MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 24, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:07 a.m. on Wednesday, April 24, 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:

Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Ilena Madraso, Committee Secretary

OTHERS PRESENT:

Patrick J. Conmay, Chief, Records and Technology Division, Nevada Department of Public Safety
Connie S. Bisbee, Chair, State Board of Parole Commissioners
Paula Berkley, Nevada Network Against Domestic Violence
Karen Winckler, Nevada Attorneys for Criminal Justice
John Jones Jr., Nevada District Attorneys Association

Steve Yeager, Office of the Public Defender, Clark County

Chair Segerblom:
This morning we will start with A.B. 30.

ASSEMBLY BILL 30 (1st Reprint): Revises provisions governing the statewide sex offender registry notification website. (BDR 14-344)

Patrick J. Conmay (Chief, Records and Technology Division, Department of Public Safety):
The intent of A.B. 30 is to ensure that the public has the most accurate and up-to-date information on registered sex offenders in order to take appropriate measures to protect themselves and their families. Section 1 of A.B. 30 amends *Nevada Revised Statutes* (NRS) 179B to require individuals or businesses wishing to have information on Nevada's registered sex offenders to use the sex offender registry Website to obtain the information rather than request a list of registered sex offenders through the public records statute, NRS 239.010.

Over the past 2 years, the Records Bureau has received public records requests for sex offender registration information from companies such as Dollywood, Dollywood's Splash Country, MyLife.com, AmRent, a property and residents screening company, and most recently Innovative Enterprises, a background screening company.

The concern with these requests is twofold. First, the list of registered sex offenders that we provide pursuant to these requests is only good as of the date and time the list is printed. In contrast, the community notification Website is continuously updated as new offenders are added and offenders who have fulfilled their duty to register are removed. There is potential liability to the Department of Public Safety (DPS) and to the Central Repository for Nevada Records of Criminal History if the recipient of the list relies on outdated information to make decisions, such as for dating relationships and personal safety. Furthermore, once an offender has fulfilled the duty to register, the law requires us to remove the information from the Website. If that information is on a list somewhere else, such as in some company's warehouse, then we cannot fulfill this obligation and may subject the DPS to liability should the offender wish to pursue legal action for removal of his or her record.

The second concern is that the statute requiring the community notification Website prohibits the use of information on the Website for certain purposes related to insurance, including health insurance, loans, credit, employment, education scholarships or fellowships, housing, or other benefits or services provided by any business establishment. We believe three of the four requests, which we received recently, wanted information in connection to employment or housing which is contrary to Nevada law. However, since these were public records requests, we were compelled to comply and provide the information. For these reasons, DPS seeks to change the statute to specify the Website—as the public record—is the only way for individuals to receive publicly available information on Nevada's registered sex offenders.

The second change in section 1 of the bill removes the requirement for the Repository to keep a log of individuals requesting information on sex offenders. This requirement was established when individuals contacted the Registry by telephone prior to the establishment of the notification Website in 2003. The information on the Website is public, and laws govern the Website log's misuse. As such, the log is no longer necessary.

Section 2 of A.B. 30 amends NRS 179D.160 to make the contents of the record of registration in the sex offender registry confidential and not subject to inspection by the general public. The records may be inspected by law enforcement officers in the course of their duties or by the offender who is the subject of the record.

Chair Segerblom:
To gather information wanted from the Website, can the public take a screenshot or download the information as a pdf?

Mr. Conmay:
Do you mean if an individual wanted to maintain a record from the Website?

Chair Segerblom:
Yes. If someone wanted to obtain that record to run a comparison of names through a database, for example.

Mr. Conmay:
If that individual had the ability to take a screenshot, then yes. That record could also be checked anytime on the Website 24 hours a day.

Chair Segerblom:
I am thinking of companies that may want to pull the names off the Website and match them against a database. Do those companies then have to look up one name at a time, or can the whole list be acquired?

Mr. Conmay:
There is not a way to pull the whole list as a single query from the Website.

Chair Segerblom:
To look up a sex offender, does one just search for the name as opposed to searching through an alphabetical list?

Mr. Conmay:
Yes, just enter the name in a search.

Senator Ford:
I am not opposed to utilizing the Website for public record purposes, but I am reluctant to make this Website the sole source of public records. What contingency plan is in place in case the Website goes down and the public cannot access the information via the Website?

Mr. Conmay:
If the Website were to go down, action would need to be taken to get the Website running again. All of the information is backed up, so it will not be lost. Regarding A.B. 30, we prefer that others do not create separate databases because then the contents cannot be protected. For example, if a sex offender registers pursuant to requirements, fulfills those requirements and is no longer required to register, then if separate databases are created, there is no real way to assure that information no longer exists or is available to the public.

Senator Ford:
I understand. But is there a way to access the actual data within the system if the system crashes?

Mr. Conmay:
Internally, there is access to the backup and the technicians would get the system running again. And if the question regards a period of time in which the system is not accessible, then yes, the system could be hand-searched.

Senator Ford:
Good. Is there a phone number to be called in that situation?

Mr. Conmay:
Yes, there is.

Senator Hutchison:
I am concerned with the wording of section 2. The term "confidential" has legal connotations. Paragraph (a) of subsection 1 uses that term. If this section of the bill were looked at in a vacuum, then I would think that the records, including those on the Website, are confidential and the public could not access them. If an individual or lawyer, who may not want the public to have access to the sex offender registry, were to read this and litigate this, why could he or she not point to section 2 and say these confidential records are not open to inspection?

Mr. Conmay:
Existing law describes what is available for public inspection. The language of section 2 specifically says "the contents of a record" are not available for public viewing. In other words, the record consists of an array of information related to this offense. As delineated earlier in the bill, only portions of that are posted on the Website.

Senator Hutchison:
We do not have the language of the law in front of us; yet, if I looked up the statute, could I tell that "the contents of a record" as a defined term would disallow someone from arguing the impossibility to access the Website and registry that way?

Mr. Conmay:
Yes, that is my belief based on the entire bill.

Chair Segerblom:
Seeing no one here is opposition or neutral, I will close the hearing on A.B. 30. We will now open the hearing on A.B. 40.

ASSEMBLY BILL 40: Authorizes the State Board of Parole Commissioners to notify victims of crime of certain information through the use of an automated victim notification system. (BDR 16-346)

Connie S. Bisbee (Chair, State Board of Parole Commissioners):
Assembly Bill 40 will make changes to *Nevada Revised Statute* 213.131 concerning the notification of victims of crimes with regard to court hearings and actions. Victims and interested people are currently notified by mail, which is cumbersome and expensive. The changes will allow the State Board of Parole Commissioners to use the Victim Information and Notification Everyday (VINE) system. Without the change, all notification would be accomplished by mail. The VINE system allows victims and interested persons to still receive all notification by mail if they so choose. The advantage of the VINE system involves receiving swift notification without having to wait upon the U.S. Postal Service.

Pages 3 through 5 of my testimony (Exhibit C) includes sample letters sent out through the mail. Victims are not getting the same kind of notification that an interested party or an inmate gets. Notices sent are in accordance with NRS 213.131. Victims, interested persons and inmates have separate and distinct rights. Each of the notifications sent out are specific to the statutory rights of those particular people. Inmates will still receive a paper notice, but victims and interested parties will receive notice through the VINE system.

Please consider and pass this bill so that the Board of Parole is authorized to utilize the VINE system. If passed, Assembly Bill 40 defines the path of fading out the old system and fully utilizing the VINE system.

Senator Ford:
The Parole Board mails victims information relative to parole and probation hearings?

Ms. Bisbee:
Correct.

Senator Ford:
All of the information is sent through the mail? You do not use the phone to give that notification?

Ms. Bisbee:
The notifications are sent via mail. Personnel are available to answer victims' questions by phone if needed.

Senator Ford:
The Parole Board desires to discontinue the mailing of notifications and move completely to a telephonic process—an automatic telephone call that informs victims about the impending hearing?

Ms. Bisbee:
Yes. Except that the choice is given to victims and interested persons whether they would prefer email, phone or mail. Utilizing the VINE system, notifications can still be sent via mail.

Senator Ford:
Choice means that victims may opt in to receive notification via the VINE system? In other words, victims and interested parties must deliberately choose to receive electronic or telephonic notification?

Ms. Bisbee:
They can make those changes on the VINE system. For example, if a victim's phone service is shut down, he or she can choose to receive notifications via email. Or, if the victim's emailing capabilities are closed down, through the VINE system, he or she can change to notifications via mail. Each option available on VINE can be changed at will.

Senator Ford:
It appears that the VINE system is not new, and the victims know about it. Yet, I want to be certain that moving to the VINE system will not result in people not knowing about notifications of impending hearings.

Ms. Bisbee:
Victims and interested parties must opt in to the VINE system. Let us say, for the sake of example, that you are the victim of a criminal who will be imprisoned for the next 30 years. You will no longer be notified by the Parole Board but will be notified using the VINE system. Before you are moved over to the VINE system, you will be notified multiple times by the Parole Board that it is changing over to the VINE system. The Parole Board will help you move over to that system. The Parole Board will not abandon the victims but will make sure they are notified and helped to move over to the VINE system.

Senator Ford:
That is not in statute, though? That is a regulatory principle that the Parole Board has set up?

Ms. Bisbee:
No; section 3, subsection 2, paragraph (b) indicates that if A.B. 40 passes, the Parole Board is required to notify victims "not less than two times" of the changes being made.

Chair Segerblom:
Please explain the difference between interested party and victim.

Ms. Bisbee:
An interested party can be anyone interested in the case who wants to know when actions occur regarding that case. Sometimes an interested party includes members of the press. All Parole Board meetings are public hearings. The victim is the actual victim of the crime by the defendant. Victims can also include family members—parents, grandparents—a close relative relationship. If a victim is deceased, the victim includes a spouse, the parents, children or siblings. The victim relationship is defined under NRS 213.

Chair Segerblom:
An interested party must come to the Parole Board and ask to be put into the system?

Ms. Bisbee:
Exactly. That can be done through the VINE system, as well. The VINE system is also wonderful for inmate family members who want to be notified.

Senator Hammond:
I have tested the VINE system as an interested party, and the system works great.

Ms. Bisbee:
I, too, have tested the system. I only had one problem which was straightened out once I contacted those who run the system and explained the problem.

Chair Segerblom:
Who actually runs the VINE system?

Ms. Bisbee:
The system is run by Appriss, a private contractor. The VINE system is in the criminal justice systems of 42 states.

Paula Berkley (Nevada Network Against Domestic Violence):
The Nevada Network Against Domestic Violence appreciates and supports A.B. 40. We also appreciate the notification options the Parole Board is providing to make sure the victims remain and feel safe and competent throughout the process.

Chair Segerblom:
Seeing no one in opposition or neutral I will close the hearing to A.B. 40. I will now open Assembly Bill 156.

ASSEMBLY BILL 156 (1st Reprint): Revises provisions relating to the sealing of certain records. (BDR 14-590)

Assemblyman James Ohrenschall (Assembly District No. 12):
Karen Winckler is here to present Assembly Bill 156.

Karen Winckler (Nevada Attorneys for Criminal Justice):
I am testifying in support of Assembly Bill 156 concerning the section 2 sealing of records where no charges have been filed. Concerning employment, the sealing of records is especially important. If someone is arrested for possession of drugs or for getting into a fight, a record is computer-generated. The district attorney (DA) or prosecuting agency reviews the police report and determines whether to proceed with the case. When either the DA or prosecuting agency decides there is not sufficient evidence or enough resources to proceed with the case, he or she issues a no charges filed (NCF)—an NCF case. The record of the arrest and the proceedings at the jail and initial proceedings concerning bail remain in the court system. For example, someone from Maryland is arrested in Nevada and no charges are filed. When the person returns to Maryland and has an employment opportunity that requires a background check, his or her record shows up on the computer system. These types of situations happen to Nevada residents as well.

The Las Vegas Justice Court brought to our attention that *Nevada Revised Statute* 179.245 did not sufficiently address the issue of what to do when no charges are filed. This bill corrects that situation and allows the court to be

petitioned to seal a record where no charges are filed. In the sealing of a record, the only individuals who can view the sealed record are gaming, policing or federal authorities. The record eventually becomes sealed so that individuals petitioning for the sealing of the records can honestly answer, pursuant to statute, that they have not been arrested. That becomes very important for employment. Sealing the record allows for individuals to go on with their lives in an ordinary way.

Senator Ford:
What is the difference between Nevada statutes that say if charges are dismissed or someone is acquitted, the records can be sealed, and charges that were never filed? That seems qualitatively different. Why should someone who committed a battery and no charges were filed because of a lack of resources be lumped into the same category with someone who was charged and acquitted? Why should they both receive the same benefit in regard to sealing of charges?

Assemblyman Ohrenschall:
For example, in justice court, I have seen many people who received a citation, showed up to court and the DA declined to prosecute. The collateral consequences to that person are severe. That is why this bill is needed. This bill protects those who have not been convicted of a crime. Many attorneys are not aware that records cannot be sealed when charges are dropped.

Senator Ford:
Circumstances where charges are not filed for reasons unrelated to commission of the crime—lack of resources—seem different from circumstances where an investigation determines that an individual did not do what someone else said he or she did.

Assemblyman Ohrenschall:
Yes, that does make sense. Yet, I believe that A.B. 156 is still needed because if someone is not convicted—whether from a dismissal, an acquittal or the DA declining to prosecute because of lack of resources or a weak case—that person's record should not be hurt.

Senator Brower:
Why, as a matter of public policy, should it be easier to make facts disappear? Ms. Winckler referenced people coming to our State and having a good time,

but the issue is those having such a good time that they convince our law enforcement officers that an individual needs to be arrested for violating the law. Just because charges are not pursued, that means that individual should not have a conviction on his or her record, should not have to go to jail and should go on living his or her life? The fact that a person was arrested is still a fact. The argument could be made that the individual arrested will have to live with the consequences of engaging in behavior that caused him or her to be arrested.

Assemblyman Ohrenschall:
That is a policy decision for this body and the Governor to make. The arrest is the accusation. The arrest is not the conviction; the burden of proof has not been met. To not provide someone an opportunity to move on with his or her life is unfair. The Nevada statute is unfair by not allowing the sealing of records where no criminal case is pursued.

Chair Segerblom:
The arrest means nothing. Without a conviction, to have the arrest submitted as proof that something illegal happened is wrong. For example, I have defended cases in which a massage parlor's license was revoked on the basis of an arrest. How could that happen when the massage parlor did nothing wrong? There is no conviction. The license was revoked because of the assumption that because of an arrest, something illegal must be happening. An arrest does not mean anything. It could be that someone was in the wrong place at the wrong time. An arrest is not proof of anything.

Assemblyman Ohrenschall:
If the State does decide to pursue the charges, most of those cases will end up in a plea bargain; there may be a conviction, a submittal or community service performed and then charges are dismissed. But, where charges are not pursued, it is not fair to hold that person to the same level as the individual where the State does pursue charges in some fashion.

Chair Segerblom:
If the charges are prosecuted and a dismissal is arranged, does that wipe out the rest of the record, or does the rest of the record remain?

Assembly Ohrenschall:
The rest of the record would remain.

Chair Segerblom:
Steve Yeager is shaking his head is disagreement with you.

Ms. Winckler:
This bill addresses the procedure followed when a person wishes to seal a record. First, a petition to seal the record is filed with the court; the judge and the DA review the petition before it is filed, making sure it is an appropriate case to be sealed. Then the court signs the order. It is not an automatic process.

If the county does not have resources to pursue a certain charge, the DA can go back within the statute of limitations if additional information regarding the alleged crime becomes available. The DA can then refile that case. Until the statute of limitations has passed, the case is not sealed forever. The exception is if the prosecuting DA agrees that the charge should not have been filed—the arrest commenced to calm down a group and the act was not illegal, but the police officers used their authority to calm the situation.

This bill will be utilized by the person who cares about his or her employment situation—a school teacher, or someone whose job requires licensing, like a lawyer. The process does need to be followed carefully.

In an arrest where the case is managed to a dismissal, that person by law can ask the court to have the record sealed. That person has been found guilty of some bad conduct, but has made the requirements set by the court to receive a dismissal. That person can now have the record sealed. For those individuals who have no charges pressed against them, to allow the records to remain unsealed is not fair.

Chair Segerblom:
Given the situation in which an individual does plead guilty and the court allows the record to be sealed, does that seal the rest of the record too?

Ms. Winckler:
Yes, that seals the whole record. Every office is notified—justice court, district court, Las Vegas Metropolitan Police Department, the DA's office, even the Repository.

Chair Segerblom:
It is crazy that in a situation where a charge is dismissed, the sealing proceeds for the entire record versus a situation in which charges are dropped and the record cannot be sealed.

Ms. Winckler:
Correct. The justice courts have done this, but they pointed out that practice is not in accordance with statute; A.B. 156 was proposed to make that change.

John Jones Jr. (Nevada District Attorneys Association):
Concerning Senator Ford's question, A.B. 156 recognizes a difference between a dismissal and a declination of prosecution. After a case is dismissed, the defendant is free to petition to seal the case. According to A.B. 156, if the defendant's case is not prosecuted for various reasons—the case is not a good case or Metro is still collecting evidence and may file at a later time—after the statute of limitations has passed, the court may be petitioned to seal the records. Under A.B. 156, these cases are treated differently from dismissals.

Additionally, if the DA knows that charges will not be filed, he or she can stipulate with the defendant to seal the records.

The Nevada District Attorneys Association supports A.B. 156.

Senator Hutchison:
My concern regards the First Amendment and the reaction from the press. Have you heard from the press regarding this bill? If the press has not been consulted, litigation may ensue. Additionally, has the Nevada Supreme Court been consulted?

Assemblyman Ohrenschall:
No one from the Nevada Press Association has spoken against this bill in the Assembly hearing. I have not been contacted by anyone from the press. The press does have the right to appear and oppose this.

The Nevada Supreme Court did not testify at the Assembly hearing and has not contacted me with any concerns.

Ms. Winckler:
Senator Hutchison's concern regards the sealing of records from a court proceeding open to the public. Assembly Bill 156 does not concern a public court proceeding because the DA is declining prosecution. There has been no discussion and no concern from the press about this issue. The press becomes concerned when a case—like the current one involving Dr. Dipak Desai—records are being sealed which the press desires to be open for public viewing. Concerns of that nature are for a district court judge to handle. The records germane to A.B. 156 are administrative in nature; they are not records under litigation. The press may become aware and concerned of the petition to seal a record at the time of the filing. The press can express its opinion to the court at that time.

Senator Hutchison:
Are you saying when a petition to seal the records is filed, the media would receive notice? Or are you saying, in general, the media would be watching and could take note of that petition?

Ms. Winckler:
The media would be watching in general. The court would not give the press notice regarding these small matters.

Senator Hutchison:
Is the answer to my original question: No, the media and the Nevada Supreme Court were not part of the process to develop this bill; but nothing contrary has been heard from those two entities?

Ms. Winckler:
Yes, that is correct.

Assemblyman Ohrenschall:
It was not a willful snubbing of those two entities; neither seemed concerned with this bill.

Senator Hutchison:
Section 1, subsection 5 addresses additional offenses that cannot be sealed. Those offenses seem to regard driving under the influence (DUI).

Assemblyman Ohrenschall:
The offenses also regard watercraft.

Senator Hutchison:
What was the policy behind those additions? It seems like common sense to me. Why not include other offenses? What was the focus of the reasoning behind not sealing records for these offenses in section 1, subsection 5?

Assemblyman Ohrenschall:
The rationale is that the law becomes more severe after each subsequent DUI. I do not believe that records concerning a DUI should be sealed.

Mr. Jones:
Clark County has had problems with judges sealing DUI records, including felony DUIs. The District Attorneys Association wants to make it clear that a DUI can never be sealed; once a DUI felon, always a DUI felon.

Senator Hutchison:
So this provision in A.B. 156 has proceeded from concern about what courts have done in the past?

Mr. Jones:
In a small number of cases, yes.

Chair Segerblom:
This provision added at the request of the DAs in Nevada benefits the prosecution.

Mr. Jones:
It has always been the position of the DAs that a felony DUI cannot be sealed. We have had a few such issues in Clark County and want to make it absolutely clear through statute. This has always been our position.

Chair Segerblom:
A felony DUI conviction is not even within the scope of what A.B. 156 deals with: arrests without prosecution.

Steve Yeager (Office the Public Defender, Clark County):
Clark County public defenders do support this bill because it does make good policy sense. Public defenders do want to incentivize the DA in cases where the evidence is weak or the resources do not exist. The charges not being filed result in benefits on all aspects. It seems unfair regarding whether the petition can be made to seal the records to distinguish between whether the charges were or were not filed. Why would we allow the defendant whose case was filed and acquitted or dismissed to file a petition to seal and not allow the defendant whose case was never filed?

This bill pertains to the petition to seal the records which is a decision the court must make; it is not an automatic decision. The DA and public defender usually agree on these matters.

One part of the bill that could be problematic is section 2, subsection 1, paragraph (b). In the original bill drafting, I believe there was to be a waiting period before records could be sealed. The District Attorneys Association wanted to wait until the limitations had terminated. My concern comes with the murder charge in which no statute of limitations exists. It is not often that someone is arrested for murder and not charged, but that is a possible scenario. The bill should include language for setting an outside time limit—the termination of the statute of limitations or 10 years from the arrest, whichever comes first.

Chair Segerblom:
Does A.B. 156 allow for stipulation to get around that issue?

Mr. Jones:
Yes. In situations where someone has been arrested for murder and it becomes clear before the filing of the complaint to the grand jury that the defendant did not commit the crime, the prosecutor can stipulate to seal that case.

Chair Segerblom:
Mr. Yeager, does that alleviate your concern? Do you still want to put a 10-year limit on it?

Mr. Yeager:
I do not have a strong feeling on that. I can foresee scenarios where a stipulation would not be forthcoming. That policy decision should be left to the sponsor and the Committee.

The Public Defender's Office in Clark County is committing to a pro bono, after-hours attempt to help clients seal records. This area of law is complicated for clients to properly file the paperwork.

Assemblyman Ohrenschall:
The complexity of the petitioning paperwork to seal records needs to be understood by the Committee. It is not automatic.

Mr. Jones:
In Clark County, Bart Pace is the chief deputy district attorney who has been assigned to sealing records. He has worked diligently to help streamline the process so that defendants who are eligible to seal their records can move forward with the process.

Chair Segerblom:
Seeing no one in opposition and no one neutral, I will close the hearing on A.B. 156. Seeing no one here for public comment and having no further business, the Senate Committee on Judiciary is adjourned at 9:54 a.m.

RESPECTFULLY SUBMITTED:

_____
Ilena Madraso,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	3		Attendance Roster
A.B. 40	C	5	Connie S. Bisbee	Testimony in support and sample notification letters