

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
May 30, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 4:05 p.m. on Saturday, May 30, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblyman David M. Gardner (excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Kimberly Buchanan, Senior Deputy Attorney General, Office of the Attorney General
John T. Jones, Jr., representing Nevada District Attorneys Association
Regan J. Comis, representing M + R Strategic Services
Vanessa Spinazola, Legislative & Advocacy Director, American Civil Liberties Union of Nevada
Scott J. Shick, representing Nevada Association of Juvenile Justice Administrators
Susan Roske, Chief Deputy Public Defender, Juvenile Division, Office of the Public Defender, Clark County
Donna Coleman, Private Citizen, Las Vegas, Nevada
Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department

Chairman Hansen:

[Roll was called and protocol was explained.] We are going to have a hearing on Senate Bill 99 (2nd Reprint), so please come up, Mr. Kandt. Since I have not had a chance to read the bill, I am looking forward to your testimony very much and an explanation as to why this is coming so late in the session.

Senate Bill 99 (2nd Reprint): Revising provisions governing sex offenders and offenders convicted of a crime against a child. (BDR 14-134)

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

I am here on behalf of Attorney General Adam Laxalt to present for your consideration Senate Bill 99 (2nd Reprint). I would like to mention to you that one of the subject matter experts from our office is on the phone, Senior Deputy Attorney General Kimberly Buchanan. She will be taking you through some of the particulars of the bill along with Mr. Jones from Clark County who will also take you through some of the particulars of the bill. I would like to begin by framing why we are here before you today with this piece of proposed legislation.

During the 2007 Session, the Legislature enacted Assembly Bill No. 579 of the 74th Session that implemented the federal Adam Walsh Child Protection and Safety Act into Nevada law. This is the Act that deals with sex offender registration. In a nutshell, the change that was made by the Adam Walsh Act was that we went from what is called an offender-based system, whereby an individual's responsibility to register as a sex offender and some of the duties that came with that responsibility were based purely upon an evaluation of the offender. We moved under the Adam Walsh Act to an offense-based system, whereby the offender's duty to register and the other duties that flowed with that as a registered sex offender were tied to the offense for which the offender was convicted. Once again, the basic difference would be moving from an offender-based system to an offense-based system. Prior to implementation of the law after its enactment in 2007, the law was challenged in both state and federal court. I am not going to go through the details and history of that litigation, but suffice it to say that my office has successfully defended A.B. No. 579 of the 74th Session all the way up to the U.S. Court of Appeals for the Ninth Circuit and in our Nevada Supreme Court.

The last piece of litigation challenging A.B. No. 579 of the 74th Session that is currently pending in the Nevada Supreme Court was stayed just prior to the beginning of this legislative session by agreement of the parties for an important reason. We realized there were probably some things that we could do to improve the law before it becomes effective and enforced, and that this session very likely might be our last opportunity to make improvements to the law and to clarify certain portions before we got to the point where we would be enforcing the law. Since then, many stakeholders have worked together over the course of this legislative session to come up with S.B. 99 (R2) as it sits before you today.

I am very grateful that everyone put aside their differences and we worked together toward a common solution. I specifically want to thank Mr. Jones and Ms. Erickson on behalf of the prosecutors, Mr. Yeager and Mr. Sullivan on behalf of the public defenders, Mr. Callaway and Mr. Spratley on behalf of law enforcement, Ms. Comis, Ms. Spinazola on behalf of the American Civil Liberties Union, Mr. Shick who is the chief juvenile probation officer in Douglas County, and I am probably missing other people. We are all here before you today collectively asking for your favorable consideration of S.B. 99 (R2). This is likely our last opportunity to get it right before we can begin enforcing this law. I respectfully submit to you—I think someone already mentioned on the floor today—do not let perfect be the enemy of the good. I am not saying this bill is perfect, but I submit that it is a very good bill. I also respectfully submit that it serves the interest of fairness and justice and the protection of our communities and children.

I would like to turn it over to Ms. Buchanan very briefly to take you through some of the particulars of the bill, and Mr. Jones is going to touch upon some of the portions of the bill that deal particularly with juveniles. This was a particular concern to us to make sure the juvenile piece was fair and just and accounted for the fact that juveniles are not the same as adults and do not necessarily need to be treated the same as adults.

Kimberly Buchanan, Senior Deputy Attorney General, Office of the Attorney General:

I am testifying in favor of Senate Bill 99 (2nd Reprint). I would like to take you through section 61.3 of the bill with changes to *Nevada Revised Statutes* (NRS) 176.0931 dealing with lifetime supervision. We have added in a section that an offender would not be eligible for release from lifetime supervision if they violated the terms of their lifetime supervision or registration requirements. That is important because an offender could serve the requisite time but have been a serious offender of the rules of lifetime supervision during the time that they registered for lifetime supervision. Generally an offender will commit violations and that is the sign they are about to reoffend. That was the reason we put in that change.

The next change I would like to review with you is on page 8 of the bill under section 61.5. We have changed subsection 1, paragraph (m) to indicate movement restrictions, meaning an offender cannot be within 500 feet of an area used primarily by children, for anyone who has been convicted of a sexual offense against a child under the age of 14. Of course, the judge would still have discretion to impose it on any other offender they deem necessary, but it would be a mandatory condition for those offenders convicted of sexual offenses against children under 14.

The next change we have is to the definition of sexual offense, which is on pages 12 and 13 of the bill. It amends NRS 179D.097. We have included in section 62.3, subsection 1, paragraph (n), sexual conduct between certain employees of a school and pupils under NRS 201.540. We have included under paragraph (o), sexual conduct between certain employees of a college or university and a student. Those would be registerable offenses.

To address some of the concerns for defense in others, in section 62.3, subsection 3, we specifically excluded offenses involving public urination or indecent exposure so long as the indecent exposure was not done for the purposes of sexual gratification. On page 14, we amended NRS 179D.115 which sets forth the definition of Tier II offenders. That is important because there are several certain requirements for our state to be in compliance with the Sex Offender Registration and Notification Act (SORNA) and if an offense is not

specifically delineated in NRS 179D.115, which is Tier II offenders, or NRS 179D.117, which is Tier III offenders, they automatically default to a Tier I. So we added in Tier II statutory sexual seduction so long as it is punishable as a felony, incest, and open and gross lewdness. That is subsections 1, 2, and 3 under NRS 179D.115, and that is for victims who are 14 years of age or older.

If you turn to page 15 of the bill, section 62.7, amending NRS 179D.117, we specified offenses for individuals or victims under the age of 14. So your very worst offenders are going to be targeting the younger children. That again brings us in compliance with the federal requirement. In section 63.7 on page 17 of the bill, amending NRS 179D.447, basically we are also requiring that changes to the driver's license or motor vehicle license plate are to be reported as well. You can see that echoed throughout the entirety of this bill, particularly on pages 21 and 22.

On page 23 of the bill, section 66, amending NRS 179D.480, Tier I offenders are required to register in person on or before the anniversary date they established the registration. This was an important change because the district attorney's office was concerned for viability of prosecution for offenders who might register late. We had to tie it into the date they initially registered so we do not have problems with rolling dates of verification. Tier I offenders, under NRS 179D and S.B. 99 (R2), are required to register in person every year. For a Tier II offender, they register every 180 days from the date they established the date of registration. Tier III offenders register in person every 90 days. This is one of the earmarks of the Adam Walsh Act. It is the in-person registration. That is important because law enforcement can get a recent picture of the offender, which is of great assistance in solving crimes.

There is additional language regarding not having the tolling should the offender register late. On page 25, we have indicated that they must have completed supervised release, probation or parole, and a sex offender treatment program before they are able to be released from their duty to register. On page 26, under section 68, amending NRS 179D.550, we narrowed the change that I referenced earlier regarding a change to the driver's license, identification card, description of the motor vehicle registered to, or frequently driven by the offender or sex offender. Again, that is important for law enforcement purposes, but also for the public in ensuring safety for the children.

I will skip the provisions relating to a juvenile and defer to Mr. Jones for those. There were a few sections at the end with regard to adults that primarily deal with movement and residency provisions, which are amending NRS 176A.410, NRS 213.1245 and NRS 213.1255. Again, that was putting the movement and

residency room restrictions on offenders convicted of offenses against children under 14. Of course, that would not remove the judge's discretion to impose those restrictions against sex offenders that committed a crime against an individual over the age of 14.

Chairman Hansen:

Are there any questions for Ms. Buchanan? [There were none.]

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

I am here to walk you through the portions of the bill that deal with juveniles. Assembly Bill No. 579 of the 74th Session, which was passed in 2007, applies to juveniles from the ages of 14 to 17 who committed a sexual offense. They would automatically be subject to registration and lifetime supervision. Public defenders, the courts, and others have looked at this and thought maybe it is a little harsh and inappropriate to just automatically place juveniles on a sex offender website. We looked at A.B. No. 579 of the 74th Session and at the federal requirements for the Adam Walsh Act and figured out a system where we could (1) look at the juvenile to see if they are a danger to the community, and (2) evaluate that juvenile in light of registration and community notification. What we have here is a good balance of those two factors.

I will start with section 74.5, which defines an aggravated sexual offense. When you look at the federal requirements of the Adam Walsh Act, even for juveniles, if a juvenile is convicted of an aggravated sexual offense, they are subject to registration and community notification. These are outlined here as it relates to juveniles. It is any offense involving the administration of a drug or controlled substance, any offense that is subject to the deadly weapon enhancement, which is NRS 193.165, and any offense involving substantial bodily harm. When I say offense, I mean sexual offense. Sexual offense with respect to a juvenile is defined in section 76 of the bill. This list is a lot narrower than the adult version, and it is the six crimes that you see outlined here: sexual assault, offenses involving pornography, lewdness with a child, conspiracy or attempt to commit the crimes, an aggravated sex offense, or any act that is deemed to be sexually motivated. Those are the only crimes that would subject a juvenile to registration or community notification pursuant to this statute. I will point out that this is similar to the list we had prior to the Adam Walsh Act.

Section 77.5 outlines the responsibilities of a juvenile who is adjudicated of a sexual offense if they are subject to registration. It includes when they are required to register. It basically puts some of the burden on the parents or guardian to ensure that they do meet the requirements of this act.

I want to go specifically to section 80.5. This is where the major change in S.B. 99 (R2) occurs. It allows a court to exempt a child from registration or community notification if they determine the child does not pose a threat to the safety of others. There are numerous factors the court has to consider. If the court finds, by clear and convincing evidence, that the child does not pose a risk to the safety of others, then they can exempt the child from the registration requirement and community notification requirement.

As an aside, how I see this working in practice, and it is typically what we have done in Clark County and Washoe County since the Adam Walsh Act took effect, is that we would probably just stipulate in appropriate cases if the child does not need to register or be subject to community notification. Section 81 basically outlines a procedure that every child who is convicted of a sexual offense will undergo at age 21 to determine if they have been rehabilitated to the satisfaction of the court or if they pose a threat to the safety of others. This hearing will occur around their 21st birthday—again, the court is making a similar determination using the factors outlined in the bill. This is exactly what we do now. Assembly Bill No. 579 of the 74th Session did not provide this discretion, but what S.B. 99 (R2) does is that it keeps the current practice in place where a court will look at the child, look at their performance on probation, and determine whether they need to register or continue to register if they have been ordered to do so.

There are some other changes in the bill and other changes above the deal with a juvenile who has been exempted. A juvenile who has been exempted from registration to community notification is not subject to the Adam Walsh Act. There are also provisions that if a court does find the juvenile should be exempted from the registration or community notification requirements, and if something happens that causes a court to reevaluate that determination, the court can reevaluate that determination.

Chairman Hansen:

The first question I have is, why does a bill of this magnitude show up on my desk when we are a little over two days away from ending the whole process?

John Jones:

This bill spent a lot of time in the Senate Committee on Finance. When this bill was first introduced—I believe by Senator Segerblom—it was a complete repeal of the Adam Walsh Act. It included repealing the adult and juvenile portions of the Adam Walsh Act. Because of the expense and the repeal of the Adam Walsh Act, there were two fiscal notes placed on this bill—one by the Department of Corrections and one by the Department of Public Safety—which

caused a referral to Senate Finance. We spent some time working with them to get rid of the fiscal notes.

Assemblyman O'Neill:

In 2007, I was sitting there at the table with several people, and this is partially my fault, if not all, because I promoted the Adam Walsh Act. Part of the fiscal note was because we would not receive grant funding—it was called Byrne Grant funding at that time—and we did not pass the Adam Walsh Act. It was rather a large impact to the Department of Public Safety and law enforcement as a whole. So we passed it, and found out afterwards that it was not quite as perfect as even we could hope for. One of the first bills I wanted to bring in when I was elected this session was on the Adam Walsh Act, but I found out how complicated it was and the impact it had, so I was not able to do it. I am sorry that I was not able to actually cosponsor this with Senator Segerblom, but this is a good bill. This has been briefed with SORNA, we will stay in full compliance, and it will not impact us, correct?

Brett Kandt:

Yes, and I will make two points. We have received annual notice from what is called the SMART Office of the U.S. Department of Justice that we are substantially compliant with SORNA. Because of the state's enactment of A.B. No. 579 of the 74th Session, even with injunctions and stays from enforcing the law, and the fact that it was enacted, we have been notified annually that we are substantially compliant with federal law. We have been communicating with the SMART Office as we have been working through these proposed changes, and it has been indicated to us that what is represented here in S.B. 99 (R2) will also keep us compliant with federal law and it should not be a problem.

Chairman Hansen:

If this goes in the drawer and never sees the light of day, what changes as far as the law right now? Are there things in this bill that you need to do your job, or is this complying with federal requirements? What is the genesis behind the bill?

Brett Kandt:

We have been notified every year by the federal government that we are substantially compliant. If you do not change anything in the current law, we will still be substantially compliant with federal law. We will be substantially compliant if you implement these changes, and we are asking you to implement these changes because we think they make the law better. We are talking 2007—it was eight years ago, and we have learned a lot. The federal government and other states have learned a lot from their attempts at the

Adam Walsh Act implementation. This is likely our last chance to make these final corrections and clarifications for the benefit of everyone before we lift the final stay and begin enforcing the Adam Walsh Act in our state. The juvenile piece is really the core component of this. I would submit to you that it is all important—everything in this bill we feel is very important—but especially the juvenile piece. We believe the court needs to be afforded some discretion when dealing with the juvenile offender to determine whether, under the circumstances, it is really fair to have the juvenile offender subject to the community notification provisions of being put on the website. Currently, A.B. No. 579 of the 74th Session does not afford judges that discretion; S.B. 99 (R2) will.

Chairman Hansen:

Okay, very good. That was obviously a devil's advocate question. The first thing to do is to amend Assemblyman O'Neill's name into the bill with his permission.

Assemblyman O'Neill:

Only if it will not impede the process.

Chairman Hansen:

It will not impede a thing. In fact, I am sure Senator Segerblom and Assemblywoman Fiore would be delighted to have you on board. Are there any questions at this time?

Assemblywoman Diaz:

I want to understand the difference between what is happening right now and what is happening if this bill were to be passed into law, which I have heard it is a good one. Who is in need of lifetime supervision? If this goes into effect, who potentially will not need this lifetime supervision?

Brett Kandt:

I am going to let Ms. Buchanan answer that question. She is the subject matter expert. This has been very confusing. I just wanted to explain that because of the Adam Walsh Act in Nevada, A.B. No. 579 of the 74th Session has been in various stages of litigation enjoined or stayed from enforcement. We have always been working under the pre-A.B. No. 579 of the 74th Session set of sex offender registration laws since 2007. Moving forward, because A.B. No. 579 of the 74th Session is on the books, this last legal impediment, which is at the Nevada Supreme Court now, is the stay that we willingly entered into to afford you the opportunity during this session to consider some of these improvements

to the law. Once that is lifted, we will be enforcing the law—A.B. No. 579 of the 74th Session—under the Adam Walsh Act in Nevada. This is the last opportunity to make these corrections and clarifications before that takes place.

Lifetime supervision under the current law and then how it would work under what we are proposing here under the Adam Walsh Act enforcement of A.B. No. 579 of the 74th Session, I will now turn over to Ms. Buchanan.

Kimberly Buchanan:

This bill does not make a lot of changes to the lifetime supervision. It does not change the offenses that will require lifetime supervision. The offenses that require lifetime supervision are your worst offenses; hence, the lifetime supervision. What this bill does is add additional requirements to be able to be removed from the requirement of lifetime supervision. The additional requirements were that if an individual who is on lifetime supervision committed an offense of the sex offender registration laws or the lifetime supervision conditions, they would not be eligible for relief from lifetime supervision. That is the difference this bill makes.

The primary thrust of this bill is really to the sex offender registration requirement and there are additional offenses that require registration that I mentioned earlier: sex between school employees and pupils or students, both at school level and at university level, and then there is also a clarification regarding Tiers I, II, or III. Did that answer your question?

Assemblywoman Diaz:

I believe so, thank you.

Assemblyman Thompson:

I want to do my due diligence because I received an email from a constituent that I converse with quite often, and I want to paraphrase part of that email: Senate Bill 99 (2nd Reprint), in its revised form, is a bill of retractor that punishes nonviolent, nonpredatory people going back for convictions handed down and already served generations ago; if someone commits a crime, please increase the punishments, but this bill is a recipe for vigilantism and harassment of innocent children of people who have long ago served their court-ordered punishments. Can you answer to that? Are they speaking correctly? Is what we are trying to do not really affecting them? Of course, you probably need more information from them.

Brett Kandt:

There have been a lot of questions that have come up over the last eight years about people who were adjudicated for sex offenses in the distant past and how

this impacts them and how the Adam Walsh Act impacts them. In many instances, I think there are a lot of misconceptions about the impact of the Adam Walsh Act. I will turn it over to Ms. Buchanan and she can provide you with a little more clarification on it.

Kimberly Buchanan:

The Adam Walsh Act does not change the date by which an offender has to register. Existing law, which is referred to as Megan's Law, is the law that is in place because of the stay on the Adam Walsh Act to A.B. No. 579 of the 74th Session and already goes back to 1956. Any sexual offender who has committed an offense going back to 1956 is required to register in the state of Nevada. The Adam Walsh Act does not change that. What has changed is the tiering of individuals. As Mr. Kandt mentioned earlier, it goes from offense-based to conviction-based, so an individual's tier may change. But fact of registration has not changed under existing law or the Adam Walsh Act.

Assemblyman Thompson:

Will this bill lift some people who may be in a lower tier, so to speak, from lifetime supervision, or is that just automatically going to stay?

Kimberly Buchanan:

Individual tier levels may increase. The number of Tier III offenders will increase significantly under the Adam Walsh Act.

John Jones:

Lifetime supervision is different. It is something that is ordered outside of the Adam Walsh Act. The Adam Walsh Act deals with registration and community notification. I want to be clear that what Ms. Buchanan is saying is that the number of people registered should not change, but their tiering might change. I want to point out that this bill does not affect—with a few minor exceptions—the Adam Walsh Act. It clarifies some things and puts us in compliance with the federal Adam Walsh Act as well with respect to adults.

I will say that it will drastically affect juveniles, because if the stay is lifted and A.B. No. 579 of the 74th Session is put into place, then you do have juveniles who are not currently subject to registration or community notification who would be. That is why S.B. 99 (R2) is important from the juvenile point of view. We want to keep those kids who do not necessarily belong on a community notification website from having to put their information on there.

Assemblyman Jones:

I am a neophyte in this area, not being too well-versed. So the main part of this is the juvenile aspect. How many juveniles do we have right now that are

actually getting caught up in this? When you read these areas that say what the crime is, such as pornography with a juvenile, does that mean they are having sex when they are watching an x-rated movie or does it mean they are participating in one? It seems like it can be interpreted in so many ways. How many of these juvenile crimes are actually occurring in Nevada?

John Jones:

I am sorry but I do not have exact numbers. When I was a member of the Clark County District Attorney's Office and working in the Juvenile Division, I handled this specific caseload for over three years. I think on average I received one to two cases per week where a juvenile was accused of committing one of these crimes. As a guess, probably about 100 or so per year. In terms of people who are subject to the Adam Walsh Act, or would potentially be subject if this stay is lifted, I cannot answer that question. I can tell you that in the District Attorney's Office we negotiated a lot of cases because a kid could potentially have been subject to the Adam Walsh Act. At the District Attorney's Office, we try to treat the offender and the reason why they are sexually offending, and we keep that in mind when we negotiate these cases. I am not here to tell you that there is never a juvenile who should be on a sex offender website. In fact, there are some cases that I have seen where I would strongly argue that the child belongs on a sex offender website due to their propensity to engage in these crimes. We want to keep most of the kids off the website because they do not belong there.

With respect to the drug part of it, that is an enhancement where the kid would have to commit the crime and use one of those drugs or controlled substances in order to commit that crime. I think a good example is you give the victim a substance which would diminish their ability to consent to the sexual act and if you did that in furtherance of the sexual assault or lewdness with a minor. That would be a situation in which that enhancement would apply. It would be a sexually enhanced crime under this bill.

Assemblyman Jones:

So the ones who actually have to register under the Adam Walsh Act is a relatively small number. If you said it is about 100 a year, then the ones you are prosecuting that do not have to register might be a handful?

John Jones:

Yes. The way this is designed is to keep most of them off the website. As I said, it is our goal, and generally what we have been doing in both Clark County and Washoe County, to negotiate around the Adam Walsh Act in appropriate cases so they do not have to register. I would anticipate that most of the time, in this case, we would stipulate that this child does not have to

register or place their information on a community notification website. In situations where we are not comfortable stipulating—because unfortunately those cases do exist—it would ultimately be the judge's determination.

Assemblyman Ohrenschall:

My question has to do with the Attorney General's Advisory Committee to Study Laws Concerning Sex Offender Registration. Assuming this bill passes into law, will it still stay active and monitor the implementation?

Brett Kandt:

I will take that as a request that the Advisory Committee monitor the implementation. I will follow up on it personally as a member of that Advisory Committee.

Assemblyman Araujo:

You mentioned there would be some changes in regard to the reporting that the Las Vegas Metropolitan Police Department would have to put out for these people. I know there were some questions when the Adam Walsh Act was passed in regard to people being displayed 20 years after their conviction. I want to see what the difference is now with reporting once this bill passes to what A.B. No. 579 of the 74th Session would have done.

Brett Kandt:

We talked about how under the sex offender registration notification program, sex offenders register, then there is the notification piece which includes community notification where law enforcement can notify the community of the presence of a registered sex offender. There is also the website and whether the individual is required to be put on the website. Those are all—I do not know if that is what you are referring to by reporting.

We also clarified in the bill that we wanted clarification on how often the offender had to appear in person. We wanted that very clear. There was some confusion in the current law about how you calculate those rolling dates, and we wanted it as clear as possible in fairness to the offender so they understand the frequency with which they need to appear in person. If we have an issue where an offender is out of compliance for that reason, we do not want that to be something that is litigated. We want something that is very clear in the law. With regard to what we are changing with community notification, the piece we are proposing to change in S.B. 99 (R2) is the juvenile piece. We want to give judges the discretion in certain instances with minors to allow them to not be subject to being put on the website in that type of community notification.

Assemblywoman Diaz:

If the injunction is stayed, are there any other pending plaintiffs out there against A.B. No. 579 of the 74th Session?

Brett Kandt:

There is not an injunction in place now. We originally had an injunction in federal court that we fought all the way to the Ninth Circuit Court of Appeals and prevailed on it. Right now the parties in a piece of litigation that is pending before the Nevada Supreme Court have mutually agreed to stay that proceeding during this legislative session because we envisioned that we might want to bring some proposed changes to you. Once the session is over, I envision the parties will agree to lift that stay and the litigation will proceed.

Assemblyman Ohrenschall:

On page 11 of the bill, section 61.7, subsection 2, how do you envision the panel working and making their decisions?

Brett Kandt:

Because we were putting in the issue of someone being deemed a sexually violent predator, we had to take the old language and put it back into the Adam Walsh Act and that created the process for having someone determined to be a sexually violent predator. In this section, the Legislative Counsel Bureau took the old procedure for having someone determined to be a sexually violent predator and we are putting it back into the law.

Regan J. Comis, representing M + R Strategic Services:

I want to add that research has shown that youths who sexually offend are often unlikely to become sex offenders themselves. Most youths' sexual offense involves a family member or a person known to the youth, and is not predatory in nature. The National Center on the Sexual Behavior of Youth has reported that 40 to 60 percent of youthful offenders have been victims of a sexual offense, and 25 to 50 percent of youthful offenders have been victims of physical abuse. National recidivism rates for juvenile sex offenders is between 3.5 to 5 percent, which is very low as opposed to adult offenders. I think this speaks highly as to how well juveniles respond to treatment, which is why we feel it is important to have the judicial discretion when looking at each individual child's case.

Chairman Hansen:

Are there any questions? [There were none.]

Vanessa Spinazola, Legislative & Advocacy Director, American Civil Liberties Union of Nevada:

We are here in support of S.B. 99 (R2) as amended and presented as a good compromise, but in saying so, I do not wish to make any statements that are inconsistent with the litigation of which we are still a part. There are definitely parts of this that we do not like, but in the spirit of compromise, we are here. There are some things, such as adding sex trafficking, sexually violent predator panel, and then, of course, the modification of the tiering levels we are a little worried about. We think that the good outweighs it in this bill. The discretion for the juveniles is absolutely essential for the reasons that Ms. Comis just stated.

Also, I wanted to note that there is a narrowing of the movement restrictions to include only a specific class of offenders, which is actually helpful and helps people on the registry find housing and become productive members of society. We also have a little of Assembly Bill 208—those minor offenses that really people should not be on the registry. We support those good parts for adults. We participate on the Advisory Committee with the district attorney, and we will be monitoring the implementation of this law as well.

Scott J. Shick, representing Nevada Association of Juvenile Justice Administrators:

We stand in strong support of this legislation. We have been working on it since the Adam Walsh Act was implemented. We appreciate the district attorneys and public defenders guiding us through this process and getting it right on behalf of judicial discretion on low-level sex offenders in the juvenile arena. This is going to enable us to continue to monitor and supervise them in a way to make sure that they respond to treatment and complete those treatment requirements per the court order and they can be terminated from the court order as a response to treatment. The juveniles who continue to offend and exercise felony behaviors can be escalated up the ladder and that is the good news about this. It polices it rather carefully. We were very concerned when the bill came out in its entirety. We appreciate the streamlining of it, and we stand in full support.

Susan Roske, Chief Deputy Public Defender, Juvenile Division, Office of the Public Defender, Clark County:

The Assembly has passed several very important bills involving juvenile justice this session. I have to emphasize that it is my opinion that this is the most important bill regarding juvenile justice, and I urge this body to approve it.

As has been mentioned before, the practitioners in court regarding sex offenders have been utilizing the prior law that was in effect before Assembly Bill No. 579 of the 74th Session was approved in 2007. It has never been implemented because of the stay of the court. I represented a young man in juvenile court named Logan D. We contested the constitutionality of A.B. No. 579 of the 74th Session as it applies to juveniles, and the juvenile court agreed it was unconstitutional. The state appealed and the case languished in the Nevada Supreme Court for many years, several legislative sessions. The court came out with an opinion about a year and a half ago declaring that although it was unconstitutional, the Supreme Court urged this legislative body to take a look at this law. Including juvenile delinquents in this sex offender registration and community notification scheme can be very harmful to children.

The Supreme Court stated,

Despite our decision today upholding the constitutionality of mandatory sex offender registration and community notification for juvenile offenders, we echo the juvenile court's concern regarding this legislation. Numerous studies and commentators indicate that subjecting juvenile sex offenders to registration and community notification may not be an effective policy decision.

They cite several studies.

As noted by Logan, the registration and notification programs are expensive, and there are doubts regarding the effectiveness of community notification preventing crime. We agree that the prior statutory scheme, which left the decision to subject juvenile sex offenders to adult registration and community notification requirements to the discretion of the juvenile court based on specified factors, was a superior method of protecting the various interests at stake, including public safety, the welfare of the juvenile sex offenders, and conservation of public resources. [*State v. The Eighth Judicial District Court*, 129 Nev. Adv. Op. 52 (2013)]

At that, they urged the Legislature to take a look at the law, and S.B. 99 (R2) does just that. I would like to commend the Nevada District Attorneys Association for their involvement and the Attorney General's Office in trying to correct this legislation, which I submit was bad public policy. Since the Adam Walsh Act was passed by Congress, numerous states were reluctant to come into compliance because of the inclusion of juvenile delinquents. The Adam Walsh Act only requires states to include juvenile delinquents for

a very narrow category of offenses, which are aggravated sexual assaults that involve rendering a victim unconscious to complete the sexual assault or involve some sort of violence. The Nevada District Attorneys Association and the Attorney General's Office in their crafting of the language in S.B. 99 (R2), narrows the requirement of registration and community notification on the public website to that narrow category.

Over the years since the Adam Walsh Act was passed by Congress, the SMART Office of the Department of Justice has made changes to the requirements involving juveniles so it does not have to be retroactive to 1956, and that the juvenile court can have the discretion to keep the child off the public website. All of these changes that the SMART Office has put into place since 2006 are reflected in S.B. 99 (R2). I concur with the American Civil Liberties Union of Nevada. This is not the perfect law we would like to see, but this is so important. If this bill does not pass and A.B. No. 579 of the 74th Session is implemented, it could ruin many young lives who have a bright future.

Donna Coleman, Private Citizen, Las Vegas, Nevada

I have been a child advocate in the state of Nevada for over 20 years. I cofounded the Children's Advocacy Alliance. I contributed to raising \$1 million to building the Children's Advocacy Center on the Child Haven campus for children who have been sexually abused, and donating that building to the county. I was highly instrumental in Nevada's creation of the sex offender registry including securing the funding for implementation as it was another lean year for Nevada. I was also a member of the State Board of Education and have contributed hundreds of hours of volunteer advocacy work in the state including being quite vocal in support of A.B. No. 579 of the 74th Session, otherwise known as the Adam Walsh Act.

I am here today to say that I was wrong in supporting the entire bill without adding an amendment similar to this. The Adam Walsh Act was so confusing that, as you heard today, the 2009 Legislature directed the Attorney General's Office to form the Advisory Committee to Study Laws Concerning Sex Offender Registration, which is made up of legislators, law enforcement, advocates, and attorneys. I am still a member of this group. In 2014, I conducted an informal survey regarding Adam Walsh and presented my findings to our committee. I was able to reach over 30 states and I can say 100 percent that were either passing or had passed the Adam Walsh Act were going to change the juvenile piece and amend it. I have yet to find one person who likes the entire Adam Walsh Act, especially the juvenile piece.

If S.B. 99 (R2) does not pass, it will result in young people who have made mistakes being labeled like a scarlet letter with their face on the Internet as

a sex offender, and it will ruin countless lives. Our teenage suicide rate is already one of the highest in the country. Again, SORNA has already acknowledged that passing S.B. 99 (R2) will not affect our compliance with the Adam Walsh Act and we will still be eligible for funds.

Let me be perfectly clear. We have kicked this can to the end of the road. If the juveniles are placed on the sex offender website, the results will be tragic and once their face is on the website, it is a bell we cannot unring. I urge you to pass S.B. 99 (R2).

Assemblyman Ohrenschall:

I have a disclosure to make. Because we are considering S.B. 99 (R2), which deals with the potential lifetime supervision of juvenile sex offenders, I would like to advise this Committee that my supervisor at my day job at the Clark County Public Defender's Office, when I am not in the Legislature, is Ms. Roske in Las Vegas, who is testifying on this bill. I have checked with the Legislative Counsel Bureau and I have determined that I do not have a conflict of interest with respect to S.B. 99 (R2) pursuant to Assembly Standing Rule No. 23 because this bill clearly does not affect me any differently than any other practicing attorney in Nevada who represents juveniles. Since I do not have a conflict of interest pursuant to Rule 23, I will be participating in the discussion and plan on voting on this bill.

Under the existing case law that has been stayed, hypothetically, if this bill did not pass and the stay by the Nevada Supreme Court were no longer in effect, is it correct that those juvenile offenders would be classified as either Tier II or Tier III and thus would be on the website and the court would have no discretion as to that, and there would be no chance they would be Tier I? Under the Adam Walsh Act, the tier is based on the offense and not the personal assessment of the risk of reoffending.

Susan Roske:

That is absolutely correct. There was some discussion in the Senate Committee on Judiciary about possibly some juvenile offenders being Tier I, but since the tier base is based on the offense, the offenses that are considered sex offenses for juveniles are all either Tier II or Tier III. For Tier II, these youngsters would have to register every 180 days for 25 years. Those Tier III youngsters would have to register at the place of registration every 90 days for life, but there is a possibility after 25 years they could be relieved of that burden. It is important to note that these kids will be having to get themselves to the place of registry on their own if their parents will not help them, and this is the same place that adult sex offenders are registering.

In S.B. 99 (R2), the place of registry is through the probation officer to whom they have to report anyway. These children will not be going to the sheriff's office to register; they will be going to their probation officer. This is a very important change in the law in S.B. 99 (R2) that I fully support. Thank you for clarifying that.

Assemblyman O'Neill:

Ms. Coleman, I just want to thank you for your tireless effort over the years for this and your admission that we may have made a small error back in 2007 and we are trying to correct it now. If she likes this bill, it is a good bill.

Chairman Hansen:

That is a good endorsement. We will take your word for it, Ms. Coleman.

Assemblywoman Fiore:

Because of the importance of this bill and the time that we have, I am afraid to amend or add. Our clock is ticking and I really want to get this bill out. If it would be okay, I would hope to have no amendments, pass it out of Committee, rules are suspended, and let us get on with the program.

Assemblyman Ohrenschall:

I have a question for our Committee Counsel. Would an amendment at this stage, even to add another member's name, require a concurrence in the Senate? I just want to verify it.

Brad Wilkinson, Committee Counsel:

Yes, it would.

Chairman Hansen:

It looks like you are out of luck, Assemblyman O'Neill. I still wanted to get your name on it since you were involved with it back in 2007.

Assemblyman Ohrenschall:

In 2007 when we worked on this legislation, I was a freshman legislator, and I certainly did not realize that this might be the effect of the bill that I voted for and supported in 2007. My recollection is that we were told we had to get this through, there would be a lot of consequences with the federal government if we did not, and that we really did not have much of a choice. That was a different chairman and different times back then. I did not anticipate this would be the consequence, and I am glad we can work together and try to correct this.

**Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

Las Vegas Metropolitan Police Department is in support. I also want to put on the record that Lieutenant Spratley from the Washoe County Sheriff's Office is also in support of this.

Chairman Hansen:

Is there anyone else in Carson City or Las Vegas who would like to testify in favor of the bill at this time? [There was no one.] Is there anyone in opposition to the bill? [There was no one.] Is there anyone in neutral? [There was no one.] We will close the hearing on S.B. 99 (R2). We have one more bill that is coming over from the Senate, so we will probably have a meeting tomorrow and then we will possibly have a work session on the two bills. Is there any further business for the Committee?

Assemblyman Ohrenschall:

Since Rule No. 57 of Assembly Resolution 1 is suspended, would you consider a motion on S.B. 99 (R2) today?

Chairman Hansen:

No, not yet. I have not had a chance to really go through it myself. I do not want to rush it. It sounds like a very good bill to me, but I would like to have just a little more time to double check everything. Is there anyone who would like to address the Committee in public comment? [There was no one.] Is there any further Committee business? [There was none.] This meeting is adjourned [at 5:07 p.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: May 30, 2015

Time of Meeting: 4:05 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster