

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

**Seventy-Eighth Session
March 10, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Tuesday, March 10, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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 David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Karyn Werner, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Maggie McLetchie, Partner, Langford McLetchie LLC
John Wagner, representing the Independent American Party of Nevada
Sean B. Sullivan, Deputy Public Defender, Washoe County
Public Defender's Office
Steve Yeager, Deputy Public Defender, Clark County Public Defender's
Office
Julie Butler, Division Administrator, General Services Division, Nevada
Department of Public Safety
Vanessa Spinazola, Legislative and Advocacy Director, American Civil
Liberties Union of Nevada
Tom Clark, representing Black Rock City LLC
Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
Ryan Smith, Sergeant, Las Vegas Metropolitan Police Department
John T. Jones, Jr., representing the Nevada District Attorneys
Association
Ben Graham, Private Citizen, Carson City, Nevada

Chairman Hansen:

[Roll was taken. Committee protocol and rules were explained.] We only have one bill today. We had two, but late yesterday afternoon one of the sponsors asked to postpone the hearing. We will open the hearing on Assembly Bill 208. The presenter is Assemblywoman Fiore.

Assembly Bill 208: Revises provisions governing certain sexual offenses.
(BDR 14-233)

Assemblywoman Michele Fiore, Assembly District No. 4:

In 2007, Nevada enacted Assembly Bill No. 579 of the 74th Session to comply with provisions of the federal Adam Walsh Act. In our rush to pass A.B. No. 579 of the 74th Session we created unintended consequences of allowing nonsexual offenses to be included in the sex offender registry.

Section 1 of Assembly Bill 208 removes misdemeanor crimes, such as urinating in public or the college prank of mooning someone in public, from the

sex offender registry. It is in no way intended to let real sexual predators escape the registry. It was brought to my attention yesterday that there has been some concern that the language of this bill may not be in compliance with the requirements set forth in the Adam Walsh Act. I am working with the Office of the Attorney General on amendments to resolve these concerns. Before questions, I will turn the microphone over to Maggie McLetchie, who has been working on this legislation and defending these cases for many years.

Maggie McLetchie, Partner, Langford McLetchie LLC:

Nevada passed Adam Walsh Act compliant legislation in 2007. That bill was called A.B. No. 579 of the 74th Session. However, the law on the books has never actually been enforced because of litigation—in large part that I have been involved in—and confusion with the Adam Walsh Act. Back in 2007, that legislative body was confused about whether they were required to comply with the Adam Walsh Act and whether the federal government could force Nevada to comply with it; that confusion continues. Since the Adam Walsh Act was originally passed in 2007, the federal government has gone back and looked at the Act and has changed the Sex Offender Registration and Notification Act (SORNA) guidelines for enforcement and has drastically changed what states are now required to do if they want to comply with the Adam Walsh Act.

What is required of juveniles is different. You no longer have to put juveniles who fall within the guidelines on the sex offender website. You also no longer have to retroactively apply and reclassify sex offenders and people who may erroneously be tagged as sex offenders whose crimes go back to 1956, people who the state knows are not dangerous, who have been classified as nondangerous, and have not reoffended. Those are the current SORNA guidelines. The problem is, if Nevada is ever able to enforce the Adam Walsh Act—which is unclear because of current litigation—it will be enacting an old version of the Act and do things that are no longer required under federal guidelines.

Another big problem with the 2007 version of the Adam Walsh Act is that there is a huge cost. As Assemblywoman Fiore mentioned, we are not here today to get people who are dangerous off the registry. In fact, it is the opposite. A problem with the way the 2007 law is written is that people who were previously classified as dangerous can become nondangerous, and people who were previously classified as nondangerous can become dangerous when enacting the law. Another problem is the dilution from attention on the real sexual predators and the real dangers. The Division of Parole and Probation, back in 2007, was quoted in the papers as saying that, while you will not have more dangerous offenders suddenly on the registry, you will have more people classified as dangerous offenders. The problem with that becomes, in essence,

a needle-in-a-haystack problem where you are not able to focus the limited resources on the real dangerous offenders. As a clinician who has also been quoted in the newspapers and who works with sex offenders has explained, the real dangerous people on the radar are going to get lost.

Assembly Bill 208 takes a significant step toward resolving some of the problems with our outdated version of the Adam Walsh Act that is on the books and may never be enforced. The current language in A.B. 208 helps ensure that we are not focusing on nondangerous offenders, that crimes such as urinating in public are not included, and that we do not accidentally include people in the registry who do not need to be targeted.

I have proposed an amendment ([Exhibit C](#)), which I circulated yesterday. My proposed amendment would ensure the act was not applied retroactively to people who are not dangerous and who are not currently on probation, parole, prison, or supervised release. That amendment is consistent with SORNA and federal guidelines.

Chairman Hansen:

Is there anyone else who would like to testify before we go to questions? [There was no one.] Are there any questions from the Committee?

Assemblyman Ohrenschall:

I am the only member of the Committee who was here during the 2007 Session, and I was a freshman. Although things are foggy, I do remember feeling that we had to pass this bill. I am glad Ms. McLetchie is trying to correct what we did wrong. I did not realize it at the time, and I am sure that Chairman Bernie Anderson did not either, but there has been a lot of litigation and a lot of hard work since then.

Maggie McLetchie:

There is still an issue with the 2007 Act that has not yet been litigated but could be litigated. That is the potential Tenth Amendment issue with the Adam Walsh Act. In the Affordable Care Act litigation, the Supreme Court of the United States made it very clear that a state cannot be punished for not enacting legislation by taking away unrelated funds. That is essentially what the Adam Walsh Act did. It said that if a state did not enact compliant legislation, the federal government would take a 10 percent reduction in your Edward Byrne Memorial Justice Assistance Grant Program (Byrne JAG) funding. The problem is that it is unconstitutional under the Tenth Amendment. The cost to fully implement the Adam Walsh Act far exceeds the savings from any Byrne JAG grant funding that may have been lost. Many states have actually

rejected a full-scale implementation of the Adam Walsh Act because of the great expense involved.

Assemblyman Nelson:

I agree with the bill. It was mentioned that some offenses would be included that were not intended to be included, such as minor things like urinating in public, mooning, et cetera. How would those be categorized? Would they be under open and gross lewdness?

Maggie McLetchie:

They could be under open and gross lewdness, but more importantly, under *Nevada Revised Statutes* (NRS) 179D.097, there is a catchall that says any other offense with any sexual element or that may be sexually motivated. As many years as I have been litigating these issues, I am still unclear what exactly that means. As with any law, an important thing is clarity. The way the law is currently written, which is one of the problems with retroactive activity, there is no due process and no way to say that you might be erroneously subjected to this law. There is no way of getting clarification. Registrants and everyone convicted of any crime with a sexual element or that may be sexually motivated since July 1, 1956, are required to comply.

One of my clients in my first round of litigation was a grandpa from Elko who had committed statutory rape in 1961. He received probation, but stole a bale of hay and was required to serve a short sentence because of his violation of probation in 1962. If we apply the law full-scale and apply it retroactively, he is someone who would be required to register, not just as an offender, but as a dangerous offender because of the age of the other person. Back then there was a residency and movement restriction and his family was looking at having to move. They were concerned about potential violence against the family since average people, when they see that someone has the label of sex offender, do not look further to see that it was statutory rape committed in 1961. People were concerned about their family members being subjected to violence.

Chairman Hansen:

Typically, in a plea bargain arrangement, they usually go from felony down to gross misdemeanor for a variety of reasons. Since the bill would only apply if it is a felony, are you concerned that people who have been charged with significant sexual offenses but plea bargain it down could end up not being placed on the sexual offender registry?

Maggie McLetchie:

That is a good question that I had not thought about. I would be happy to talk to the district attorney about potential concerns regarding that. Obviously, whether to plead something down is something the district attorneys' offices would take into consideration. On the topic of pleas, one big issue that you see in other states where they have actually enforced the Adam Walsh Act is that it stops up the criminal justice system. No one wants to take any pleas whatsoever because they will all be subject to registration and notification. You want to make sure that you are exempting the right people from registration. I would be happy to talk with the district attorneys just as we are planning to do with the Office of the Attorney General. I have also reached out to them, as has Assemblywoman Fiore.

Chairman Hansen:

We will open it up for anyone who would like to testify in favor of the bill at this time.

John Wagner, representing the Independent American Party of Nevada:

All I am going to say is, "Me, too."

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

Me, too, as well. As we have already testified before this Committee, we have many homeless clients and a lot of clients with mental health issues that may get trapped in this horrible cycle. They are living on the streets and may improperly expose themselves or urinate in public, and may be facing a charge of open and gross lewdness or indecent exposure, which are gross misdemeanors. Because they are homeless, they usually do not know how to register or complete an annual verification. They are subsequently arrested and possibly charged with a category D felony for failure to register as a sex offender and are placed on the registry. I certainly applaud the efforts of A.B. 208, and I am ready to work with the bill's sponsor.

Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:

We are here in support of A.B. 208. I will add a me, too, to what has already been said.

Chairman Hansen:

I am not familiar with how the whole process works, but I have a hard time believing that the sex offender registry is full of people who peed in public. Is there anyone here who could testify to the number of people who are on the registry that are charged with things like that?

Maggie McLetchie:

I do not have numbers right now, but one point that I want to make is that the current law is not A.B. No. 579 of the 74th Session. When we talk about the law on the books and the law that is being enforced, Nevada is now enforcing the pre-2007 version of our sex offender laws because of the litigation and constitutional problems with it. We do not actually know what would happen, but I have clients who received letters from the Department of Public Safety (DPS) advising they did not believe they had been properly subjected to the registry. Others came to me who had crimes such as urinating in public or public indecency who would have to register due to the strict language of the law that is on the books. I have not done a formal survey, but under the current system, there are not too many of them. The way the current system works is that the Department of Public Safety assesses all offenders to determine—using psychiatric and other factors—whether they are actually dangerous. That is the reason for the difference.

Chairman Hansen:

Ms. Butler, I see you signed in as being neutral. Do you want to testify right now?

Julie Butler, Division Administrator, General Services Division, Nevada Department of Public Safety:

To answer your question, there are approximately 1,600 misdemeanor and gross misdemeanor registrants that, if A.B. 208 were enacted, would be removed from having to register. Since 1998, we do not have anyone on the registry convicted of urinating in public.

Chairman Hansen:

Your testimony is that there would be 1,600 people who would be removed from the registry. That is interesting. What I want to know is what these 1,600 people were convicted of?

Julie Butler:

Statutory sexual seduction, open and gross lewdness, and indecent exposure. For the record, open and gross lewdness offenses include physical touching, usually against the victim's will, as opposed to indecent exposure which has no touching involved. We share the plea arrangements concern. A lot of these offenses are pled down.

Chairman Hansen:

There are 1,600 that are misdemeanors or gross misdemeanors. What is the total on the registry at this moment?

Julie Butler:

Total active offenders as of March 5, 2015, was about 6,500, give or take. Now there is a total of 12,000 to 13,000 inactive registrants which includes people who are incarcerated, have moved out of state, or are deceased. The 6,500 are the folks who are required to complete a verification packet annually and register and that we are actively monitoring.

Chairman Hansen:

Do you know if there is a grandfather clause built into this? If we pass this, will those 1,600 be automatically purged from the records or will they remain on it? Would the new people who are convicted of a gross misdemeanor be included in the registry?

Julie Butler:

I do not know. The Office of the Attorney General would have to work that out and give us an interpretation.

Assemblywoman Diaz:

Do we have the 1,600 individuals broken down by age? I do not want to assume they pled it down, but if it was really 18- or 19-year-olds who made a mistake, it should not follow them for the rest of their lives. We do stupid things when we are young.

Julie Butler:

We do not have any minors on the registry unless they were convicted as an adult. I do not know what our system's capability is in terms of breaking that down by age. Things are pretty antiquated, but we can certainly try.

Chairman Hansen:

In other words, there are no minors in the registry at the moment at all. You have to be at least 18 years old to get on the registry?

Julie Butler:

Or as a juvenile convicted as an adult.

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

I am here in support of A.B. 208 and the proposed amendment from Ms. McLetchie. To address the 1,600 people whom we are talking about, we use indecent exposure for prosecuting people who urinate in public. There is not a urinating in public statute; it is usually prosecuted as indecent exposure. That might be more data to get from Ms. Butler.

Regarding statutory sexual seduction, that is something that concerns us at the American Civil Liberties Union (ACLU). There are people who engage in consensual sex that is still a crime under *Nevada Revised Statutes*, and they end up in these sex registry situations. That really concerns us. There are reports out there, including a Human Rights Watch's report from 2007 that is called, *No Easy Answers*. These laws break up families. We have received a ton of letters at the ACLU about the new tier system—and the potential for A.B. 579 of the 74th Session to go into effect—from people who have never had to register. Dads who coach soccer teams get letters in the mail from the DPS that say they can no longer coach their daughters' soccer teams because the federal government has now said that this is the law. Nevada has never seen it as a registration law. The people did something when they were young, may have been convicted, and now have to register. They will not be able to go to their daughters' schools. We are getting lots of letters on this, and it really is destroying people's lives. People have to move because they cannot live within certain zones or areas near schools or other offenders. We hear from offenders all of the time who are on the edge already and cannot find stable employment or housing. They continually get evicted from their apartments as soon as their landlords find out that they are on the registry. This causes more instability.

The reports have shown that these laws are counterproductive to public safety. The law causes so many problems for these people; it causes re-offenses and instability in employment and housing. We, as the public, are actually less safe as a result of these laws which is what we should be concerned about. We think this bill is a good first step in getting rid of the misdemeanors. These are the people who were not convicted of felony charges. There are 1,600 people walking around whose lives have been substantially upended by this law.

We did not talk a lot about the second section of this bill, which gives judges discretion. Section 1, subsection 2 says that if someone comes back as a repeat offender, the judge can say that he feels there is something wrong in this particular case. That offender would need to be registered and punished and be taken care of for public safety. I feel judges have the ability to tell what will keep the public safe. These one-size-fits-all sex offender laws do not do anyone any good. All of the data says that we should look at each case individually and determine what would be best for public safety. We ask you to support the bill and the amendment.

Chairman Hansen:

I would like to see some of those letters. I would like to follow up and see what types of crimes they were convicted of. I would appreciate it if you would please get five of them for me.

Vanessa Spinazola:

I will try, but we have a very strict confidentiality policy.

Chairman Hansen:

Black out all of the parts that I cannot read, but I would like to see the specifics.

Assemblyman Gardner:

Would you please elaborate on what you mean by the people who are having consensual sex? Are we talking about having sex with minors? We just passed a bill about sex with inmates. Who are they having sex with consensually that would be considered a crime?

Vanessa Spinazola:

There are two bills pending in the Legislature right now. One small portion of both Assembly Bill 49 and Senate Bill 192 has to do with the "teacher sex" statutes. Those are 16- and 17-year-olds, but S.B. 192 wants to raise it to include 18-year-olds who meet an employee, volunteer, or teacher who is 21 years of age or older at a school. They have some type of contact at school and then meet later in life and have a relationship. If you are between 16 and 18 years of age, you can consent to sex. If you have an 18-year-old and a 21-year-old under this new law, that would actually be a felony. The bill pending on the Assembly side wants to raise it to a class B felony. Under law, those are people who can consensually engage in sex, but, because we have made a policy determination that the relationship began in the education environment, we are criminalizing it. That is just one example of how that can happen.

Tom Clark, representing Black Rock City LLC:

Black Rock City is the organizer of the annual Burning Man event. We support the testimony that came previously. We think all of these types of laws need to be not just enacted but enforced. This kind of bill gets to the core of lewd and sexual activity. We support the bill 100 percent.

Assemblyman Jones:

Are you worried that there might be some lawbreaking going on at the Burning Man Festival that could be subject to the reporting requirements?

Tom Clark:

We have a number of different law enforcement agencies that patrol the event and take care of it. I was called by a client last night regarding this bill, and he said that we have not seen a lewdness charge against anyone for the history of the event. We have the Bureau of Land Management rangers, Pershing County police, Washoe County sheriffs, and a number of different law enforcement

agencies there. We fully expect and hope, if laws are being broken at Burning Man, that they will be caught, criminalized, and prosecuted. If they do the things that are in this statute, they need to be in that registry.

Assemblyman Elliot T. Anderson:

To clarify this, Burning Man is about free expression. If you are expressing yourself freely at Burning Man, you could be convicted as a sex offender under our current statute if it is being enforced. Is that correct?

Tom Clark:

Yes. Activities take place at events like Burning Man where people openly and freely express themselves, but they know what they are getting into before they get there and before they buy their ticket. Law enforcement understands that, as well. If laws are broken, we want those people caught and convicted.

Chairman Hansen:

That is a new one for Mr. Sullivan and Mr. Yeager. You can use free expression in the future as one of the defenses in court.

Maggie McLetchie:

I want to add some more information to the question about consensual sex. Last session Nevada got rid of the differential age of consent for same sex versus opposite sex consensual sexual activity. However, there is some confusion about applying A.B. No. 579 of the 74th Session to people who were convicted of crimes out of state, which it does apply to. I have a client whose crime would not have been properly charged in Nevada under the changed infamous crimes against nature abolition. It would no longer be a crime, but yet he is still facing registration because of the confusion about how to apply Nevada law to out-of-state crime. That is a good example.

I also need to point out that the current registrants that Ms. Butler was speaking about—the 1,600 people—are not the people that the Adam Walsh Act would apply to. Those 1,600 people are from the pre-2007 version of the law, which has nothing to do with the Adam Walsh Act. The real statistic we need is, if the State of Nevada were to go way back to 1956 and apply the Adam Walsh Act, how many people would be on the registry who were convicted of misdemeanors? Those are the important statistics. If the injunction is ever lifted and the State is able to enforce A.B. No. 579 of the 74th Session, you are going to have a whole host of new people on the registry; it will be much more than 1,600.

Assemblyman O'Neill:

Just to clarify something, did I understand you correctly that a person who comes from out of state where he or she would have to register and then moves to Nevada, he or she would no longer have to register?

Maggie McLetchie:

No. That is incorrect. When you move to Nevada, regardless of where your crime was committed, you have to register in Nevada, which I agree with. The confusion was that our client was convicted of a crime that would no longer be a crime in Nevada because we got rid of the differential age of consent. For same-sex activity, the age of consent used to be 18, where it is now 16. There is some confusion with the DPS about whether the law should apply to my client. I mentioned that example as a problem because there is no discretion or due process built into the Adam Walsh Act. There is no mechanism—other than being part of my litigation—to get clarity about whether you have to register and if the DPS is properly applying the law to you.

Assemblywoman Diaz:

If this law were to pass, does the State then go into the sex offender registry and pull out those individuals who would no longer be considered sex offenders? Are they absolved of having to be part of the registry? I want to be clear what effect this law would have.

Maggie McLetchie:

The answer to your question is complicated because, right now, Nevada is enjoined from enforcing the law that is on the books. Nevada is enforcing a pre-2007 version. If this law, or some version of the law, were to pass, the key benefit is that it might resolve a lot of the pending litigation. The State could finally enforce the law that is actually on the books and could do it with clarity. Once that happens, we are going to change anyway. We can then enforce the Adam Walsh Act and not include misdemeanors. It should not be that difficult for the State because we will have to make a change anyway at some point. The State has never been able to enforce A.B. No. 579 of the 74th Session because of litigation.

Chairman Hansen:

We will go south to see if there is anyone who wants to testify at this time. Seeing no one, we will come back up north for anyone who wants to testify in favor of the bill.

Assemblyman Thompson:

In the event that this passes, and looking at the pre-Adam Walsh Act, will the State have the capacity to clean up the system and notify those people who are no longer on it? A good example of how it makes a difference with relationships, family, and the workplace is that I have a constituent who is dealing with this issue. He is a prominent person in the community, but it is having its toll on his business and his relationships.

Julie Butler:

It is complicated. If we are able to implement the Adam Walsh Act, the 1,600 people of whom I am speaking would become a Tier 1 under the new law. I do not know. We would have to work in conjunction with the Office of the Attorney General, and probably Ms. McLetchie's office, to see if that means these people automatically drop off. We think they would automatically become a Tier 1, which is no community notification. I do not know.

Chairman Hansen:

Please walk me through the different tiers that exist in the sex registry. I am not familiar with them.

Julie Butler:

Under the current registration scheme we use a registration tool to assess an offender's risk to reoffend. Those that are deemed a high risk to reoffend are identified as a Tier 3. Those are usually reserved for sexual predators, violent crimes, violent crimes against children, et cetera. The Tier 2 people are deemed to be at moderate risk to reoffend based upon that registry tool. Both of those tiers, under current law, require community notification, which means they go on the community notification website and the public can access their names. The way the current law is written is that, if you are not identified as a Tier 2 or Tier 3, you are automatically a Tier 1, which is usually for the lesser crimes. Under current law, the Tier 1 people do not go on the community notification website—except for certain exceptions.

Chairman Hansen:

My concern is that there could be another victim. I realize you are in the neutral position, but listening to the testimony as we focus on the people who have done something sexual, I am concerned because of the fairly high rate of recidivism. I will wait until after the opposition testimony before I start asking that type of question, but I want to make sure there are no young people who get revictimized because we did not put an offender into the registry.

Assemblyman Ohrenschall:

Does NRS 176.0931 provide that after ten years of staying out of trouble someone who is subject to lifetime supervision can petition to be removed from the registry? Do you have any data on how many people have successfully gone through that process and gotten off of lifetime supervision?

Julie Butler:

Lifetime supervision refers to Parole and Probation, not necessarily sex offender registration. I need clarification on what you are asking. Are you asking how many people have been removed from the registry or how many people on parole and probation have been removed from lifetime supervision?

Assemblyman Ohrenschall:

The latter.

Julie Butler:

Lifetime supervision? I can work with the Division of Parole and Probation to find out.

Chairman Hansen:

If a Tier 1 offender is placed on the sex offender registry, is there a point in his life where he can petition the courts to have his name removed from the registry?

Julie Butler:

Yes, there is. I believe it is 15 years. After that they can petition to get off of the registry.

Assemblyman Nelson:

Regarding the evaluation scheme you talked about, is that the same as the Static-99 that we have heard about in other hearings?

Julie Butler:

It is based on the Static-99, but it is a different tool that we adopted from another state. It is not the Static-99.

Chairman Hansen:

Is there anyone else who would like to testify in favor of the bill at this time? Seeing no one, is there anyone who would like to testify against A.B. 208?

**Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

I am here today in opposition to A.B. 208. First, let me clarify my position. I certainly agree with the bill's sponsor that the intent with the sex offender registry is not to capture those folks who are intoxicated and urinate in public or the college kid who moons his friend. Ms. Butler stated that there is no one in the registry that she is aware of for urinating in public. The concern that I have with the bill is, as it is written, it would also cover open and gross lewdness, which is under NRS 201.210. That includes crimes such as fondling, groping, and touching which are obviously of a sexual nature. Urinating in public and mooning someone are not crimes that have a sexual intent. Masturbating in a park across the street from a playground or watching school children on the playground and masturbating would fall under open and gross lewdness. It is my belief that those folks should be required to register and should be on the registry.

To quickly touch on the comments that were made about Burning Man, it is a private event that you purchase tickets for. You go there with an expectation of what you are going to see when you enter that event, similar to events that we have in Las Vegas such as the Adult Film Festival or some of the "swingers" conventions. When you go to those events, you purchase a ticket and you understand what you are going to see when you go in there. We are just talking about crimes here that are occurring in public.

There were questions about which consensual sex crimes would be against the law. When I was in patrol, I responded to several calls where people were having sex in a public restroom, in the JCPenney store, and at the mall. When you walk into the restroom with your child at the mall, you do not want to see two people engaging in sex in the bathroom. I am not saying that a consensual couple having sex in the bathroom should be required to register—but I am talking about cases where these crimes are occurring in public and not at a private event.

I have with me today Detective Ryan Smith down in Las Vegas. He is part of our sex offender apprehension team, and he can give you some firsthand examples and statistics of what we see that this bill could inadvertently capture. I do not think that is the intent of the sponsor, and I would hope that is not the intent of the Committee.

Ryan Smith, Sergeant, Las Vegas Metropolitan Police Department:

I agree with Mr. Callaway on this. The reason for our opposition to this bill is the nature of these crimes. We are not talking about people urinating in a park or people at Burning Man. We are talking about the person who goes to a park to masturbate hoping that the woman who is jogging at the park at 7 a.m. comes upon him and sees him, which arouses him. We are talking about the people who get aroused exposing themselves to the unsuspecting citizen who does not want to see this. Those are the people we are concerned about. This is not normal, healthy behavior. These are often precursors for more deviant, serious behavior that may come in the future if this behavior is not checked.

Chairman Hansen:

Do you normally prosecute those as felonies? Obviously, this bill will continue to pick up people who are convicted of a felony. When you run into circumstances as horrendous as that, how do you and the district attorneys' offices handle those?

Ryan Smith:

The first count for indecent exposure or an open and gross lewdness charge is a gross misdemeanor. The next offense is a felony. That is the way it works, but the thing we have to consider is that cases are often pled down. Felonies are pled down to gross misdemeanors and gross misdemeanors are pled down to misdemeanors. Oftentimes, charges that are more serious than indecent exposure or open and gross lewdness are pled down to these charges. That has to be considered, too. That is another reason why we believe these crimes should be considered registered sex offenses.

Assemblyman Elliot T. Anderson:

Getting back to the intent of this bill, which is not to protect the real offenders, is there a way the obviously horrendous situations could be a felony, and the college prank could be a misdemeanor? You can split hairs here and still protect the kids by not criminalizing things unnecessarily to make sex offenders out of them. That would hurt their job prospects, require notification, and make it harder for them to live.

Chuck Callaway:

With this particular bill, we could potentially work on the language to exclude the urinator or the kid that moons classmates, but I think we would be on shaky ground to try to cut out the gross misdemeanor offense. The crime would either be a misdemeanor offense or a felony. You would get into the problem of changing masturbating in public from a gross misdemeanor to being classified the same as sexual assault, which is a felony. Obviously, there are different levels of felonies, so you could look at where it fits in the scheme of things.

It would be quite an undertaking to cut some of those out or to remove the gross misdemeanor altogether. It would be easier to draft language that excludes urinating in public and mooning.

Assemblyman Elliot T. Anderson:

Is it possible to say that, if the crime involves exposing children to a bad situation, it is excluded? It may be easier to exclude from this bill that which we want to protect rather than making it too narrow by only protecting those individual situations. Does that make sense?

Chuck Callaway:

Absolutely. I think you hit the nail on the head. The key difference, as I stated earlier, is that urinating in public and mooning are not done for sexual gratification. The open and gross lewdness offenses—touching, groping, fondling, masturbating—are done for sexual gratification. There is a distinction, and that may be how the language can be drafted to differentiate between the two.

Assemblyman Nelson:

Your opposition to the bill deals with limiting it to felonies. Is that correct? That is part of it, but you have gross misdemeanors wrapped inside of this. Do you have any problem with the discretion given to the judge in section 2? It seems to me that it will be extremely difficult to craft legislation that will cover everything that we are talking about here. How do you feel about letting the judges have the discretion?

Chuck Callaway:

You are correct on the first part of your question. I am concerned about the bill limiting it to felonies only, which would exclude the gross misdemeanor offenses such as open and gross lewdness. As far as judges' discretion, I certainly support judges having discretion. I think every case is different and no two cases are identical. I sit on the Advisory Commission on the Administration of Justice and during the interim we had numerous discussions about category B felonies and restructuring the law. In those conversations, discretion of the judges came up. The concern raised at that time—which was not necessarily my position—was that you would have two people charged with exactly the same crime and judge A, who is a stickler, requires that person to register; but judge B, who is not such a stickler, says he does not have to. Now you have two people who are similarly situated, but treated completely different. I personally support discretion of the judges.

Chairman Hansen:

Are there any other questions for either gentleman? I do not see any.

Ryan Smith:

I have one other thing to add. When we talk about the college prank gone wrong, or the vagrant who is peeing somewhere, one of the things we have to consider with those crimes is they do not involve a victim. Sexual offenses, on the other hand, are not victimless crimes. You have to take into consideration that a person can realize the difference between walking around a corner and seeing a vagrant peeing because he had no other place to go, or a college prank where they were mooning their friends across the street and someone else just happened to see it. Jogging at 7 a.m., coming around a corner, and meeting a guy who is watching you and masturbating is a completely different thing. I wanted to point out that there is a victim involved in this, and it goes to common sense that the victim can see the intent. Either there is a definite sexual overtone, or there is not.

Chairman Hansen:

Thank you for that clarification. Is there anyone else north or south who would like to testify in opposition to the bill at this time? Seeing no one, we will move to the neutral position.

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

The Nevada District Attorneys Association is here in the neutral position on the bill. I do appreciate Assemblywoman Fiore's bringing this proposal. Most of our concerns with this bill are addressed in another bill, Assembly Bill 49, which this Committee heard last Friday. The biggest issue we have with this bill is that when an adult sexually gropes or touches a 14- or 15-year-old, right now that is not covered by the lewdness with a minor statute. That is extremely disconcerting conduct. Assembly Bill 49 takes care of that piece, and under this bill it would now be a felony and subject to registration. We would urge this Committee's passage of A.B. 49, but that is another matter. That is the biggest piece of this bill that will be covered by another one. On behalf of the Nevada District Attorneys Association, we do not want people who are peeing in public to be on a sex offender registry; that is not what this law is for. In fact, that waters down the intent of the sex offender registry. It is important to note that Ms. Butler indicates that no one is currently on the registry for that type of offense. Typically, if that type of offense is a first or second offense, it is reduced to a disorderly conduct or some other nonsexual offense.

Assemblyman Gardner:

Can you please answer a question that was asked earlier regarding what effect, from your reading of the bill, there is when people plead down from a felony to a gross misdemeanor or such?

John Jones:

It all depends. If it is pled down to a gross misdemeanor or a misdemeanor under this statute, they would not be subject to registration. That would factor into our negotiations. We, as prosecutors, would be less willing to give an open and gross lewdness in situations where otherwise an open and gross lewdness might be appropriate if everyone is being charged with open and gross lewdness.

Chairman Hansen:

That is the question and concern I had. Hopefully, we can get the bill's sponsors together with all of you and get that all cleaned up.

Julie Butler:

We are also concerned that not registering offenders convicted of statutory sexual seduction or open and gross lewdness may jeopardize our compliance with the federal Adam Walsh Act. Every year we have to reverify our implementation status with the federal office that monitors our compliance with the federal act. I appreciate the Assemblywoman's comments that she would work with the Attorney General on that language. We stand to potentially lose some future federal grant funding for not being in compliance.

Chairman Hansen:

There was testimony earlier that we are not enforcing the Adam Walsh Act anyway as of 2007. Can you elaborate on that?

Julie Butler:

That is correct. There have been various legal challenges to A.B. No. 579 of the 74th Session since the law was enacted in 2007, and the effective date was July 1, 2008. About June 28 or so in 2008, the first injunction came in against the bill, and it has been in litigation in various forms since then. Having said that, at one point we received a designation from the federal office that monitors our compliance that we had substantially implemented, "but for the injunction." The following year, they just dropped the "but for the injunction." That opened us up to receiving some bonus money from the federal office that monitors compliance. Obviously, we cannot implement so we are concerned. We do use that federal money to fund things such as overtime and system enhancements to the registry, so loss of those funds would have an impact on our office.

Chairman Hansen:

Are there any more questions? Seeing none, is there anyone else who would like to testify either north or south? Seeing no one, I will call the bill's sponsor back up.

Assemblywoman Fiore:

Most of you know me and I am pretty tough on crime. On the record, last session when Mr. Ohrenschall asked me about the death penalty on certain crimes, I said that some people just do not need to be breathing. It is the same with the sex offender registry. The problem, and why I brought this bill to you, is that when two neighbors live next door to each other and one is a sex offender, the other does not necessarily realize that it is just Tier 1. They do not understand the difference between Tier 1 and Tier 3.

I know someone in this body whose spouse was arrested for open and gross lewdness, went through a lot of issues, and the end result was that it was dismissed. That open and gross lewdness charge was because the couple were fighting about her cheating, and he grabbed himself and asked, "Is his better than mine?" I know both of them personally, so this is firsthand information. There are about 35 people in this room and none of us are innocent—well, maybe one or two—and we have probably been a little frisky with a friend or a spouse in our car or in a public situation. We have people walking these halls who have done some frisky things in Fuji Park up the street, and they could be listed as a sex offender.

I just want to bring the realism back to us and our behavior as we create these laws. These are things that we do. These are things that we are telling the majority of people that they cannot do because we put a law in place. I want to ensure that this bill does not make people register who are truly not predators. My four-year-old grandson and I are guilty of driving from Las Vegas to Carson City and pulling over to the side of the road and urinating because there are no bathrooms for 100 miles. Each and every one of us, under this law, could be listed as a sexual offender the way it reads. I want to ensure that we protect our people, and I urge you to support this bill.

Chairman Hansen:

With that, we will close the hearing on Assembly Bill 208 at this time. We had another bill originally scheduled, but the sponsor of the bill asked for a postponement. We will open up for public comment.

Ben Graham, Private Citizen, Carson City, Nevada:

I am here as a father and a person who travels with children. Years ago in another state, I was traveling with my children on Amtrak from Chicago to Portland. As we got into Glacier National Park, a voice came over the loudspeaker and said, "Everyone look over to the left side of the train. There is a group of campers that you will see in a few moments." Just as we rounded the bend, there were 10 or 15 campers all mooning Amtrak. We discovered that Amtrak's schedule would be on the camping itinerary each day, and the campers would go out to give their greeting. Over the years, I have laughed about the mooning incident. When I was at the University, I had a student or two of mine charged with mooning, and I obviously think that this is something for which they should not need to be registered.

Chairman Hansen:

Where in Nevada law is mooning defined? Is there such a thing?

Ben Graham:

I am not sure where mooning specifically is, but I know we have had people charged a few times years ago. I would have to look it up.

Assemblywoman Fiore:

I can answer that. Urinating, mooning, and anything that we do not have a definition for would be under indecent exposure or lewdness. They just wrap it up, and that is the issue. That is why section 2 of the bill gives the judges discretion. If there is any sexual intent, throw them away and lock them up; I am good with that. The offenses without sexual intent are what I am trying to solve here.

Chairman Hansen:

The big concern is trying to keep things like mooning out of it, while at the same time we do not want people who are publicly masturbating to be left out of it. There are some areas that we have to make sure we cover before this goes forward.

Is there anyone else for public comment in the north or the south? Seeing no one, we will close public comment.

On Committee business, we are running out of bills because bill drafting is having a difficult time getting amendments and bill draft requests finished at this time. I have a suggestion. What I would like to do is possibly move the two bills that are scheduled for Friday to Wednesday and Thursday, and not have a Committee on Judiciary hearing on Friday. Give that some thought.

I want to make sure we have fair hearings and give everyone an opportunity to present their case to this Committee. We also have a Homeowners' Association (HOA) Subcommittee scheduled for March 16, 2015. If you do not know, I have asked Assemblywoman Seaman to be the Chair, Assemblyman Gardner will be the Vice Chair, and there will be five members total. The HOA bills, at my discretion, will probably be funneled to that Subcommittee. There are currently four bills scheduled for the Subcommittee. Think about that for Friday. If there are issues with the bills and you think that is a bad idea, let me know. Otherwise, we can give everyone a break on Friday morning.

Is there any other business that needs to be brought before the Committee at this time? Seeing none, this meeting is adjourned [at 9:03 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 10, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
<u>A.B. 208</u>	C	Maggie McLetchie, Partner, Langford McLetchie LLC	Letter of Support with Proposed Amendment