MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
February 9, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:01 p.m. on Monday, February 9, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Tick Segerblom (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Connie Westadt, Committee Secretary

OTHERS PRESENT:

Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
John T. Jones, Jr., Nevada District Attorneys Association
Chuck Callaway, Metropolitan Police Department, City of Las Vegas
Eric Spratley, Lieutenant, Sheriff's Office, Washoe County
Sean B. Sullivan, Deputy Public Defender, Washoe County
Steve Yeager, Office of the Public Defender, Clark County

Jared Frost, Deputy Attorney General, Public Safety Division, Department of Corrections
Sheryl Foster, Deputy Director, Department of Corrections
Heather Procter, Senior Deputy Attorney General, Office of the Attorney General

Chair Brower:
We will open the hearing on Senate Bill (S.B.) 52.

SENATE BILL 52: Revises provisions governing search warrants. (BDR 14-159)

Brett Kandt (Special Assistant Attorney General, Office of the Attorney General):
Senate Bill 52 updates *Nevada Revised Statute* (NRS) 179.045 to authorize the use of a secure electronic transmission for the submission of an application and affidavit for a search warrant and for the issuance of a search warrant by a magistrate or judge. Other states are updating their search warrant laws to authorize the use of new technology enabling a law enforcement officer to submit a search warrant application with probable cause affidavit via a secure electronic communication directly to the judge, who then issues the search warrant via that same secure electronic communication. It is a transaction that can happen in a matter of seconds. It can result in cost savings while promoting public safety and preserving constitutional rights. It could lead to fewer warrantless searches. Nevada law does not authorize the use of this type of technology. As endorsed by the Attorney General's letter (Exhibit C), this bill would authorize its use.

I reached out to many stakeholders regarding this bill. The civil liberty position is that anything that reduces the number of warrantless searches is probably a good thing—although we will always have warrantless searches. This proposal is intended to be permissive. This proposal allows for the use of technology to apply for and issue a search warrant, but it does not mandate its use.

Chair Brower:
Please walk us through the typical search warrant application process as it occurs today, and then walk us through how the passage of this bill would change that process.

Mr. Kandt:
The process has changed over time. The traditional process envisioned under the Fourth Amendment was that the officer would appear before a magistrate or judge and lay out the probable cause justifying the search warrant. The judge would issue the search warrant on a piece of paper. The officer would serve the warrant and execute it. At some point, we recognized the benefit of technology and amended the statute to allow for this process by telephone. The process by telephone is recorded and has been used for some time.

Chair Brower:
Is the law enforcement officer able to telephone the magistrate, explain probable cause via telephone and get the warrant issued?

Mr. Kandt:
Yes. The call is recorded, but the whole process is reduced to writing because you have to produce and serve a hard copy of the warrant on the subject. Under our proposal, the officer would still have to have the ability to reduce the warrant to writing and leave a copy with subject. The need for S.B. 52 was highlighted 2 years ago when the U.S. Supreme Court ruled in the landmark case *Missouri v. McNeely*, 569 U.S. ___, 133 S.Ct. 1552 (2013), on driving under the influence. The court ruled that when an officer believes somebody may be driving a vehicle impaired, the dissipation of alcohol in that person's system is not alone an exigent circumstance justifying a warrantless search. This changed enforcement of Nevada's implied consent laws.

Under our implied consent laws, a driver was required to give a blood sample and the officer could use reasonable force to obtain the sample. Following the *Missouri v. McNeely* ruling, we advised law enforcement officers that they needed to obtain warrants. Consequently, the number of warrants being sought went up dramatically. In some instances, it can be challenging to obtain a warrant—especially for law enforcement officers in rural areas of the State.

Chair Brower:
You suggest that this bill would make it easier in some circumstances for an agent to get a warrant. You are not suggesting it would be any easier in terms of a lower standard for proving probable cause. It would be easier in terms of time by allowing remote communication between the agent and the magistrate. Do I understand that correctly?

Mr. Kandt:
Yes. It would be a more efficient process, result in cost savings and improve the administration of justice.

Chair Brower:
Would the Nevada Supreme Court have to adopt rules as contemplated in section 1, subsection 2 of S.B. 52?

Mr. Kandt:
Yes. I looked at the way several states updated their laws. Some states were detailed and others took a simplistic approach. I followed the approach taken by Kentucky, which authorized the state's supreme court to adopt rules. The Nevada Supreme Court has adopted rules for electronic filings, making it appropriate to accord the Justices the opportunity to lay out the rules for this process.

Chair Brower:
Senate Bill 52 makes this new process permissive. Does that mean a court or magistrate would not be required to accept warrant applications electronically?

Mr. Kandt:
Yes. We have a decentralized system. Our local jurisdictions will make budgetary decisions with respect to using this technology. They would need to contract with vendors and acquire the appropriate hardware in order for law enforcement and judges to utilize this process.

Chair Brower:
Would this new process require new equipment?

Mr. Kandt:
It would be driven in part by the rules promulgated by the Nevada Supreme Court. These days, there is an app for everything. It might be as simple as an app, although the bill does require a secure electronic transmission. Any electronic transaction carries security and integrity concerns. You would not want a third party to interfere with or affect the process. Whether hardware or software is required to comply with Supreme Court rules and ensure the integrity of the transaction is a question for another day.

Chair Brower:
Can you walk us through the new process?

Mr. Kandt:
Based on demonstrations by vendors that provide this technology in other jurisdictions, the officer in his or her squad car with a mobile device—such as an iPad or a computer—drafts and sends the probable cause affidavit to the judge on a secure line. The judge receives it on a mobile device and makes a determination that the affidavit is sufficient. The judge issues the warrant to the officer with an electronic signature. The officer produces a paper copy and then executes the warrant.

John T. Jones, Jr. (Nevada District Attorneys Association):
We support S.B. 52 for two major reasons. First, it will allow officers to obtain warrants quicker. The *Missouri v. McNeely* decision discusses how quickly warrants can be obtained and specifically mentions electronic warrants. Second, having a copy of the warrant available almost instantly will speed up the process once the complaint has been filed in court. We do have occasions when we wait for a copy of the telephonic warrant to be typed. Electronic warrants can save law enforcement and the court system some time on both the front end and the back end of the process.

Chuck Calloway (Metropolitan Police Department, City of Las Vegas):
We support S.B. 52. It is important to bring our statutes up to date with modern technology and allow law enforcement to obtain warrants in a more efficient manner without eroding important constitutional requirements. To clarify the increase in obtaining warrants, time is crucial when handling a DUI case, especially a fatality, because every minute that goes by, the person's blood alcohol level decreases. Having a more efficient manner to obtain a search warrant in those cases can be crucial to the investigation.

Eric Spratley (Lieutenant, Sheriff's Office, Washoe County):
We support S.B. 52.

Senator Hammond:
Will you be able to produce a paper copy of the warrant in the squad car?

Mr. Calloway:
The computer systems and laptops in our patrol cars may not have the ability to print. Once a warrant is obtained, the officer could print it from a secure location at the Clark County Detention Center. It would still be a more efficient process. Down the road, we may update our equipment so the warrant could be printed in the car.

Sean B. Sullivan (Deputy Public Defender, Washoe County):
We support S.B. 52. We like the fact that it disseminates the information to the defense bar much more quickly. In Washoe County, we have e-filing or eFlex systems from which we get judgments of conviction, motions, oppositions to motions, presentence investigation reports, criminal informations—pretty much anything can be filed or corrected electronically. The quicker we get the information, the quicker we can scrutinize it to see if there are any problems.

Steve Yeager (Office of the Public Defender, Clark County):
We support S.B. 52.

Chair Brower:
We will close the hearing on S.B. 52 and open the hearing on Senate Bill 53.

SENATE BILL 53: Revises provisions relating to certain postconviction petitions for writs of habeas corpus. (BDR 3-156)

Mr. Kandt:
Senate Bill 53 is a proposed change to the Nevada statute that governs inmate challenges to the computation of their time credits. The computation of inmate time credits is governed by a complex statutory scheme. It allows inmates to accumulate credits for various reasons, including time served, work performed at the prison, good behavior and completion of certain educational or rehabilitative programs. In calculating accrued time credits, the Department of Corrections must take into account considerations such as whether the inmate has been required to forfeit any credits due to disciplinary action; whether the credits apply to the inmate's minimum or maximum sentence; and whether the inmate is serving multiple sentences and, if so, whether the credits apply to each of these unexpired sentences. In short, the computation of inmate time credits is a complicated process that sometimes results in disputes between the inmate and the Department.

In the event that an inmate wishes to challenge the Department's calculation of those time credits, the inmate can submit a written grievance at the prison institution where he or she is incarcerated. The inmate grievance system is designed to provide inmates with a formal process to address any concerns related to their confinement, including the time credit computation, and allow inmates and prison administrators an opportunity to correct any errors before resorting to the much more costly forms of dispute resolution such as civil litigation. However, NRS 34.724, which governs inmate challenges to the computation of time, does not specifically require inmates to take advantage of the inmate grievance system before bringing a lawsuit in State district court. The Nevada Supreme Court has ruled that this omission means that inmates are not required to present computation challenges to prison administrators before filing a lawsuit. Senate Bill 53 would remedy this problem and clarify that inmates must first pursue to completion the remedies available to them in the prison grievance system before they initiate costly and resource-intensive litigation in our judicial system. The Attorney General requests your support in a letter (Exhibit D).

Senator Ford:
I am not a proponent of limiting the ability of someone who challenges his or her time calculation from seeking redress in our courts. I understand the concept of exhausting administrative remedies. Describe the administrative remedies and how long it takes to obtain a ruling from the Department.

Jared Frost (Deputy Attorney General, Public Safety Division, Department of Corrections):
The inmate grievance system allows inmates to submit a written request form at three different levels. At the informal level, the inmate can challenge the computation of his or her time credits and get a response from a caseworker. If the inmate is dissatisfied with the response, the inmate can appeal that decision to the warden's office. If the inmate is dissatisfied with that response, the inmate can appeal the decision to the deputy director. Time credit computation disputes are uniquely within the knowledge of the Department to redress. We hope this bill will reduce litigation costs by encouraging inmates to use the system best able to redress their concerns.

Senator Ford:
I want to know the duration between steps and how long it takes to obtain a final ruling from the Department.

Mr. Frost:
Grievances that come across my desk typically receive response within 1 to 2 weeks at each level of the inmate grievance system.

Senator Ford:
This is 3 weeks in total?

Mr. Frost:
The response is usually 1 to 2 weeks at each level of the inmate grievance system—1 to 2 weeks at the informal level, 1 to 2 weeks at the first level and 1 to 2 weeks at the second level.

Senator Ford:
Now we are at between 3 and 6 weeks. Is that a fair estimation?

Mr. Frost:
Yes, that is my understanding.

Senator Ford:
How frequently do inmates go directly to the courts? I seek to understand the reason you want to insert the requirement that they pursue administrative remedies.

Mr. Frost:
I have handled two of these cases. My colleagues have had a number of these cases in the last 2 or 3 years. I would say at least a dozen from my experience.

Senator Ford:
You have handled two cases over the course of what time frame?

Mr. Frost:
I have handled two cases in 2 years.

Senator Ford:
You have one a year. Then there are your colleagues. Can you estimate the total number of these types of cases that go directly to court as opposed to the grievance process?

Mr. Frost:
I estimate a dozen in the last 2 years.

Senator Kihuen:
How much money would be saved in litigation costs?

Mr. Frost:
I do not have an estimate on the expected savings.

Mr. Kandt:
Inmates would more likely get a timely resolution by submitting to the grievance process rather than initiating litigation. This is part of our rationale for this bill. It will be quicker if they go through the 2-, 3- or 4-week grievance process. You are well aware how long litigation can take. If an inmate has a valid point and an error occurs, it is much more likely to be resolved in a timely manner through the grievance process.

Senator Ford:
I tend to agree with you in that regard—assuming that 3 to 6 weeks is the right time frame; frankly, Mr. Frost did not sound entirely sure that 3 to 6 weeks was accurate. I ask that you double-check those numbers and the duration of time to get a final ruling from either the administrative agency or the court. It is also important to understand the financial burdens. If you have had 12 cases in 2 years, I want to know the costs. Answers to those questions would help us make an informed decision on an issue as important as this.

Sheryl Foster (Deputy Director, Department of Corrections):
I will clarify the response on time frames. Although we would like to answer every grievance within 3 weeks, that is optimistic. In reality, the informal level has 45 days to respond, and then the inmate can file an appeal. The first level to the warden also has 45 days to respond, and then the inmate can file an appeal. At the deputy director's level, we have 60 days to respond. Certainly in a sentence computation grievance, we move as quickly as possible. In fact, the second level in this particular process goes directly to the offender management administrator. It could be resolved at the informal or first level, but at the second level, it goes directly to our offender management division for any research or recalculation of time necessary to resolve the grievance as soon as possible.

Chair Brower:
We close the hearing on S.B. 53 and open the hearing on Senate Bill 55.

SENATE BILL 55: Revises provisions governing waiver of the right of a criminal defendant to be present during sentencing proceedings. (BDR 14-432)

Mr. Kandt:
I am here to present S.B. 55. With me today is Senior Deputy Attorney General Heather Procter, who represents our Extraditions Unit. When a defendant is charged with a crime committed in Nevada, but that defendant is physically incarcerated in a jail or prison in another state, that defendant may waive his presence in the State for sentencing on the Nevada crime. This is called sentencing in abstentia. To request a sentencing in abstentia, the defendant must be represented by counsel in Nevada who must present to the Nevada judge a written, knowing waiver of the defendant's physical presence for the Nevada sentencing. The Nevada judge may order the sentence on the current crime to run concurrently, meaning the sentence in Nevada will run at the same time the defendant serves the sentence in the other state, or to run consecutively, meaning the sentence in Nevada will not begin to run until after the defendant completes the sentence in the other state. The Nevada defendant remains physically incarcerated in the other state but receives a sentence on the Nevada crime.

The problem arises when the defendant completes the sentence in the other state but has yet to complete the Nevada sentence. Under normal circumstances at sentencing, the defendant is immediately transferred to the Department of Corrections to begin serving the sentence. When the defendant is sentenced in abstentia, because the other state will no longer have physical custody of the defendant, the defendant must be returned to Nevada to complete the sentence. The process to transfer a defendant from one state to another is called an extradition that must be conducted pursuant to the Uniform Criminal Extradition Act under NRS 179. An extradition can be a time-consuming and costly process in which the offices of the Attorneys General and Governors in both Nevada and the other state must coordinate their efforts to transfer the defendant back to Nevada. The cost of this process and the sentencing in abstentia will never be recouped from the defendant because the process will occur after sentencing.

As outlined in the Attorney General's letter (Exhibit E), S.B. 55 would amend the sentencing in abstentia statute. As part of a written waiver of the physical presence for sentencing in abstentia, the defendant also agrees to waive the formal extradition process and permit Nevada to pick him or her up without the extensive, costly proceedings otherwise required. The process is analogous to the rights waived by a defendant when entering probation, parole or bail in which the waiver serves as a condition. When the defendant signs the written waiver to appear for sentencing in abstentia, he or she knowingly waives the right to a formal extradition proceeding for return to Nevada to serve the remaining sentence. Senate Bill 55 promotes judicial economy while still preserving the constitutional rights of defendants.

Chair Brower:
Take us through a real-life example of how this would work.

Heather Procter (Senior Deputy Attorney General, Office of the Attorney General):
An extradition is the process by which the State of Nevada brings a defendant back from another state. There are two processes involved.

Chair Brower:
When you talk about extradition, are you talking about a preconviction phase of the proceedings? An arrest has been made in Colorado on an outstanding warrant or in an investigation where someone is wanted. The person is picked up in Colorado and has to be extradited to Nevada to face charges.

Ms. Procter:
That is correct. The first aspect that I am going to talk about is a formal extradition. That is exactly what you just discussed, Mr. Chair. A defendant is arrested solely on our warrant in another state and permanently transferred to Nevada to face the charges.

The second aspect is an Interstate Agreement on Detainers (IAD). This temporary transfer is a situation where the defendant is incarcerated in another state—already in prison on other charges—and we want him or her in Nevada to face Nevada charges. In an IAD, the defendant will be transferred to Nevada on untried charges. He or she will go either through the guilty plea phase or through a trial, be sentenced in Nevada and then be returned to the other state to serve the remainder of that sentence.

Chair Brower:
In that scenario, the defendant is sort of on loan from the Colorado system. He or she is incarcerated under a lawful conviction. How does someone who is incarcerated in Colorado come to be charged with a crime in Nevada? One assumes that it is for something the defendant did before the arrest and incarceration in Colorado.

Ms. Procter:
Yes. Generally, the local jurisdiction in Nevada posts a warrant for the arrest. Prison officials in Colorado locate that warrant and notify Nevada authorities that this individual has been located. Nevada authorities can then post a detainer on the individual in jail or prison that advises the inmate of the warrant and opportunity to initiate the IAD. Inmates often initiate the IAD because they hope to get concurrent time rather than consecutive time.

Mr. Kandt:
Last year, our Extraditions Unit handled 671 transfers of which not all involved a sentencing in abstentia. But that gives you some idea of the number of transfers our Extraditions Unit deals with in a typical year.

Ms. Procter:
When the inmate initiates the IAD, the IAD serves as a double waiver. The inmate waives the right to come to Nevada from Colorado to face the Nevada charges and is returned to Colorado. After serving the Colorado time, he or she waives any formal extradition process to return to Nevada to complete the Nevada sentence.

Chair Brower:
That scenario has an inmate convicted and incarcerated in Colorado; charged, convicted and sentenced in Nevada; returned to Colorado to finish Colorado time; and then back to Nevada—if a prison sentence remained—to serve that time.

Senator Ford:
Has a perverse incentive been created whereby sentences are more frequently concurrent as opposed to consecutive because of the fear of an inability to extradite after a sentence?

Ms. Procter:
I would not use the word fear. A judge often rules in favor of concurrent time for a sentence if the defendant is serving a sentence in another state simply because the judge intends to rule that way. I do not believe it is in favor of or in opposition to the extradition process.

We are dealing with sentencing in abstentia. This process does not fall within either the formal extradition or the IAD process. The problem is an IAD process only applies to untried charges—that means an individual who has not been convicted, pleaded guilty or been sentenced. Now we need to deal with a case in which the individual has either pleaded guilty or has been through a trial and found guilty. All that remains is sentencing. We cannot use a formal extradition process because that is a permanent transfer. This is a temporary transfer. Therefore, we have to find something in between. In Nevada, we do allow for sentencing in abstentia. That formal statutory process is already in effect. The problem is that once the defendant has served the time in the other state, he or she has to be returned in some way to Nevada to complete the remaining Nevada sentence.

As it is now, once the defendant has completed the sentence in Colorado, we have to go through a formal extradition process in order to return that individual to Nevada despite the opportunity to use the statute and be sentenced in abstentia. We ask to add this component to the sentencing in abstentia consideration. In addition to waiving the physical presence in Nevada for sentencing, the defendant also waives any formal extradition process—similar to an IAD process.

Chair Brower:
We are adjourned at 1:49 p.m.

RESPECTFULLY SUBMITTED:

_____
Connie Westadt,
Committee Secretary

APPROVED BY:

_____
Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	1		Agenda
	B	3		Attendance Roster
S.B. 52	C	1	Office of the Attorney General	Letter re: S.B. 52
S.B. 53	D	1	Office of the Attorney General	Letter re: S.B. 53
S.B. 55	E	2	Office of the Attorney General	Letter re: S.B. 55