

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
February 12, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:01 p.m. on Thursday, February 12, 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
Cassandra Grieve, Committee Secretary

OTHERS PRESENT:

Sheryl Foster, Deputy Director, Programs, South, Department of Corrections
Greg Cox, Director, Department of Corrections
Joy Trushenski
Brian Connett, Deputy Director, Industrial Programs, Public Information Officer,
Department of Corrections
Tonja Brown

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Amy Rose, American Civil Liberties Union of Nevada
Barry Smith, Executive Director, Nevada Press Association
Josh Hicks, Consumer Data Industry Association

Chair Brower:

I will open the hearing of the Senate Committee on Judiciary with Senate Bill (S.B.) 17.

SENATE BILL 17: Authorizes a deputy director of the Department of Corrections to accept employment as an instructor at an institution of higher education. (BDR 16-339)

Sheryl Foster (Deputy Director, Programs, South, Department of Corrections):

I submit to the Committee my written statement ([Exhibit C](#)) supporting S.B. 17. I also submit an amendment ([Exhibit D](#)).

Chair Brower:

How many deputy directors does the Department of Corrections (DOC) have?

Greg Cox (Director, Department of Corrections):

We have four deputy directors.

Chair Brower:

How do you divide the labor between the four deputy directors?

Mr. Cox:

The four positions are Deputy Director of Programs, Sheryl Foster; Deputy Director of Operations, E.K. McDaniel; Deputy Director of Support Services, Scott Sisco; and Deputy Director of Industrial Programs, Brian Connett.

Chair Brower:

Should the Committee assume that discussion regarding employment as an instructor at an educational institution indicates a part-time-only position?

Ms. Foster:

Yes, part-time only.

Chair Brower:

Is there a reason the bill does not specify that?

Mr. Cox:

We have no problem specifying that the position be restricted to part-time and that it not conflict with the regular duties of a deputy director.

Chair Brower:

The Committee will take that into consideration. Is there opposition to S.B. 17?

Joy Trushenski:

I am a retired caseworker who worked for the DOC for over 20 years. I oppose S.B. 17. If a deputy director is doing his or her job 100 percent, he or she will not have time to be an instructor at an institution of higher education. There are many problems in the DOC that need to be dealt with, and I feel that a deputy director having a secondary, part-time job would take away from his or her ability to deal with those problems.

Chair Brower:

Ms. Foster, could you give the Committee examples of what types of part-time instructional employment are envisioned with this bill? Have there been opportunities that you have not been able to take advantage of that you could describe to the Committee?

Ms. Foster:

When I was a warden, I taught part-time and it never conflicted with my job as a warden. I taught in the evenings and on Saturdays. If there was a conflict of any kind, I had someone teach the class for me. Teaching is not intended to be during regular work hours; it is only intended as part-time, meaning evenings and weekends.

Chair Brower:

What types of classes did you teach as a warden?

Ms. Foster:

I taught introduction to corrections, introduction to criminal justice, parole and probation, and juvenile justice. I taught a variety of law enforcement- and corrections-related classes.

Chair Brower:

Where did you teach those classes?

Ms. Foster:

I taught at College of Southern Nevada and at Everest College, a private college in Henderson.

Chair Brower:

Are those examples of where part-time instruction would take place and that this bill would allow for? Would you be teaching primarily corrections and criminal justice-related instruction?

Mr. Cox:

Yes. I would like to clarify that this bill is only effective for the deputy directors, not the Director, which is my position. I support my deputy directors with regard to supplying these educational services and teaching. There is a struggle across the Country to find people who want to work in the field of corrections. I think it is important to have people like Ms. Foster teaching classes to attract people to State government positions, specifically corrections, law enforcement or other public safety positions.

Senator Hammond:

Please clarify the term "part-time" with regard to university hours or credits. How many hours or credits would you typically teach in a semester? I am wondering if the bill needs to specify the number of hours or credits that can be taught.

Ms. Foster:

When I was a warden, the most I ever taught in one semester was three units, and that was only because I was given the opportunity to teach on Saturdays. I usually taught two nights a week.

Senator Hammond:

Would you like to teach two classes a week or two classes a semester?

Ms. Foster:

Yes, two credits; three credits at the most.

Senator Kihuen:

Would these be continuing education credits or credits that students could use for a degree?

Ms. Foster:

When I was a warden, I taught degree courses.

Senator Kihuen:

Is there a teacher or professor shortage at the community college level or in the system of higher education? Are you filling a void, or does this bill just give you permission to be a part-time instructor particularly because it is criminal justice?

Ms. Foster:

A combination of both. I was asked to teach because of my expertise in the area of corrections. Colleges like to employ people who have expertise in the area of law enforcement and crime scene investigations. Schools hire police officers, parole and probation staff, and people from corrections, such as myself, because they want to provide their students with experts in the subject matter. The belief is that we are able to provide students with more real-life experiences as they are also going through the educational process.

Senator Kihuen:

I worked for a community college, and we had many part-time instructors who taught about the field in which they worked. There was a police officer who taught criminal justice courses. As a student, and also as an employee, I always found it enriching when you had somebody who actually worked in the field teach the class.

Senator Harris:

Recognizing that there is a variety of different delivery systems in education, do you teach in the classroom or online?

Ms. Foster:

I prefer to be in the classroom. I find it exciting to get in front of a classroom, and I also find it to be a stress reliever from the type of job that I have.

Chair Brower:

We will close the hearing on S.B. 17 and open the hearing on S.B. 57.

SENATE BILL 57: Revises provisions concerning access to public records by offenders subject to the jurisdiction of the Department of Corrections. (BDR 16-342)

Mr. Cox:

I would like to introduce Brian Connett, the DOC's Public Information Officer. Mr. Connett deals with the issues and aspects of S.B. 57 on a daily basis. As Director, I also deal with these issues, but Mr. Connett is confronted with them daily, so it is important you hear from him.

Brian Connett (Deputy Director, Industrial Programs, Public Information Officer, Department of Corrections):

With S.B. 57, we address unintended consequences relating to *Nevada Revised Statutes* (NRS) 209. Inmates use the public records provision to access records of other inmates, which can be a security risk and allow for nuisance requests to be made to our Department and to other State departments.

Inmates use public record requests to circumvent the collection of evidence for criminal or civil proceedings through the court system. The DOC's Administrative Regulations, which are approved by the Board of State Prison Commissioners, stipulate what information is releasable. These regulations are public and on DOC's Website. Inmates also have a grievance process to make requests or identify issues through the court system. Requests from inmates and media for the records of other inmates, their grievances, medical records or personal records are a security threat to all staff and inmates.

Chair Brower:

I suggest to the Committee that we have two issues to consider with S.B. 57: section 2 and section 3. I will open with section 3.

From reading the bill and from Mr. Connett's testimony, section 3, subsections 1 and 2 preclude an offender—I assume an offender means someone incarcerated, an inmate—from making requests under NRS 239 unless the request pertains to information necessary to his or her own criminal proceeding or appeal. Am I understanding section 3 correctly, Mr. Connett?

Mr. Connett:

Yes.

Chair Brower:

Is it accurate to say that there is no such prohibition? Can a prisoner make a request for records pertaining to another prisoner without limitation?

Mr. Cox:

Yes.

Senator Ford:

I have grave concerns about section 3. I understand prisoners forfeit certain rights, but not all rights. It seems to me that S.B. 57 is an infringement upon the constitutional rights that even prisoners maintain. If a prisoner has issues and concerns that need to be addressed, public record requests are utilized to help get those situations addressed. Nuisance requests are a small price to pay for constitutional protection. I may be reading the language wrong, so I would like you to address those concerns.

Mr. Cox:

Looking at the aspect of public records and nuisance requests, S.B. 57 does not oppose the transparency of DOC. The amount of litigation in corrections is extremely high across the Country. To date, I have over 170 lawsuits against me. Inmates do have access to the court system. I think what makes DOC different from other State agencies or other organizations is that we do have a grievance process. I can attest there is clear access to the courts in our State.

The action requested in S.B. 57 is not the first request of its kind from a department of corrections in this Country. Many states already have these bills enacted: Washington, Arkansas, Michigan, Virginia, New Jersey, Texas, Louisiana, Wisconsin, Kansas, Alabama, Georgia and Arizona. These states have various laws, some dating back to the mid-1990s, that limit or block inmate access to state open-record laws. Pretty much the whole Country is covered in the passage of such legislation: Midwest, East Coast, West Coast and South.

Inmates have rights covered by the U.S. Constitution and by the Nevada Constitution. We are not eliminating those rights with this bill.

We do have a number of inmates or offenders who ask repeatedly for other inmates' information, and that can be a security issue. An inmate may ask for information concerning post assignments, our staffing plan, where our correctional officers are at specific times, what our operational procedures are in

regard to safety and security, or how we process contraband. While I understand Senator Ford's issues with this bill, we should not provide that type of documentation to an inmate to protect the safety and security of DOC's facilities and, of course, other inmates and our staff.

This is a complex issue, but DOC has a robust grievance process to which the federal courts have access. In fact, it is because of the DOC that, over the years, a grievance process became established. Avenues other than public record requests allow an inmate to file a grievance, complaint or request information.

In regard to nuisance requests, some examples are requests for electricity usage of a fax machine in Ely State Prison and for the documentation of prison menus going back 6 or 7 years. We attempt to comply with all requests so as to follow the law. We have found that a number of inmates use public record requests to go around the court process and system.

In my estimation, Nevada inmates have an extremely good access to the courts and a good grievance system. We have a system that has been tested and reviewed; this bill does not prohibit an inmate from writing a letter. I do not want this Committee to think that the Department does anything to hamper an inmate's constitutional rights. In my experience as Director, I can speak to the fact that the core grievance process in Nevada is aggressive, and I spend a tremendous amount of time dealing with grievance issues.

Senator Ford:

I understand those concerns and they are valid. As I read section 3, though, it reads to be a near-blanket prohibition against utilizing the public records request for what could be, in your view, a frivolous request. How about a more-tempered prohibition to protect the items you just detailed? I cannot see, outside the one exception you provided, that this bill is narrowly tailored enough to address the issues you are discussing. I am concerned about the constitutional infringement upon our prisoners that section 3 may present if passed as is.

Mr. Cox:

I am willing to work with anyone on this bill to tailor it so it still focuses on protecting the safety and security of our institutions, inmates and staff. If others would like to provide some language to help with this, I am open to that

idea. Again, we want to deal with the safety and security concerns of what type of information we are being asked to release. In regard to the inmate population, there is an expectation that I protect them from inmates asking for their personal records. The law that we have does not allow for that protection.

Senator Ford:

I ask you to work with those who will come up here to oppose this bill to find compromise and amend the language.

Chair Brower:

You testified to examples of the types of information that have been, or could be, the subject of record requests by prisoners. You mentioned post assignments, staffing plans, contraband policies and some others. I am surprised that type of information could be fair game for a public records request by a prisoner. Is it DOC's position that it must produce such information upon a request by a prisoner?

Mr. Cox:

Yes. The Attorney General's review of the statute would indicate that we have to provide this type of information.

We discern safety and security issues with the law, and we have had ongoing meetings and discussions with the Attorney General's Office concerning specific issues of this nature. There are groups that are concerned about an inmate's constitutional rights, but my obligation under NRS 209 is to provide for the safety and security of DOC's institutions, staff and inmates.

We have oversight by the Board of State Prison Commissioners. I am obligated to promulgate regulations to that Board for approval or for changes in a public meeting.

Confidential documents like emergency response manuals and other documents dealing with the types of issues that we do not release are outlined in the DOC Administrative Regulations. When we respond to requests for public information, we are guided by Administrative Regulation (AR) 120, which states the following inmate information is public: name, identification number, institutional location, commitment offenses, time serving, county of commitment and projected dates of release on parole or discharge. The

following staff information is public information: name, work station, rank, date of hire, date of promotion and salary.

Confidential information that should not be revealed to the public includes, but is not limited to, expected date, time and movement of inmates; and specific illness, medical or psychiatric diagnosis—and we do get requests of that nature. Inmates may be asking for information regarding other inmates' medical status or issues or illnesses that may be similar illnesses to their own.

Chair Brower:

Are you listing information that, pursuant to DOC Administrative Regulations, you do not provide upon request?

Mr. Cox:

Correct.

Chair Brower:

Do the DOC Administrative Regulations limit the scope of inmate requests?

Mr. Cox:

Yes.

Chair Brower:

Based upon what I hear today, the scope of Administrative Regulations needs to be broadened. We will talk more about that.

I would like to put the nature of the problem into perspective with an example. We have one high-profile prisoner in our system right now, O.J. Simpson. I suspect there is interest in his situation and in getting information about him. Is it correct that, according to law, any prisoner in the system could make a public records request for Inmate Simpson's file?

Mr. Cox:

Yes.

Chair Brower:

Are situations like this part of what you address with section 3? Do you intend to preclude inmates from requesting information about other inmates that in no way assists them in their defense or for their appeals?

Mr. Cox:

Yes.

Mr. Connett:

Senate Bill 57 provides an allowance for an inmate to exercise any right, privilege or immunity under the U.S. Constitution or the Nevada Constitution, to request and receive a public record or book for the purposes of criminal proceeding. We want those requests to be vetted through the courts, and we want to be provided with a court order that tells us to release a particular document on a particular proceeding.

Senator Harris:

Does section 3, subsection 2 limit inmates' ability to obtain information about themselves? You went into detail about how they make requests for other prisoners' records. What about inmates' own records not directly related to their defense or appeals, such as disciplinary records?

Mr. Cox:

Inmates may request and review their own records. In our institutions, they request these and we provide them. We have other issues with medical records. We do not allow those to be taken back to the cell. Inmates are allowed to look at them, take notes, etc., but other inmates can, and have, used that type of information against an inmate. The culture and environment in corrections is different than in a community. Inmates have used medical information on another inmate to impact that inmate's safety and security. Ms. Foster can better explain the procedure for when inmates request their own records.

Chair Brower:

As a follow-up to Senator Harris's question, are you saying that under statute and regulations, an inmate can request and obtain another inmate's medical record?

Mr. Cox:

They can request it, but they cannot receive another inmate's medical record under our regulations.

Senator Harris:

I would like some clarity on how it is done now and whether this bill would in fact limit inmates from obtaining access to their own personal information.

Ms. Foster:

Administrative Regulation 568.01 allows an inmate to access his or her own records. A request is made through an inmate's caseworker for an Institutional File (I-File) review, where, in the presence of a staff member, an inmate may examine the I-File and its documents. We may redact some documents from that file, such as whether the information pertains to another inmate or we feel there is a security issue. An inmate is not allowed to take their I-File away from the presence of a staff member; however, inmates may order copies of certain items from their I-Files to keep in their possession.

Senator Ford:

Right now, the only exemption from the public record request is for the criminal context of a person's own file. I can imagine a circumstance where a prisoner has a civil suit pending, to pursue an equal protection claim for example, and it could very well be that the treatment of others in that same prison is what is at issue vis-à-vis his or her own treatment. These examples give me concern when we have a near-blanket prohibition against open-record requests because public record requests would most certainly be relevant to a civil lawsuit. This is an appropriate example as to why S.B. 57 is not acceptable in its current form.

Mr. Connett:

The bill does provide that the request of and access to records be vetted through the court system. If we receive a court order that tells us to provide certain information to an inmate, then we provide it.

Chair Brower:

I would like to continue to focus on section 3 before we move to section 2. Seeing that there are no others here to testify in support of section 3 of the bill, I invite those who are opposed to section 3 to testify.

Tonja Brown:

I advocate for inmates and the innocent, and I oppose S.B. 57. I have submitted my statement ([Exhibit E](#)) and other documents ([Exhibit F](#) and [Exhibit G](#)) to show why I am in opposition to the bill.

In the wrongful death settlement agreement for my brother, Nolan Klein, it was agreed that I could take the public documents I uncovered to any board in order to exonerate our names.

During the case, I discovered that the Attorney General was withholding evidence in not only my brother's case, [Exhibit G](#), but other cases. The Attorney General withheld information in a federal court in civil litigation.

I took my complaint of withholding evidence to the Board of State Prison Commissioners, but the Board removed my testimony from the record and blocked all the documents that I presented, claiming confidentiality. For 19 months, the documents could not be accessed. Only after I filed a breach of settlement suit were some of the documents released. The remainder of the documents were never released because the DOC claimed confidentiality.

During this process, in 2007, a computer glitch put false felony charges in inmates' files ([Exhibit H](#)). Mr. Cox testified that inmates have access to their own information. Inmates do not have access to their own information because if they had that access, it would have been discovered earlier that false charges had been mistakenly assigned to inmates. It is inaccurate to say that inmates have access to their files.

Caseworkers looked at the files and told inmates of false charges against their names. The caseworkers removed the false charges and then the charges reappeared. I have gotten letters from inmates regarding this situation, and it remains an ongoing issue. There are problems with false information being contained in inmates' files. Inmates have no recourse.

Chair Brower:

The Committee is interested in your opinion on section 3.

Ms. Brown:

I do not support section 3 or any of S.B. 57. I do not think the Committee should consider this bill until the Nevada Supreme Court renders its decision in my appeal, [Exhibit F](#), and the case is finally resolved because the case specifically deals with public documents. Caseworkers have been informed to tell inmates that they do not have access to the records of the Board of State Prison Commissioners. I filed an Open Meeting Law complaint in September 2014.

Chair Brower:

We appreciate your comments on the bill. As there are no others here to testify in opposition to section 3 of S.B. 57, we will move on to section 2 of S.B. 57.

Amy Rose (American Civil Liberties Union of Nevada):

I have submitted a letter outlining the American Civil Liberties Union's (ACLU) opposition to S.B. 57 ([Exhibit I](#)). Although we are discussing section 3 specifically right now, in general, the bill's sweeping prohibition on access to public records significantly limits accountability and is a blow to the principles of open and honest government.

The bill limits the ability of prisoners to request or receive a copy of a public book or record. As the Committee noted, this bill makes no exceptions for inmates to access their own personal records, financial data or even the basic policies of the institution in which they are incarcerated. Moreover, limiting access to public records carries with it critical liberty concerns.

This bill limits the ability of prisoners to investigate abuse or wrongdoings from which they may be personally suffering. The personal situations of prisoners make them more aware of prison operations than we on the outside. The incarceration, sentencing and parole policies of prisoners are important topics of public debate to all of us, and inmates may provide a critical insight into these discussions.

I recognize the DOC's concerns in terms of inmates accessing records on other inmates. As was noted early by the Committee, these concerns can be addressed by inserting more specific language in the bill. For example, in Arizona, a statute prohibits inmates from requesting public records on each other. If that is a safety concern that the Committee deems worthy of protection, we definitely understand that. A bill that is more narrowly tailored would be appropriate to address those concerns. I am happy to hear that Mr. Cox is open to work with members of the public, including the ACLU, to find a more reasonable approach to limiting a prisoner's access to public records.

It is unclear what the DOC means when testifying that prisoners are circumventing the legal process by using public records. It seems it would be better for a prisoner to request information for a public record than initiating litigation and overburdening the system.

Chair Brower:

I do not think I heard you reference the Constitution. Is it the ACLU's position that section 3, if adopted, would violate an inmate's constitutional rights?

Ms. Rose:

Yes. There are situations where prisoners need access to various and random materials. This bill may limit their ability to defend themselves since they may not be able to access DOC materials. I know of an exception within the language of the bill, but situations can come up that cause constitutional concerns.

Chair Brower:

With section 3, subsection 2, we have to acknowledge that an inmate, notwithstanding any other limitations, is able to obtain information to assist himself or herself in the defense of a criminal proceeding. What other specific constitutional right does the ACLU see as implicated by section 3?

Ms. Rose:

For example, prisoners have a constitutional right against cruel and unusual punishment, and that includes their access to medical care. If they believe that they are suffering cruel and unusual punishment, they would have no ability to find out the prison's policies on providing medical assistance to prisoners. Another example would be if a prisoner would like to investigate documents of a pending case or appeal but is not allowed to do so—the bill would violate that.

Chair Brower:

Every prisoner has a constitutional right to not be subjected to cruel and unusual punishment, but I am not sure each prisoner has a right to investigate whether that generally happens in the prison.

Senator Ford:

Ms. Rose's letter, [Exhibit I](#), gives the example of *Weaver v. Superior Court*, where an individual was ascertaining if the district attorney impermissibly sought the death penalty against him and others based on race. That is an example where a broad public records request is necessary, and I am concerned that S.B. 57, as written, would prohibit this sort of action.

In litigation, there are opportunities for discovery. This bill would not affect those types of rights, but oftentimes prelitigation discovery is practiced in the guise of a public records request. We need to be very careful with limiting the rights of prisoners.

Mr. Cox, you talk about the ability to stop prisoners from getting other prisoners' records. That is a blanket statement because, if we are talking about equal protection claims, certain portions of a prisoner's record may be relevant. It is one thing to limit one prisoner's access to another prisoner's medical records, but we need to be specific when we talk about what is being disallowed from public disclosure from what is otherwise a public record, even in the context of prisoners.

There needs to be a lot of work done on this bill in order to gain my support for section 3, as well as the entire bill.

Ms. Rose:

I agree with Senator Ford's concerns about being specific when limiting prisoners' access to records on each other, specifically their medical records. My comment was more toward ways to approach this issue other than for a prisoner to resort to litigation. There is a lot of work to be done on this bill, and I look forward to working with the DOC to make this bill more limiting while addressing the specific concerns about the safety of staff and inmates.

Chair Brower:

As there are no more witnesses to testify on section 3, we will return to section 2 of S.B. 57.

Mr. Connett:

Section 2 allows the DOC to determine information available for public record. The DOC would create guidelines through its Administrative Regulations, which are reviewed and approved by the Board of State Prison Commissioners.

Chair Brower:

As I understand section 2, you are requesting authority to change the classification of Department records so as to make them confidential and not public, subject to adopting regulations that would create exceptions. What is happening that poses a problem for the DOC with respect to public record requests?

Mr. Connett:

If I may go back to the example of Inmate Simpson, we have continual public record requests from the media. One reporter thought that Inmate Simpson looked like he had gained weight, and so the reporter wanted all the menus

from the last 4 or 5 years. He requested information on what exercise Inmate Simpson does, how often, and on and on. We did not have that record, but record requests of that nature are continual.

Senator Ford:

I understand why it might seem frivolous to ask for information about someone's weight, but if the reporter's contention is that the inmate is being mistreated or abused and they are looking to investigate prison conditions, then public record requests are a great way to do that without having to sue first and then go through litigation or the discovery process.

You leave yourself open to add regulations, but from a statutory perspective, I am not comfortable issuing a blanket rule that goes the other way. Work needs to be done on this bill to address the constitutional right of the press and others.

Mr. Cox:

I agree with transparency in the media's review of our operations, and I would like to work with the Committee to tailor the language to allow for accessibility.

During the 4 years that I have been Director, I have tried to provide for the transparency of the Department regarding how we operate and what we do, and I want to continue that. We are willing to work with members of the Committee, public, media and the ACLU—their assistance would be helpful.

The safety and security of the institutions and the inmate population is the priority. Many inmates are asking for various documents that would affect the safety and security of our institution and other inmates. With regard to Inmate Simpson, we get requests on him weekly, and we respond. I do understand that there might be some heartburn with some of the language, and we will work with others to craft a better bill, but the safety and security of our institution, staff and inmates are paramount to the DOC.

Senator Ford:

I understand your issues. You are doing an excellent job as Director and do well to protect the safety and security of your staff and inmates. My opposition is because I need to legislate for the future. When you decide to retire, someone will take your job, and I do not know that person's priorities. A different person may do just the opposite of what you aim to accomplish here. I do not want statute to authorize the potential abuse I just described to you.

Mr. Cox:

I knew there would be a lot of concern when we approached this topic. I expected that we would have to rework the bill, but submitting it was a good place to start the conversation. We can work toward common language that will provide for the safety and security of staff, inmates and our facilities.

Chair Brower:

I appreciate Senator Ford's concerns, and we need to work through them before we process this bill. I would like the Committee to keep in mind that the media, the press, has no First Amendment right to obtain information. The press has a First Amendment right, subject to some U.S. Supreme Court caselaw, to report information to the public. Whether our government agencies release certain information, however, is purely a policy decision made at the Legislature, and we do tend to err on the side of transparency.

Since there is no one else wishing to testify on section 2 of S.B. 57, is there anyone opposed?

Ms. Brown:

Regarding section 2, I have dealt a lot with public record requests, and inmates have revealed to me that they are not being allowed access to documents due to the claim of confidentiality.

Inmates have requested the 2008 settlement agreement my brother, Mr. Klein, had with the DOC. The DOC breached the settlement agreement and my brother filed for breach. When my brother died, the issue became moot, but other inmates have picked up the case and cannot get access to the settlement agreement. I have had to provide those documents to inmates. There have been several cases of litigation where the DOC has not released documents pertaining to agreements already settled.

Chair Brower:

Are you opposed to section 2?

Ms. Brown:

Yes. Often, inmates are after information specific to settlement agreements. It costs taxpayer money if the same issue is litigated over and over again. There are cases where I have received documents from the Attorney General's Office about not turning documents over in discovery or even hiding documents from

the courts. Inmates are asking for documents, and the DOC is already limiting access to public record requests by claiming documents confidential. Inmates do not have the access that Mr. Cox claims they do.

Chair Brower:

I can appreciate the frustration you have had with the Attorney General's Office; I have experienced that myself.

Ms. Brown:

I would like to submit an amendment to S.B. 57 ([Exhibit J](#)). The amendment creates a free-standing commission called the Public Integrity Unit Commission.

Chair Brower:

The Committee will consider the amendment.

Barry Smith (Nevada Press Association):

I oppose section 2. It is a broadly worded bill and makes sweeping changes to NRS 239. This bill goes counter to the very principle of NRS 239, a statute enacted by this governing body, which states all records are public unless exempted.

Chair Brower:

As you know, there is a long list of what is exempted.

Mr. Smith:

Yes, I am aware. The manner in which section 2 reads seems to remove the Legislature from the entire process. It gives the DOC director, with the approval of the Board of State Prison Commissioners, the authority to make exemptions. It makes everything confidential except what the Department says is not confidential.

The Director referenced AR 120, which lists the information about prisoners and staff that are public records, and says everything else is not public record. If those Administrative Regulations were to be changed to permit or exclude anything else down the line, those changes would not come back before this body for review before being implemented. Any changes in allowing what the public can access would simply go to a regulation—a regulation that does not come back to the Legislature for review.

Medical records and other records that may contain security issues are generally covered in other statutes, and this type of information is generally understood to be confidential. This bill turns the intent of NRS 239 upside down, removes authority and oversight from the Legislature, and places these under the DOC.

Chair Brower:

To reiterate your point, when the DOC deems further exceptions to the public's general ability to obtain records are necessary, then that would normally be handled by legislation, but section 2 changes that, allowing the DOC the ability to make those calls. Is that your objection?

Mr. Smith:

Yes. This bill closes everything down and then, subject to regulation, opens it up again. It also removes what constitutes a public record from the Legislature's purview. This concerns me.

Josh Hicks (Consumer Data Industry Association):

The Consumer Data Industry Association is a trade group based in Washington, D.C., with over 100 members. Many of these members are those who do background checks for employers or for landlords. My concern is the same as Mr. Smith's, and I oppose sections 2 and 4 of S.B. 57. The bill is too broad.

We have members who utilize the DOC Website, which has an inmate search function. This search function is a resource used by members in the background checks they do to quickly look up a name to see if someone has been in the system in Nevada. We are concerned that under S.B. 57, this function could be eliminated, reduced, or made more difficult for members to do their work.

Ms. Rose:

Government transparency, including the ability to inspect public records, is a critical element of a functioning democracy. This is especially true when public records involve issues of civil liberties and vulnerable populations such as incarcerated individuals. The language in the bill that pertains to "an offender" is ambiguous, overbroad and undefined. It can be interpreted, in practice, to limit even general public record requests and all prison policies pertaining to an offender. It is particularly concerning that whoever is responsible for interpreting the statute will determine what is public record, although I do not think the purpose of the bill is to limit access to all records maintained by the DOC.

The ambiguity of the bill's language aside, the public must retain access to records of specific offenders. My letter, [Exhibit I](#), has examples of when access to a specific prisoner's records can be vital to the case at hand, for example, death of a prisoner. My letter references an article relating the number of prison deaths and how the ability to request public records regarding those deaths, as well as records relating to the execution of a prisoner under the death penalty, is important to an investigation.

I think it is important to note that public oversight over jails and prisons through access to public records is no less important than public oversight of other government agencies.

The ACLU opposes section 2 of S.B. 57. Additionally, members of the Nevada Attorneys for Criminal Justice have asked me to convey their concern about their ability to access public records under the proposed changes.

Chair Brower:

Mr. Cox, it was suggested that with section 2, the DOC would not be required to maintain the function that allows an inmate to be looked up on its Website.

Mr. Cox:

We have a Website that provides information, and I cannot imagine that the DOC would not allow access. Almost every corrections department in this Country has a Website where you can see who is incarcerated and find out where they are. We do get a number of entities that request information on inmate's records and other information, and we look at every one of those requests.

Chair Brower:

Do you see how section 2 could be interpreted to read that you are not required to display that information on the Website? In other words, that information could be determined by DOC to be confidential and not public, and so you could simply take that off your Website and not provide that access. I am not saying you would do that, but do you see how section 2 could be read that you are not required to have that information on DOC Website?

Mr. Cox:

Yes, it could be read that way.

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Chair Brower:

I do not think the DOC's intent is to take that information off the Website.

Mr. Connett:

It would not be our intent to take that information off the Website.

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Chair Brower:

Seeing no more business or public comment, I will close the hearing of the Senate Committee on Judiciary at 2:22 p.m.

RESPECTFULLY SUBMITTED:

Cassandra Grieve,
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. 17	C	2	Department of Corrections	Statement in support
S.B. 17	D	1	Department of Corrections	Proposed amendment
S.B. 57	E	2	Tonja Brown	Statement in opposition
S.B. 57	F	11	Tonja Brown	Court documents
S.B. 57	G	1	Tonja Brown	Letter from Attorney General, Nevada Department of Justice
S.B. 57	H	4	Tonja Brown	Letter
S.B. 57	I	3	American Civil Liberties Union of Nevada	Letter in opposition
S.B. 57	J	1	Tonja Brown	Proposed amendment