law down but keeps most of the statute, which is important. Victims need more than a flip of a coin to release these people back into society. My personal opinion is that I am not sure you can cure these offenders. Look at the kidnappers and abusers of Jaycee Lee Dugard. That gives you an idea of recidivism and what is out there.

When I retired from law enforcement 13 years ago, we had many, many books listing the sex offenders in Washoe County. Extrapolate that to the State or to the U.S., and what do we do to protect the victims when sex offenders are released into their communities? How can we best do this? Flip a coin? Have a psychiatric panel come in and do what this Static-99 says? Can you just make a checklist to determine if someone is at a low or high risk to reoffend?

From my personal experience in the field, I am not sure these people can be cured. That has been my experience in working with psychologists and psychiatrists specializing in this area. I would like this Committee to hear from someone who has worked in this field. There are many experts in law enforcement to come in and speak.

The idea behind S.B. 104 may be fine, but you have to look at what is important in society today—the victims who are impacted when these individuals are put back into society. The offenders are monsters. For that reason, I oppose this bill. If you do anything, go with the amendment.

John T. Jones, Jr. (Nevada District Attorneys Association):

We oppose the bill but the amendment does alleviate our concerns. There is no perfect risk assessment out there. Some objective instruments should be used in conjunction with other evidence. *Nevada Revised Statute* 176.139 refers to the psychosexual evaluation a sex offender has to undergo prior to sentencing. In that list is the examination of records of the offender, records of treatment, interviews with family members and others, etc. This is a good guideline for what should be considered when looking at a risk assessment. Sometimes

evaluators should depart upwards from the objective assessment, and sometimes they should depart downward. They should not ignore the evidence in front of them, even though it may not be on the risk assessment. I am concerned that in the Static-99, nothing sex offenders do in prison will change their risk assessment, except the fact that they get older.

Senator Segerblom:

As you have heard, even the DOC realizes a change is necessary. Whether we can do it this Session, at least we have started a dialogue which, hopefully, we can follow through with.

Senator Ford:

Are you okay with the amendment?

Senator Segerblom:

I have not had a chance to look at it closely. I like the concept but am concerned that the Open Meeting Law would be out of the process. We are agreed on getting rid of the current, subjective test and focusing more on the objective test. I have a letter of support for this bill from the Nevada Attorneys for Criminal Justice written by Lisa A. Rasmussen ([Exhibit O](#)).

Senator Kihuen:

I will close the hearing on S.B. 104 and postpone the hearing on S.B. 107. We will have public comment now.

SENATE BILL 107: Restricts the use of solitary confinement on persons in confinement. (BDR 5-519)

Ms. Brown:

I want to comment on the DOC Audit Report. I appreciate it, but it is incomplete. We wanted answers to questions put before the 2012 Advisory Commission on the Administration of Justice, but the questions were not even asked. For example, the good time and work time credits for those with wrong convictions in their files, where did those credits go? There are inmates who had their credits removed and to this day, 5 years later, they have not recouped the credits. One inmate was injured and went 90 days past the due date for his parole hearing. I have read the audit and the comments from the DOC and the Parole Board saying they would make corrections.

I have the DOC Offender Information Summary which illustrates the computer glitch ([Exhibit P](#)). It is highlighted on June 5, 2007, showing those crimes. If DOC and the Parole Board had corrected this error as they claimed, why was it still in Nolan Klein's file 16 months after his death in 2011?

The auditors say no consequences resulted from the computer errors. I disagree and have included a handout chronicling the consequences of this computer glitch ([Exhibit Q](#)). The day before NOTIS was implemented, Nolan Klein received a June 4, 2000, letter from the Office of the Attorney General, which was representing the Parole Board in litigation Mr. Klein had against the Parole Board. The letter showed Nolan Klein was not a threat to society because part of the resolution of the litigation was to parole him in 2008. A computer glitch the next day put false charges into his file. That erroneous information was then disseminated to the Parole Board and the State Board of Pardons Commissioners in July 2007. At that Parole Board hearing, the Board revoked his granted parole, some that had expired over a decade, to put him back on his first life sentence. This took him from a moderate risk to a high risk to reoffend.

In September 2007, Nolan Klein had another Parole Board hearing, and he was denied. In 2008, this information was disseminated to the Pardons Board. Prior to his appearing before the Pardons Board, new information came to light. It was favorable to his case. He had always maintained his innocence. It was an interview with the Washoe County District Attorney admitting to opening up the DNA evidence and testing it. This video of the interview was presented to the Pardons Board, who knew Mr. Klein was dying. The pardon was denied. Klein's attorneys, Hager and Hearne ([Exhibit R](#)), filed a motion for the DA to turn over the entire file, including the DNA results.

In May 2009, Second Judicial District Judge Brent T. Adams ordered the DA to turn over the DNA test results and case file. On June 10, 2009, the file was turned over and it revealed more than 200 pieces of exhibit—exculpatory evidence withheld from the defense. Included were the handwritten notes from the prosecutor stating he was not going to submit this evidence in spite of a court order to turn over every piece of evidence. It would have exonerated Nolan Klein had it been presented at trial. Shortly thereafter, he filed suit ([Exhibit S](#)) in 2007 because his granted paroles were revoked. In that suit, the only thing changed from the time the letter was written—the day before the

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computer glitch June 4, 2007—and July 10 and September, was that now he had additional charges, making it look like he had committed other crimes.

My point is that some of the questions were not asked in the audit, and where the audit reports no consequences from the computer glitches, I am saying there were consequences. I have one more article to include which illustrates this point ([Exhibit T](#)).

Chair Segerblom:

I am closing the hearing of the Senate Committee on Judiciary at 10:40 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	10		Attendance Roster
	C	50	Paul V. Townsend	Department of Corrections Audit Report
S.B. 104	D	8	Shawn Heusser	Testimony
S.B. 104	E	DVD	Mercedes Maharis	Psych Panel video
S.B. 104	F	6	Nancy Steele	Risk Assessment of Sex Offenders by the Nevada Psych Panel
S.B. 104	G	13	U.S. Department of Justice National Institute of Corrections	Risk Assessment for Sex Offenders Paroling from Nevada Corrections
S.B. 104	H	3	Connie S. Bisbee	Proposed Amendment
S.B. 104	I	2	Wesley Goetz	Letter from Parole Board
S.B. 104	J	10	Wesley Goetz	Letter to Glen Whorton
S.B. 104	K	7	Wesley Goetz	Letter to Dr. Vogt
S.B. 104	L	6	Wesley Goetz	Letter to Dorothy Nash Holmes
S.B. 104	M	2	Wesley Goetz	Letter from Department of Corrections
S.B. 104	N	1	Tonja Brown	Letter from Parole Board
S.B. 104	O	1	Nevada Attorneys for Criminal Justice	Lisa A. Rasmussen Letter of Support
S.B. 104	P	1	Tonja Brown	Offender Information Summary
S.B. 104	Q	2	Tonja Brown	Letter to Committee
S.B. 104	R	18	Tonja Brown	Hager and Hearne Report
S.B. 104	S	3	Tonja Brown	Order Dismissing Appeal
S.B. 104	T	1	Tonja Brown	Article