MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
March 16, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:08 p.m. on Monday, March 16, 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
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

The Honorable Nancy M. Saitta, Justice, Nevada Supreme Court
William O. Voy, District Judge, Department A, Eighth Judicial District
Brigid Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, Clark County
Carlos McDade, General Counsel, Clark County School District
Michael Whelihan, Manager, Spring Mountain Youth Camp, Department of Juvenile Justice Services, Clark County
Regan Comis, M + R Strategic Services

Kevin Schiller, Assistant County Manager, Washoe County
Frank Cervantes, Director, Department of Juvenile Services, Washoe County

Chair Brower:
I will open the hearing on Senate Bill (S.B.) 58.

SENATE BILL 58: Revises provisions governing the release of information relating to children within the jurisdiction of the juvenile court and children in protective custody. (BDR 5-490)

The Honorable Nancy M. Saitta (Justice, Nevada Supreme Court):
This bill revises provisions of the *Nevada Revised Statutes* (NRS) governing the release of information relating to children within the jurisdiction of the juvenile court and children in protective custody. By way of background, NRS 62H.025 became effective on July 1, 2013. This statute outlines the proper process for the exchange of juvenile justice information among and between certain agencies. We are also proposing an amendment to S.B. 58 (Exhibit C).

The School Attendance and Disturbance Subcommittee appointed by the Nevada Supreme Court's Commission on Statewide Juvenile Justice Reform in 2012 took a serious look at practices throughout the Country with respect to information sharing. We have reviewed and evaluated what are believed to be national best practices on information sharing. We looked at Models for Change, which is an information-sharing toolkit designed to help states looking at the sharing of information, recognizing how vital such information is to all the agencies that touch a child's life. We used the Model for Change guide to create the amendments in Exhibit C. We also looked at the program report of the Office of Juvenile Justice and Delinquency Prevention entitled, *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs*. Finally, we looked at *Resource Guide: Information Sharing* from King County, Washington, which was used to implement information sharing between agency partners and professional staff.

I am pleased to have been a part of the Subcommittee, which is made up of District Judge William Voy, Chief Deputy District Attorney Brigid Duffy and Assistant Director Bret Allen for the Clark County Detention Center. The amendment in Exhibit C has been reviewed by most of the stakeholders who need to have input in this. The simple intent of the amendment is to refine the language in NRS 62H.

As recently as March 11, we received specialized technical assistance from the Supportive School Discipline Communities of Practice, a nationally recognized agency. That group has approved us to be a part of their second round of consideration of information sharing. We will continue our work with this national group, once again with an eye toward best practices and how we can best share information in Nevada.

William O. Voy (District Judge, Department A, Eighth Judicial District):
I have presided over juvenile delinquency cases for Clark County since 2003. I would like to put this bill in context and give you some of the history behind it. Prior to S.B. No. 31 of the 77th Session, there was no statutory guidance on sharing information between the Department of Juvenile Justice Services and other agencies. For example, a child may be a ward of the court and also on probation, as well as being enrolled in public school. Before S.B. No. 31 of the 77th Session, there was no way for the court and the school district to communicate statutorily about what was best for the child. The court might have better information than the school district has and vice versa.

In 2007, I issued an administrative order that allowed such communication to occur, crafted after an order from San Diego County in California. We lived under that administrative order until we started preparing for the 77th Session. The original intent of S.B. No. 31 of the 77th Session was to allow the free flow of communication between juvenile justice, foster care systems and school districts when necessary and appropriate. During the discussions of the bill during that Legislative Session, concerns were raised about possible misuse of the information being shared, and safeguards were put into the bill to prevent that. In the end, the changes to statute enacted by S.B. No. 31 of the 77th Session proved to be unworkable for us in the trenches; it actually hindered the free flow of information between those three entities. We did some further research into what is considered best practice in this area, and that is what you have in S.B. 58. This bill will hopefully bring us back to the original intent of S.B. No. 31 of the 77th Session.

Brigid Duffy (Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, Clark County):
I will walk you through Exhibit C, our amendment to S.B. 58.

In section 1, subsection 1, Exhibit C states, "Juvenile justice information is confidential and may be released only in accordance with this section except as

expressly authorized by other state or federal law." We want to be quite clear that the information held by the juvenile justice system is confidential and can only be released in certain circumstances.

In section 1, subsection 2, Exhibit C adds " ... or the safety of the public ... " to the list of purposes for which juvenile justice information can be released. Senate Bill 58 allows the juvenile justice agency to release unsealed juvenile justice information for the listed reasons. Paragraphs (k) and (l) of subsection 2 provide for a written memorandum of understanding (MOU) between a school district and a juvenile justice agency regarding who may receive such information.

Section 1, subsection 3 of Exhibit C removes the requirement that a request for information be made in writing. It allows the juvenile justice system to deny a request if the request does not demonstrate good cause in accordance with section 1, subsection 2 of S.B. 58. Exhibit C also states that requests for information may be denied if they would cause material harm to the child or prejudice any court proceeding to which the child is subject. Exhibit C removes the requirement that such refusal must be made in writing within 3 days of receipt of the request. Rather, it allows 5 business days for the refusal to be made.

Exhibit C deletes section 1, subsection 4 of S.B. 58 because the matter it covers is addressed in section 1, subsection 1.

Exhibit C deletes section 1, subsection 6 of S.B. 58 because that language is now included in section 1, subsection 2.

Exhibit C includes a new section 1, subsection 5, and this is a critical provision. It adds a gross misdemeanor penalty if juvenile justice information is further disseminated or made public in a manner not authorized by State or federal law or by court rule. This provision matches NRS 432B.290, which covers child welfare information. Senate Bill No. 31 of the 77th Session made the illegal release of child welfare information a gross misdemeanor rather than a simple misdemeanor, and S.B. 58 does the same for juvenile justice information. The intent is to make the public take the crime of illegally releasing information more seriously.

The new section 1, subsection 7 in Exhibit C redefines the term "juvenile justice information."

The strong communication and relationships between the juvenile justice system, school districts and the child welfare system is important. Over the past 2 years, through the leadership of the Commission on Juvenile Justice Reform, which is chaired by the Nevada Supreme Court justices, the relationships between those three agencies have strengthened. Child welfare agencies serve some children, some children are served by both juvenile justice and child welfare agencies and all of them are served by school districts. We realize the importance of all these agencies working together for improved outcomes for kids. The passage of S.B. 58 with the amendments in Exhibit C means communication will lift barriers to allow better communication and better outcomes for education and services for children.

With regard to the criminal consequences, within the past month, the Department of Juvenile Justice Services in Clark County came to me regarding a former employee who commented on the Website of a local news agency regarding some children who were arrested for adult crimes. This former employee posted some comments about the past juvenile justice history of the children and signed the post. When the Department asked me what could be done about this, I had to say that nothing could be done because there was no criminal penalty for releasing confidential information regarding a child's juvenile justice history. It is important, as we expand the release of information to allow for better services, better safety, better rehabilitation and overall success of children, to make it clear that if you disseminate information outside of the requirements set forth in this statute, you will be charged with a gross misdemeanor.

Senator Ford:
Section 1, subsection 5 of S.B. 58 seems to expand the scope of information to be made public regarding a child in the juvenile justice system. Is that true?

Justice Saitta:
Our amendment in Exhibit C deletes section 1, subsection 5 in its entirety.

Senator Kihuen:
Why get rid of the requirement that such requests for information be made in writing?

Ms. Duffy:
Each individual jurisdiction may want to have its own policies and procedures about how to release information. With the amendments in Exhibit C, S.B. 58 allows, for example, oral requests for information made in court with all parties present. By removing the requirement for requests to be made in writing, each individual jurisdiction can come up with policies and procedures or regulations to decide how to handle requests for information and distribute records.

District Judge Voy:
There are also health, welfare and safety issues involved. For children under the jurisdiction and wardship of the court and simultaneously under the physical care and custody of the juvenile justice agency, when decisions need to be made, the time required for a written request to be made and processed can be unworkable. It is not in anyone's best interest to require that to happen. This is especially true if we are putting a gross misdemeanor penalty in the statute. We would like to err on the side of caution with written requests.

The form of the request also depends on the nature of the information. If the information requested is extensive or sensitive, we might require a written request in order to document that chain. However, a probation officer might come into the classroom to check on Johnny and ask the dean on the way out how Johnny is doing. If we require a written request, the dean would have to say, "I can't talk to you. You need to submit a request in writing, and 3 days from now I'll be able to tell you that Johnny hasn't been to school for the last 6 days and just showed up today." This wording gives us the flexibility to deal with that situation.

We want to allow individual jurisdictions to come up with their own rules. What is good for Washoe County may not be good for Clark County; what works in Mineral County may work for that jurisdiction but not for us. This is an enabling statute that allows jurisdictions to come up with their own policies and procedures.

Senator Kihuen:
It seems to me that, just for transparency, it would be better to require a written request.

Senator Harris:
I would like to have some reassurance that each of the different entities and agencies involved actually do have policies in place. There needs to be accountability for how this information is transferred between the different parties working on behalf of these juveniles.

District Judge Voy:
Under the existing statute, when information is needed, the statute is violated. There is no penalty for this. That is not a justification or excuse to violate the statute. But when we are dealing with children's lives, information is key, and the right people need to have that information at the right time. When faced with those obstacles and hurdles, people in the trenches do what they believe is the right thing at the time. If policies and procedures need to be tightened up, having a gross misdemeanor as a penalty for mistakes is going to make that happen. That is the only assurance I can give you.

Senator Ford:
As I read this bill, information only goes one way. It goes from the juvenile justice agency to the school; it does not necessarily go the other way, from the school to the agency. The Family Educational Rights and Privacy Act (FERPA) and other laws deal with student privacy. Can you speak to that?

Ms. Duffy:
The Clark County School District was consulted throughout the Subcommittee proceedings. Section 1, subsection 1 of Exhibit C states that juvenile justice information may be released "except as expressly authorized by other state or federal law." We recognize that FERPA is going to have some constraints on us. However, this bill will allow the information to flow when an MOU is created between the Department of Juvenile Justice Services (DJJS) and a school district in accordance with FERPA.

In Clark County, when children come into the DJJS, we ask parents to sign consents so school information can be given to probation officers. We are now in cooperation with the School District so information can flow in that direction. Children might be in juvenile justice counseling and school counseling at the same time. Under existing law, those two counselors cannot share information with each other to make sure they are not duplicating services and ensure they are providing the right services.

Senator Ford:
That was helpful, but I am not sure it answers my question. Are you suggesting that the MOU you will have with the School District will allow the school to give you information as well? As I read this, the flow of information goes only from the DJJS to the School District, and not necessarily from the school to the DJJS, absent some waiver from the parents. Are you suggesting that the MOU is going to authorize, in accordance with whatever law exists, information to flow from the school to the DJJS as well?

District Judge Voy:
Yes, and in fact, information tends to flow that way rather than the other way. We need information from the School District; very little of our information needs to be provided to the School District. This bill is more about us getting information from schools, enabling the easy flow of communication from the schools to the juvenile justice agencies, rather than school districts getting information from us.

People tell me teachers are not supposed to know when children are on probation, but teachers do know because the kids tell them. We adults may see this as a privacy issue, but children do not seem to share that same expectation. Teachers learn of a child's juvenile justice status because a GPS monitor goes off in class or the probation officer comes to school and talks to the dean. I do not anticipate our MOU for Clark County allowing a lot of information to go to the schools; we need S.B. 58 to allow information to come to us.

Justice Saitta:
I would like to comment on the questions from Senators Harris and Ford. I was the original drafter of S.B. No. 31 of the 77th Session, and the "in writing" component was placed in that bill for all the reasons you are talking about here today. However, we found in practice that it was an impediment to immediate exchange of information. The exchange of information, as protected by the sanction set forth in Exhibit C, is a far better way to control and protect that information than anything else we could require in a pro forma requirement such as "in writing."

I want to emphasize something Ms. Duffy said. The Subcommittee has worked together for the last year and a half. Prior to that, as unusual as it may sound, these entities had never sat down at the same table and spoken to one another

about the children they serve. It has brought all the necessary stakeholders together. We feel this is a much better option for the necessary exchange of information.

Senator Ford:
I acknowledge that what you are doing is for the best purposes, but I am still a bit uneasy. What student advocacy or parent advocacy groups were included in the Subcommittee to offer insight as to which was the better approach to best protect certain student data privacy issues?

Justice Saitta:
In addition to the national groups I referred to earlier, we consulted the State of Nevada Juvenile Justice Commission, which is a cross-pollinated group of juvenile justice stakeholders. It includes probation officers and representatives from all judicial districts, and its meetings are public, where anything that comes before the Commission is considered and approved by the entire group. We have had the luxury of open, meaningful debate with this group. Some counties in the State have been sharing information better than Clark County, and those counties have been doing this for years. After looking at their practices, we decided that the "in writing" component was not necessary, and that the gross misdemeanor penalty would meet the concerns about inappropriate release of information.

Carlos McDade (General Counsel, Clark County School District):
We participated in the drafting of Exhibit C. After S.B. No. 31 of the 77th Session was passed, we found that it actually restricted sharing of information more than it had been. This was because school districts were explicitly taken out of the bill, and thus information could not be shared with us. We confronted situations in which children were in the DJJS and were not allowed to tell us why. Before S.B. No. 31 of the 77th Session was passed, we had been using an MOU to share the information; after it passed, we felt that was not appropriate.

We support S.B. 58 and Exhibit C. They will allow us to share information with the DJJS following federal law, with an MOU to lay out exactly what can be shared and how it will be used.

Michael Whelihan (Manager, Spring Mountain Youth Camp, Department of Juvenile Justice Services, Clark County):
We are in support of S.B. 58 and Exhibit C. The DJJS has policies and procedures in place to discipline current employees who violate confidentiality. Ms. Duffy mentioned an incident in which a former employee released information, and that is one of the reasons we support the bill. There was nothing we could do to the individual in question, and we felt something should have been done.

I run the Spring Mountain Youth Camp, which is a halfway house. Many of the children have been expelled from school, and we need their individualized education plans to see what services they have had so we can create an educational program for them. We have the kids for an average of 6 months, and then they are followed for about another 6 months on probation. Our halfway house is a transitional placement for a lot of kids who go from the Division of Child and Family Services to the DJJS. We had one particular youth who was autistic, and it was difficult to get information so we could create a structured educational program and meet his therapeutic needs. Having the provisions of S.B. 58 and Exhibit C in place would ensure the free flow of information and save us time and money.

As things stand now, the court process is often slowed down because of the difficulty of getting this information to the court so it can make proper decisions based on what the school district has done. Many times, we build relationships with the kids, and they tell us things they may not tell the courts. For example, a child might tell us that he or she will be in physical danger if returned to a specific school. Under existing law, we cannot disclose that information to the School District. With this bill and its proposed amendment, we would be able to do such things.

I want to stress that we take confidentiality very seriously. An MOU would allow us to add penalties for staff who misuse this information.

Regan Comis (M + R Strategic Services):
We support S.B. 58. It allows for information sharing from all those parties involved with these children so the children can have better outcomes.

Kevin Schiller (Assistant County Manager, Washoe County):
I am the director of the Department of Social Services in Washoe County. We support S.B. 58. From the child welfare perspective, sharing information allows us to break down barriers and continue our efforts to serve children.

With regard to the concerns about controlling information, we are willing to work within those confines so we can support this. Often, child welfare and the juvenile justice agencies are dealing with the same children and the same issues and treatments. This bill allows us to share that information.

Frank Cervantes (Director, Department of Juvenile Services, Washoe County):
We support S.B. 58 with the amendments in Exhibit C. One of the previous speakers indicated that the juvenile services information is guarded closely in the system; confidentiality is one of our cornerstones. This bill allows us to move information back and forth for a right and a need to know. It is purposed, and it is definitely controlled.

Senator Harris:
I would like to clarify my concerns. I do not disagree that information needs to be shared in a timely and appropriate way. That is how we best serve our juveniles. My concern is that we need to respect their privacy, and we need to make sure the appropriate safeguards are in place so their information is not misused or allowed to become public inadvertently. That is why I asked about policies and procedures. Why would you have a gross misdemeanor component to this statute if appropriate policies and procedures are not in place so that you have a standard to hold people to with regard to release of private information? That is where my concerns stem from. We need to appropriately and respectfully share information while still maintaining privacy and making sure the appropriate guidelines and policies are in place, so that if those policies are violated, the violators can in fact be held liable for that release of information.

Senator Hammond:
I agree.

Senator Ford:
> I felt like I'd be mad at myself if I didn't voice this issue on the record as well. I used to be a teacher, and I remember as a new teacher, they would tell me, "Avoid the teachers' lounge, because all they do is talk about the kids." And sometimes that would sully

their names, right? And you'd have a preconceived notion about how this kid is and who he is and what he's going to do and what he's not going to do. I hear what you are doing as a positive, right? I know you're trying to do quote-unquote wraparound services and help these kids out. I would be remiss if I didn't, however, mention that there is a potential for abuse in this regard, and abuse not in the sense of—not just in the sense of letting information out that shouldn't be there, but also folks who now have these kids in not just a system, but the system. Like a completely integrated system where their name is bad in school, and now it's bad in the juvenile justice system, and now it's bad in whatever other service gets this. So I would just commend for your—I know you probably know this already, and this is not you, the guys who are here testifying about this bill to us … but I would want to just be certain that we remain vigilant that these kids—their names don't get sullied because they are now in a more integrated system where data and information is being shared back and forth.

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Chair Brower:
We will, as a Committee, endeavor to take all those considerations into account as we process the bill. I will close the hearing on S.B. 58. We are adjourned at 1:47 p.m.

RESPECTFULLY SUBMITTED:

_____
Lynn Hendricks,
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. 58	C	7	Nancy M. Saitta	Proposed Amendment to S.B. 58