

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session  
March 19, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:03 p.m. on Thursday, March 19, 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 Tick Segerblom  
Senator Aaron D. Ford

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nick Anthony, Counsel  
Julia Barker, Committee Secretary

**OTHERS PRESENT:**

Kimberly Buchanan, Senior Deputy Attorney General, Office of the Attorney General  
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General  
Maggie McLetchie, Langford & McLetchie LLC  
Susan Roske, Chief Deputy, Juvenile Division, Office of the Public Defender, Clark County  
Vanessa Spinazola, American Civil Liberties Union of Nevada  
Regan Comis, M + R Strategic Services  
Laurie Johnson

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Patrick Schreiber, Assistant Director, Department of Juvenile Justice Services,  
Clark County

Michael Whelihan, Department of Juvenile Justice Services, Clark County

Scott Schick, Chief Juvenile Probation Officer, Juvenile Probation Department,  
Douglas County

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

James Sweetin, Chief Deputy District Attorney, Clark County

Brigid Duffy, Chief Deputy District Attorney, Juvenile Division, Clark County

Jim Wright, Director, Department of Public Safety

A.J. Delap, Las Vegas Metropolitan Police Department

**Chair Brower:**

I will open up the meeting of the Senate Committee on Judiciary with the hearing of Senate Bill (S.B.) 99.

**SENATE BILL 99**: Repeals provisions governing sex offenders which were originally enacted for purposes of the federal Adam Walsh Act. (BDR 14-134)

**Kimberly Buchanan (Senior Deputy Attorney General, Office of the Attorney General):**

I have submitted my written testimony for S.B. 99 ([Exhibit C](#)). Under the law, any sex offender, regardless of tier, may apply for relief of the duty to register after 15 years. I have provided a copy of the U.S. Ninth Circuit Court of Appeals decision of *American Civil Liberties Union of Nevada v. Masto*, 670 F.3d 1046 (9th Cir.2012) ([Exhibit D](#)). I have also attached the 2013 Nevada Supreme Court case, *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. Adv. Op. 52, 306 P.3d 369 (2013) ([Exhibit E](#)). I have also provided a copy of the 2015 Nevada Supreme Court case, *S.M. v. State, Dept. of Public Safety*, No. 64634 (Nev. Feb. 6, 2015) (order of affirmance) ([Exhibit F](#)).

**Chair Brower:**

How does one apply for relief from registering as a sex offender and who decides that?

**Ms. Buchanan:**

The district courts determine it. The sex offender files a petition for relief from duty to register that indicates he or she has met the 15-consecutive-year requirement and has not been convicted of an offense posing a threat to the

safety or welfare of others. From there, it is a judicial determination whether to accept that petition.

**Chair Brower:**

The decision is made by a State district court judge in the relevant county of the petitioner's residence?

**Ms. Buchanan:**

Yes.

**Chair Brower:**

In light of the litigation history, why was the latest stay imposed? Who sought it? What was the court's rationale?

**Ms. Buchanan:**

The court imposed the stay as an emergency writ to the Nevada Supreme Court to allow briefing by the parties and consideration by the court due to assertions by plaintiffs of irreparable harm if the law was not stayed.

**Chair Brower:**

From your perspective and perhaps the court's perspective—given the litigation history with both federal and State courts, including the Ninth Circuit Court of Appeals and the Nevada Supreme Court finding that the law resulting from A.B. No. 579 of the 74th Session is constitutional—what argument led to the stay in the most recent case, other than the irreparable harm argument?

**Ms. Buchanan:**

The same arguments that had been argued and dismissed in prior cases; the same causes of action, violation of due process, both procedural and substantive, and violation of ex post facto and double jeopardy; a host of constitutional arguments; and an argument by plaintiffs that the decision by the Ninth Circuit Court of Appeals does not bar the action in Nevada courts under the Nevada Constitution.

**Chair Brower:**

Understanding that others on the opposite side of the litigation might have a different answer, from the State's perspective, have issues argued in the latest case been litigated and resolved in the State's favor in previous cases?

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**Ms. Buchanan:**

Yes.

**Chair Brower:**

When did you start at the Nevada Attorney General's (AG) Office?

**Ms. Buchanan:**

I started in January 2001.

**Chair Brower:**

When did you start working on this issue?

**Ms. Buchanan:**

Approximately 2008.

**Chair Brower:**

Did litigation begin with the prior AG, Catherine Cortez Masto, and continue through the current AG?

**Ms. Buchanan:**

Yes.

**Chair Brower:**

Based on your overview of the cases as a result of A.B. No. 579 of the 74th Session, have all courts that heard challenges to this law, determined it constitutional?

**Ms. Buchanan:**

Yes.

**Chair Brower:**

Does the AG's Office still believe the statutory scheme is workable in practice?

**Ms. Buchanan:**

Workable in practice in terms of A.B. No. 579 of the 74th Session?

**Chair Brower:**

Right. The courts have said it is constitutional. I have not heard from the AG's Office that it is not workable in terms of implementation and enforcement ...

**Ms. Buchanan:**

The Department of Public Safety (DPS) was set to implement A.B. No. 579 of the 74th Session on several occasions.

**Chair Brower:**

So what remains for us to decide is whether the law that resulted from that bill is still good policy.

**Brett Kandt (Special Assistant Attorney General, Office of the Attorney General):**

You mentioned the ability to enforce the implemented law. It is important to note that we defer to the judgment of many agencies that have that responsibility for implementing and enforcing the law as to whether they are prepared to implement and enforce the law at the appropriate time.

**Chair Brower:**

Courts that have reviewed this issue and this law made clear that we do not have a legal problem, and we are going to hear that we do not have a practical problem. The issue for the Legislature is whether we want to implement this policy.

**Ms. Buchanan:**

That is fairly stated. Much litigation has centered on questions to the policy of whether A.B. No. 579 of the 74th Session should have been adopted and is the best scheme, which is a decision for this Committee, not the courts.

**Senator Tick Segerblom (Senatorial District No. 3):**

I have a prepared presentation for the record ([Exhibit G](#)). The reality is the law passed in 2007 has never been implemented. We have the luxury this Session to decide whether this law is still appropriate. I would ask the Committee to think about how this law was passed and if it is still relevant. Congress basically put a gun to our heads and said, "If you don't pass this bill, we are going to take all of this money away from you and you will be punished." Because the Legislature only meets every other year, in the rush, we passed the bill exactly as Congress mandated. Ten years later, the regulations have changed. For example, the retroactive provisions in A.B. No. 579 of the 74th Session are no longer required under federal law.

The Nevada Supreme Court has begged us to address issues with respect to juveniles. They agree the law is constitutional, but they do not want to enforce it. It is harsh. A 14-year-old who is convicted of some kind of sex offense should not have his or her picture on the Internet for life without any recourse. No testimony during the 74th Session said Nevada's old law was inadequate. It was actually very strict. We had one of the toughest sex offender laws in the Country. We also had a provision wherein over time, you could show that you deserved to be removed from the list or come down a tier.

To have thousands and thousands of people have a lifetime sentence of being registered sex offenders with their pictures on the Internet and no opportunity to be removed from the list is bad public policy because no incentive exists for those people to be good citizens. They are stigmatized. I read somewhere that we need to create a leper colony for these people because they are unemployable and cannot be around anybody. We have stigmatized them and destroyed their lives. That hurts society too because they are not productive. People convicted of sex offenses in the 1950s, when it was a different concept, who have led impeccable lives since then still have their pictures on the Internet as sex offenders for all people to see. There is no purpose to it.

While I am not challenging the constitutionality of the well-intentioned law, it was a solution without a problem. We have the luxury this Session to put this law to rest and say that a mistake was made in 2007. Just take it off the books, go back to where we were, providing a system where the sex offense system is fair and punishes people who deserve to be punished but also giving them an opportunity to come down off the system, over time, if they correct their behavior.

Talking about sex offenses is a terribly difficult subject for any politician. The reality is that we have been handed a golden opportunity by the Nevada Supreme Court to not permit this law until this Legislative Session has looked at it one last time. Senate Bill 99 basically repeals the Adam Walsh Act, and keeps the law. The Act was never implemented even though it was passed 8 years ago.

**Chair Brower:**

There seems to be a lot of new language. Is your intent for the bill to simply eliminate the Adam Walsh Child Protection and Safety Act parts of State law and go back to the *status quo ante*?

**Senator Segerblom:**

Yes.

**Chair Brower:**

Does the new language bring back necessary language, similar to previous statute prior to the passage of A.B. No. 579 of the 74th Session?

**Senator Segerblom:**

Yes. When the Legislative Counsel Bureau drafted this, I asked them to remove the Adam Walsh Act and return to whatever predated A.B. No. 579 of the 74th Session.

**Chair Brower:**

I understand the current Nevada Supreme Court case was not stayed in anticipation of a legislative change but upon stipulation of the parties. Is that your understanding?

**Senator Segerblom:**

Yes, but it was also stayed because the Court realized the Legislature was going to address this issue and waiting 4 more months was appropriate after all the elapsed time.

**Ms. Buchanan:**

Yes, I agree with that. In deference to this body, the AG's Office agreed to not hold oral arguments until after this Session.

**Chair Brower:**

While we appreciate the deference, I am not sure most of us have as much confidence in this body to get something done as the court and litigants might, but we will take that up as a challenge to do the right thing.

**Senator Ford:**

I was around in the 74th Session and you talked about the Adam Walsh Act being enacted then with virtually no testimony that our law was insufficient for purposes of addressing this issue. Was any testimony relative to recidivism rates for sexual offenders? It is not just politicians who have a hard time talking about sex offenses. Does anybody know if a particular rate of recidivism associated with sex offenses as opposed to other types of crimes that justifies putting them on blast on the Internet?

**Senator Segerblom:**

Sex offenders have the lowest rate of recidivism within any group of criminals, including murderers. Certain sex offenders are so beyond the pale that they should be locked up and have their pictures posted on the Internet, but we are talking about the people who come out of prison irreparably targeted and tarred for the rest of their lives with no chance to show they have corrected their behavior. The Adam Walsh Act does that by saying if you are convicted of a sexual offense, whether you go to prison, you are deemed a sex offender for the rest of your life. Your picture will be on the Internet as a sex offender, you have to register wherever you go. It is extreme beyond belief. At the time, there was no testimony of problems with our system. It was done because Congress passed this law and said it had to be implemented in 2 years. Because this Legislature only meets every other year, we had to implement it then. Several states, including Texas, have refused to implement the law and no other state has implemented it to the extent we have. Even the regulations say it is not retroactive. If A.B. No. 579 of the 74th Session goes into effect, we will have the harshest law in the Country.

**Senator Ford:**

What about recidivism for youth sex offenders?

**Senator Segerblom:**

I am not aware, but it is probably less given the way juvenile minds work. A 14 year old who commits a sex crime should have an opportunity to show that her or his mindset has changed.

**Senator Ford:**

Are there any other registries of this type out there?

**Senator Segerblom:**

Not to this extent where a person's picture is on the Internet and anyone can type in a name to locate you and identify your relatives. Given some of the outrageous people there could be a purpose but those people are in prison. We are talking about people who have done their time, rehabilitated themselves to whatever extent possible and are out in society. Yet, this stigma still makes them unemployable and unable to live in certain neighborhoods. Their families suffer too.



**Senator Ford:**

If the Adam Walsh Act has not been enforced, what law are we under?

**Senator Segerblom:**

The law that has existed since 2007. I am proposing we stick with that. You will hear of a fiscal note attached to S.B. 99. How can there be a fiscal note if this bill just proposes to stick with statute?

**Senator Ford:**

If this bill adds language to statute, I am confused as to how the 2007 law is what would be enforced. I would like somebody to testify as to whether our law has proven insufficient for the purposes we intend to accomplish. If the 2007 law has been enforced since 2007, has it proven insufficient? If so, perhaps we should consider the Adam Walsh Act?

**Senator Segerblom:**

Even though I propose removing A.B. No. 579 of the 74th Session in its entirety, it can be viewed as two separate bills. There is the juvenile portion and the adult portion. If the Committee sees the juvenile portion as more egregious, that would be a huge step forward to remove the Act from including juveniles because branding a 14-year-old as a registered sex offender for life seems very harsh.

**Chair Brower:**

The Adam Walsh Act and Nevada law have withstood legal challenges. The Legislature must decide if it makes sense going forward.

**Maggie McLetchie (Langford & McLetchie LLC):**

I have been litigating these issues since 2008. As the person leading some of these challenges, the picture is not quite as rosy for the State as Ms. Buchanan has indicated. The State challenges and raises issues related to A.B. No. 579 of the 74th Session and has already paid close to \$200,000 in attorney's fees for my successful work challenging sex offender laws in Nevada. With regard to the Logan D. case, while the Nevada Supreme Court upheld the law, they also clearly called upon this Legislature to look at the law and take the opportunity to make any needed policy changes.

**Chair Brower:**

If the State keeps winning these cases, how do you recover attorney's fees?

**Ms. McLetchie:**

The State does not keep winning these cases. With the A.B. No. 579 of the 74th Session case, we litigated an issue regarding movement and residency restrictions which was upheld by the Ninth Circuit Court of Appeals, and we also won issues in front of district court judges. I have a pending case with issues substantively and procedurally different from other cases. While Ms. Buchanan and I did stipulate to a stay of the oral arguments in that case, the Nevada Supreme Court did find sufficient cause to stay enforcement of A.B. No. 579 of the 74th Session. After I had lost my preliminary injunction motion in State district court, I filed an emergency writ with the Nevada Supreme Court; it found that my case raised sufficient issues to merit a stay of the law.

It is not as simple as the State indicated. For example, litigation raises issues with regard to contracts and due process. While the Nevada Supreme Court and the Ninth Circuit Court of Appeals looked at the due process issue, they never considered specific issues that plaintiffs in my case raise. Typically, somebody believes he or she is improperly placed on the registry and questions what methods exist to get off the registry. In A.B. No. 579 of the 74th Session, there is no method to get off; you can be on the sex offender registry for life. This is not the oral argument Ms. Buchanan did agree to stay—the argument pending the outcome of this Session. Rather than litigate these issues forever, it is in the best interest of the State for the AG's Office, myself and others to work with the Legislature to arrive at something with clarity that works for Nevada. Confusion with this law leads people to seek lawyers and gives rise to litigation challenges, that will not be over immediately after Session.

Studies show that the law being implemented—which is not A.B. No. 579 of the 74th Session—is the system that works best at predicting dangerousness. Right now, there is a risk-based system in place, and studies show actuarial risk-assessment scores consistently outperform Adam Walsh Act tiers. With regard to policy, the key difference between A.B. No. 579 of the 74th Session and the law being enforced is that A.B. No. 579 of the 74th Session throws out all of the work Nevada has already done. It would cost the State a large amount of money to reassess everybody based only on conviction, and it would throw out a scientifically proven risk-based method.

Senator Ford asked if anybody has come forward and deemed the law being used as insufficient. That is not the case. In 2007, the main concern of the

Legislature was losing federal funds. From the fiscal notes, the Edward Byrne Memorial Justice Assistance Grant funding would lose about \$40,000 a year. My attorney's fees to date have exceeded that. The State has never carefully looked at the cost of implementing the Adam Walsh Act. It would increase the number of people on the sex offender registry and Website which will cost money, according to DPS's Division of Parole and Probation. The Justice Policy Institute made an evaluation and said that in 2009, it would have cost \$1.8 million a year for Nevada to implement the Act. For that reason, almost every state that has done a careful cost analysis has rejected the Act. I have submitted testimony for the record ([Exhibit H](#)).

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

I am on the National Advisory Board for the National Juvenile Defender Center and codirector of their Western Region. I have had 27 years of experience working with kids in the juvenile justice system. You must understand that kids are different. As every parent knows, kids are different from adults. The courts recognize it and in the last decade, the U.S. Supreme Court has issued rulings recognizing that kids have a diminished culpability and a heightened capacity for change. In these decisions, the court indicated that irresponsible behavior of children is less culpable because a child's character and capacity for judgment are not fully developed.

What do we know about kids? We know they are impulsive and reckless. In your own experience, you probably have a memory of acting on a stupid impulse, and when asked what you were thinking, you responded with, "I don't know." The reality is, that child does not know. Why? Because a child's brain is not fully developed. We have scientific proof to understand why kids are different. The frontal lobe of the brain is the last part of the brain to finish developing. The pathways to the frontal lobe are being fine-tuned and sped up. Executive decisions are being made in the frontal lobe where we think ahead for consequences, analyze behavior and reign in impulses. Kids do not have those skills. This explains why kids behave recklessly and impulsively.

We see that the vast majority of juvenile sex offenders have been eroticized either through early victimization, exposure to pornography or sexual activity. Most are boys between the ages of 13 and 15. Those hormones are raging through their bodies. Having been eroticized in the past, they feel things they do not understand and do not know how to deal with. These are essentially good

kids with so much potential. Assembly Bill No. 579 of the 74th Session states that if you are 14 years of age or older and commit one of these sex offenses—the vast majority of kids we see in court for sex offenses fall into these categories—you will have to register for 25 consecutive years to life.

Think about registration. A child who is a Tier 3 offender will have to register every 90 days, even though they may not be old enough to drive or ride the bus alone. They will have to get to the place where adult sex offenders register every 90 days and provide their picture, fingerprints, school and residence. All of this information will then be available to the public via the Internet. To stigmatize these salvageable children will jeopardize public safety. A report published by the Human Rights Watch, called “Raised on the Registry,” discusses areas where children are forced to register, have their information on a public Website and suffer damage. We find that it inhibits their rehabilitation. Why should they go to counseling when they are faced with a lifetime of humiliation, stigmatization and marginalization? These kids are bullied in school. We just had a suicide a few weeks ago committed by a girl who was being bullied and another suicide earlier in the year for the same reason. These kids are humiliated, subjected to violence, have a higher risk of suicide, drop out of school and become unemployable. The prior law was working.

The legislative history of A.B. No. 579 of the 74th Session, has no discussion about the impact it would have on juvenile delinquents. The Adam Walsh Act states if you include juvenile delinquents, it should be the most serious delinquents that federal law limits to violent sexual assaults or rendering the victim unconscious to complete sexual assaults. That is it. Assembly Bill No. 579 of the 74th Session includes the vast majority of juvenile sex offender cases we see. If we have a violent sexual assault in Clark County, the district attorney will move to have that case transferred to the adult system. Senator Segerblom mentioned that the Legislature enacted A.B. No. 579 of the 74th Session exactly as mandated by Congress and since then, there have been changes. States no longer have to put juveniles on the sex offender registry Website, and it does not have to be retroactive. One thing A.B. No. 579 of the 74th Session did was open it up to more offenses than what Congress required under the Adam Walsh Act, which was not mandated by Congress.

In Clark County, there was a case of a 13-year-old girl who was a juvenile sex offender and her family relocated to Washington. In Nevada, she was not required to register. Washington law required that on her eighteenth birthday,

based on a recommendation from her probation officer, a judge could relieve her of community notification. Her case fell through the cracks because her judge was in Clark County, not in Washington. She was arrested at the age of 19 for failure to register as a sex offender. She lost her job, was evicted, moved in with her family, harassed by her neighbors so badly that her father left the family and she attempted suicide.

**Chair Brower:**

Do you know the nature of her offense?

**Ms. Roske:**

As a young child, she was victimized to perform fellatio on an adult male. When she was 13 years old, she decided to perform fellatio on young children.

**Chair Brower:**

We are hearing a lot about juveniles being unfairly labeled as sex offenders, but that is exactly what they are. We can put aside the issue of whether they can be rehabilitated, but are they being labeled as sex offenders because they are sex offenders?

**Ms. Roske:**

Yes, but to put it out there for the whole world to know invites bullying and violence that will hurt their rehabilitation. We find that kids are dropping out of treatment and school, are unemployable and have no futures.

I represented Logan D. in *State v. Eighth Jud. Dist. Ct. (Logan D.)*. We challenged the constitutionality of A.B. No. 579 of the 74th Session and prevailed. The State took the case to the Nevada Supreme Court where it sat for about 5 years. The Court did enter a ruling in 2013 that the law is constitutional, saying:

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

They reviewed the fact that the American Bar Association and the Coalition of Juvenile Justice strongly opposed requiring juvenile sex offenders to register because it negatively affects their treatment. The Court further stated:

We agree that the prior statutory scheme, which left the decision to subject juvenile sex offenders to adult registration and community notification requirements to the discretion of the juvenile Court based on specified factors, was a superior method of protecting the various interests at stake, including public safety, the welfare of juvenile sex offenders, and conservation of public resources.

Courts and juvenile justice agree that the Adam Walsh Act as to juvenile delinquent offenders is bad policy and the prior statutory scheme is superior.

**Chair Brower:**

What was the nature of Logan's offense?

**Ms. Roske:**

I cannot remember.

**Chair Brower:**

I am reading that it was lewdness with a minor when he was 17 years old?

**Ms. Roske:**

That is my recollection.

**Chair Brower:**

With respect to the Judicial branch of government, this Legislative branch makes these policy decisions. We do appreciate their input and take seriously their expertise as the branch that presides over litigation. Our constituents expect us to decide what we think best for public safety and all considered, which is what we aim to do.

**Senator Ford:**

Can you offer any comparative analysis or statistics on juveniles who have had bad experiences, are required to register as sex offenders and have their information on the Internet? Do you have data on their level of unemployment?

While not recidivism, do you have data on reciprocal consequences attributed to being required to register for a lifetime?

**Ms. Roske:**

I can only give anecdotal information, but "Raised on the Registry" has all of that information.

**Senator Ford:**

Several states have not enacted the Adam Walsh Act. How many states have and of those, how far have they gone?

**Ms. McLetchie:**

I can follow up and give you a specific list, but some of the information is misleading. Whereas a number of states are deemed to be in compliance with the Office of Sex Offender Registration and Notification Act, the list includes states like Nevada that never implemented it. Arizona, Arkansas, California, Nebraska and Texas all affirmatively rejected the Adam Walsh Act. That was after assessments and studies of what it would cost to implement that Act in those states as well as look at whether it would promote public safety.

**Vanessa Spinazola (American Civil Liberties Union of Nevada):**

The American Civil Liberties Union of Nevada supports S.B. 99. The Adam Walsh Act is against good public policy. The best way to deal with sex offenders is to individually assess them for their rate of recidivism, not to classify them based on their crime. We all know how the criminal justice system works. People plead to things and get convicted of different things. If we want to protect public safety, individually assessing sex offenders is the best way to do that. Implementing the Adam Walsh Act would go against that.

Juvenile sex offenders have the lowest rate of recidivism. I have provided two articles for the record from the National Juvenile Justice Network. The first is "Perils of Registering Youth Who Commit Sex Offenses" ([Exhibit I](#)), the second is "Youth Who Commit Sex Offenses" ([Exhibit J](#)). Those articles list citations to the low risk of recidivism. The Human Rights Watch published a report that said juvenile recidivism is as low as 1 percent in some cases of sex crimes.

If we had maintained the assessment system, assessors could utilize it to determine recidivism rates. Nevada treats youth sex offenders like patients, not

prisoners. Judges have discretion to say in any individual case that the kid should be rehabilitated. If this law is implemented, judges will have no discretion and will have to put every juvenile on the registry. While they may be able to get rehabilitation, if we look at a cost analysis, you cannot put everybody in rehab if you pay for them to be on the sex offender registry and have them monitored by Parole and Probation. We would like to keep that judicial discretion. Youth respond well to treatment so we would like to keep that portion of the law.

**Regan Comis (M + R Strategic Services):**

Much of my testimony has already been discussed and M + R Strategic Services agrees with what has been said. We also agree that juveniles are different than adult sex offenders for the many reasons already stated. In 2011, the national recidivism rate for all offenses, nonsexual and sexual, was 40 percent, whereas the recidivism rate for adult sex offenders was 13 percent. Several studies—including one with a cohort of 77 percent of youths convicted of violent sex offenses—found a recidivism rate between 4 percent and 6 percent. That speaks to the difference between adults and juveniles in that juveniles are more amenable to treatment, which is why we see lower recidivism rates.

As of right now, 28 states are only partially compliant with the Adam Walsh Act, meaning they may have certain pieces of the law enacted but not all. Seventeen states are in compliance, Nevada being one of them, and five states are not in compliance at all. We realize this is a work in progress and ask to be involved as we move forward.

**Chair Brower:**

Under A.B. No. 579 of the 74th Session, a Tier 1 offender must register for 15 years, but may petition for early release after 10 years, assuming he or she has no felony convictions and has successfully completed a program. Is that your understanding?

**Ms. Comis:**

Yes. We would like to note that in S.B. 99 a 14-year-old juvenile convicted of a sexual offense would be required to register and notify the community. At the age of 21, there would be a hearing so a judge could determine whether the youth is still a danger to society and whether he or she should be relieved of the need to register or continue to register as an adult. A juvenile who is allowed to



seek relief from registering 10 years after conviction would be 24 years old under the Adam Walsh Act.

**Chair Brower:**

There is a way for a juvenile offender put in the Tier 1 offender category to petition for relief, which is really what we are talking about. Tier 2 and 3 offenders are more seriously bad acts. By the age of 24, in your scenario, could a Tier 1 offender petition to be removed from the system under A.B. No. 579 of the 74th Session?

**Ms. Comis:**

Yes.

**Senator Ford:**

In 10 years, juveniles can petition to be removed from the registry. Hypothetically, can an 11-year-old get off at the age of 21?

**Ms. Comis:**

Under the Adam Walsh Act, you would not have to register as a sex offender unless you were aged 14 or older.

**Senator Ford:**

What is the rule if one wants to go to college? Is there a requirement to let the university know that you are a registered sex offender? What are the practical applications for someone who wants to progress and become an active social agent in society but is required to register for the world to know?

**Ms. Comis:**

You have to disclose that to a university when you are applying. You cannot have records sealed when you are required to register as a sex offender.

**Laurie Johnson:**

I support S.B. 99. I come before you as a citizen of Nevada, a previous victim of child sexual abuse and the mother of an adult sex offender immediately adjudicated as a first-time offender from the juvenile system. The adult sex offender recidivism rates on the U.S. Department of Justice Website are 0.3 percent with treatment and 0.5 percent without treatment over the course of 10 years. After reviewing this bill, I am baffled with the decision to create a new law lumping certain offenders due to conviction, when proper assessments

and evaluations should be the determining factor. Most sex offenders do not reoffend, and blanket legislation will do more harm than good to our innocent children by backing many offenders against the wall unnecessarily. If you give them zero reasons to see the light, then darkness will definitely follow. Support is a big deal. I am a mother of a sex offender due to be released after 8 years of incarceration. Our family has supported him on his journey of simply doing all the right things while accepting and enduring his punishment which included treatment, education and work in that order. My son comes home in 10 months, but S.B. 99 would alienate him from the most beneficial and crucial family support system by not allowing him to live in our home due to Tier 3 status solely based on his conviction. He has been convicted of a sexual offense against a child. Our family began this journey on a personal level. I have branched out to make a difference to all Tier 3 offenders for life, based solely on their convictions. Many others in Nevada will suffer unnecessarily with the verbiage in this bill.

I agree with the bill wholeheartedly, but there needs to be some changes in the verbiage. It is as if these human beings take all of the proper channels to do the right things while incarcerated or on parole and probation to make good but are still doomed at the gate. I ask that you revise two areas of S.B. 99. I agree with what Ms. McLetchie and Ms. Roske said.

The first change I propose is that the Tier 3 designation be on an individual basis only. I agree with Ms. McLetchie that the evaluations be on an actuarial, static and dynamic level, as risk is not solely static but dynamic and ever-changing. For section 9, subsection 2, I propose the tier assignment be through an evaluation process. From section 54, subsection 3, I ask that you remove the portion that says, "must be assigned a Tier III level" with any child crime against a child. From section 67, subsection 5, I propose removing, "may not file a petition to terminate the sex offender's registry duty to."

The second change proposed is to not deem lifetime a form of parole when it is actually a special sentence not recognized by approximately 23 states. With proper assessments and evaluations, we can bring down the cost of lifetime supervision by focusing solely on the actual Tier 3, the true worst of the worst, with proper assessments and evaluations. I ask that you entirely remove section 87, subsection 2, paragraphs (a) and (b). It is a special sentence, not parole or probation, and I am almost certain a violation of original sentencing orders for sex offenders.

I have submitted two pages of my testimony for the record ([Exhibit K](#)). The second page is about how I did not curl up in a ball but stood up for my family and my son.

**Patrick Schreiber (Assistant Director, Department of Juvenile Justice Services, Clark County):**

The Department of Juvenile Justice Services supports S.B. 99. Youth are plastic and malleable. They are not developed emotionally, mentally or intellectually. They make impulsive decisions that they have not thought out. They do not understand consequences; for that reason, they should be worked with and receive treatment and different services to address their behaviors and crimes. We do understand that the most heinous crimes and offenses that youth might commit would be addressed in the adult system through the certification process allowed by this bill.

We support the discretion of judges to have a say in the type of treatment and services youth receive. We have a national statistic that juvenile recidivism was between 5 percent and 12 percent. In Clark County, the recidivism rate of less than 5 percent has decreased to 2.59 percent of all adjudicated offenses. Eighty percent of the youth we deal with have been victimized themselves and are going through the treatment process under development for that purpose. The registration component of the bill seems excessive and more harsh than it needs to be. We are a public safety agency, but we are also a child agency. The best way to protect the public is to cause change in the youth who have problems in the community.

**Chair Brower:**

We have been hearing a lot about the recidivism rate. It seems that we should expect the recidivism rate to be lower for juveniles who have been adjudicated because they are in a supervised program. Would factors such as those contribute to a lower recidivism rate?

**Mr. Schrieber:**

Yes, as well as the fact that the child is still developing and the behavior exhibited that resulted in the offense is a result of victimization which affected his or her development. The child's decision-making and brain development is not that of an adult's. Treatment is important because it will help with that development and maturation.

**Michael Whelihan (Department of Juvenile Justice Services, Clark County):**

The Department of Juvenile Justice Services would like to stress that the most important part of the bill is that juveniles can petition the court before the age of 21. A 14-year-old child can be on probation until the age of 21, but then you must have faith in the judicial system to understand that he or she has been through services and should be removed from the registry requirements. That is what we support. Those juveniles not amenable who continue to be a danger to public safety would be subject to notification and still be required to register. We would like a clear delineation between the juvenile and adult piece because of a difference in recidivism rates. The Department gets involved with best practice and has juvenile sex offense therapy and a juvenile sex offender probation staff assigned as experts to deal with these youths. With family and community support plus programs in place, many of these children can change.

**Scott Schick (Chief Juvenile Probation Officer, Juvenile Probation Department, Douglas County):**

The Douglas County Juvenile Probation Department supports S.B. 99. Juvenile justice has supported the intention of the Adam Walsh Act based on the dangerous propensities of some sex offenders and our inability to track them. We also recognize the fact that the juvenile piece of the Act was severe. We understand that kids are amenable, but they still need to be held accountable no matter what the offense. Accountability in the sex offender treatment process is mainstream policy in our jurisdiction, Clark County—urban and rural jurisdictions. We continue to operate under that old statute because of the back and forth between A.B. No. 579 of the 74th Session and the cases that have come before the Nevada Supreme Court. I implore you to hear us out. Public safety would not be threatened by appropriate treatment and accountability around particular juvenile sex offenders; they would not penetrate the adult system and are not predators. While some should be certified and would be a danger, it is important to differentiate between the two.

**John T. Jones, Jr. (Nevada District Attorneys Association):**

The Nevada District Attorneys Association opposes S.B. 99. We can change issues with respect to the Adam Walsh Act to make it better. We are open to those discussions.

**James Sweetin (Chief Deputy District Attorney, Office of the District Attorney, Clark County):**

I am in the Special Victims Unit which has major responsibility for prosecuting sex crimes and crimes against children. I testify in opposition to S.B. 99 and in support of many of the provisions of statute. A distinguishing factor is the classification of tiers. Under the law, it is more offense-based. Tier classification is important for reasons including determining the sex offender reporting requirements, the level of community notification and the length of time before a defendant can petition for release from sex offender requirements. The statute makes this tier determination based on the offense, so a less serious offense is a lower tier and a more serious offense has a higher tier.

The current version of the law is preferable for a couple reasons. From a practical standpoint in prosecuting these cases, many times this issue comes up in the course of negotiations. Negotiations are an important part of these cases and many of these cases, even the most serious, must be negotiated. Under the law, a defendant will know his or her tier level and requirements before entering into any agreement. There is no guessing because the plea determines his or her tier level. Many times, this major issue in regard to negotiating these cases allows us an extra advantage, potentially preventing a child victim from having to testify.

The statutory framework lays out significant charges for which a defendant would have to be adjudicated to obtain a higher tier level assessment. The delineated charges distinguish a defendant from the rest of the population. Probably every parent sitting within earshot of this Committee would want to know if a person convicted of any of the offenses delineated in a Tier 2 or 3 lived next door or down the street. The reason for the Adam Walsh Act is that people do not want to take chances with their children. Sometimes these chances have disastrous results. We are talking about requirements placed on convicted sex offenders of some very serious crimes.

The law establishes reporting requirements which allow law enforcement to keep a better eye on people convicted of serious sex offenses by establishing intervals in which the person must be checked. The more serious the offense, the closer the intervals. The length of the period of registration and supervision is specified clearly by statute from the time the defendant is adjudicated based upon the defense for the adjudication. While there are provisions for time reduction of a defendant who performs well to include the tier, under S.B. 99,

the time in which an individual could petition for release from sex offender requirements is the same, regardless of the tier. This makes no sense. It is important to know the differences between the crimes we are talking about. Sex offenses against children are different crimes from robbery or crimes of violence.

We have talked about recidivism rates and have seen that as people get older, recidivism does go down in regard to robbery. I often see offenders who have offended years after his or her prior offense; that is not unusual. This bill treats all offenders the same as far as when they can petition for release from sex offender requirements. The law establishes a greater period depending on the tier level and seriousness of the offense before someone can petition for release. The Nevada Supreme Court has tied much of the discretion of a district court judge in that the judge can only determine that the basic requirements have been met. There is no determination in having the witness speak or determining whether the individual still presents a risk.

This bill would create a system in which tier assessment is made by the Executive Branch based upon criteria they have set. The assessment is unknown as the defendant is adjudicated, but that provision is subject to adjustment of the statute once made. It creates a system where similarly situated defendants are treated differently. For example, a parent made aware of an individual living down the street adjudicated of a lesser sex offense but treated as a Tier 3 offender was not notified that the next door neighbor was convicted of a more significant and violent sex act against a child because of that neighbor's categorization at a lower tier.

**Chair Brower:**

The S.B. 99 scheme is more like the State sentencing scheme, whereas the A.B. No. 579 of the 74th Session scheme is more like the federal sentencing scheme in that under the federal sentencing scheme, a defendant knows the potential sentence with a guilty plea to a certain charge or trial conviction. However, the State scheme has a range so the defendant does not know the potential sentence, making plea negotiations more difficult for the defendant. Does S.B. 99 open up that same sort of amorphous, hard-to-predict result?

**Mr. Sweetin:**

Yes. It would open up an issue on the outcome of ultimate penalties, causing a roadblock to negotiate many of these cases.

**Chair Brower:**

The federal sentencing scheme and guidelines were established to normalize sentences around the Country so a person of a particular race in a particular federal district who commits a crime does not get a different sentence than a person of a different race in a different part of the Country who commits the same crime. The guidelines dictate what the judge will sentence, with discretion. The same applies to getting away from the tier system in A.B. No. 579 of the 74th Session. Would S.B. 99 allow for a greater variation from judge to judge and county to county, despite dealing with the same or similar crime and conviction?

**Mr. Sweetin:**

I would agree with that. The tier system is done by the Executive Branch, and I have seen huge discrepancies in what would appear to be reasonable where someone is tiered as opposed to someone else. Similarly situated people would be treated differently under S.B. 99.

**Brigid Duffy (Chief Deputy District Attorney, Juvenile Division, Clark County):**

The Juvenile Division of Clark County opposes S.B. 99. We do need to establish procedures in the law that balance community safety and system goals of rehabilitation of youthful offenders. This bill allows for community notification prior to termination and probation, but the State would like it to allow postadjudication registration for the most heinous and egregious offenders. We do have heinous and egregious juvenile sex offenses.

In the last few years, a 14-year-old boy sexually assaulted a 6-year-old boy in a public bathroom at a local pool. The 6-year-old's mother had taken him to the bathroom; when he went in, he was sexually assaulted in a matter of minutes by a juvenile stranger. In another example, a 17-year-old boy repeatedly used social media to lure 12-year-old girls into parks where he would sexually assault them. These egregious crimes of stranger-on-stranger assaults need to be dealt with for community safety.

The Juvenile Division has a unique position of protecting the community and working as a system to increase community safety by rehabilitating children. We help, even for our offender's interests, in obtaining appropriate services. We are responsible for the authority given to us by the community. I have spoken with my counterparts in Washoe County several times on ways to negotiate cases to avoid registration when appropriate. When the Logan D. case was

ruled on, I personally renegotiated 26 cases so that children would not have to register, if appropriate.

We want to ensure public safety at the conclusion of treatment. In its current form, S.B. 99 would not do that unless it allowed us to register our most heinous and egregious offenders. We all know recidivism is hard to track. The Nevada Supreme Court's Commission on Statewide Juvenile Justice Reform has had the conversation on how difficult it is to track juvenile sex offender recidivism rates. Several bills this Session allow studies to determine true recidivism rates. We have sealed juvenile records, so we do not know if they have recidivated. We have difficulty tracking juveniles into an adult system. Because we do not know of recidivism, I do not know if your statistics are accurate. A Clark County juvenile judge has found grant money and funding to get studies started to identify the County's recidivism rate.

**Chair Brower:**

We recognize that what you do is tough duty. The Committee is sensitive to the concept of the difference between juveniles and adults, and we want to get that right. From the district attorney's perspective and even if we put S.B. 99 aside, would implementation of A.B. No. 579 of the 74th Session not be quite right? Could the law be changed to make it as close to perfect as it can be, especially in the juvenile context?

**Ms. Duffy:**

Yes. I have spoken to Washoe County and they would feel the same way.

**Chair Brower:**

There is a challenge for the Committee.

**Senator Ford:**

Do you exercise some level of discretion as to whether to put someone on the sex offender registry?

**Ms. Duffy:**

We use our discretion every day in the way we charge and negotiate for children over 14-years-old who may have to register. My juvenile sex offender deputy uses that discretion every day in a responsible way. After the Logan D. case from the Nevada Supreme Court, 26 children would have automatically had to register while they were undergoing treatment. I met with the Public



Defender's Office, got information from treatment providers to see if the 26 cases were at low risk to reoffend and reached out to the families. Most cases had already negotiated; if the Adam Walsh Act was in effect, we would renegotiate. We tell the victim's families that if the child were required to register, we may stay the registration and see if he or she was at low risk to reoffend.

**Senator Ford:**

Senate Bill 99 wants to give that kind of discretion to judges as opposed to mandatory registration. They want to enable judges to do the same analysis you do and in the juvenile context. Why would we not allow that discretion, especially when you are making the assessment on what level of offense to assign a juvenile. Just because we do not know whether a juvenile has recidivated does not mean we assume he or she did. The fact that the files are sealed does not give us the right to assume that child has committed or will commit a notorious act. You have a task as prosecutor, public defenders have a task as public defenders and a judge has the task to weigh all of that and make an ultimate decision. Part of the conversation I would like to have is about giving judges that ultimate discretion to determine whether this child needs to be on the sex offender registry.

**Mr. Jones:**

The Nevada District Attorneys Association has been having that conversation amongst our members about an amendment that may address those concerns.

**Ms. Duffy:**

I would like to give judges that discretion and lift the weight off of my shoulders.

**Jim Wright (Director, Department of Public Safety):**

The Department of Public Safety opposes S.B. 99. We feel that A.B. No. 579 of the 74th Session is a good law and will provide vital information to the public regarding sex offenders within communities for the community's protection. Our substantial legal efforts to defend this law have been successful. If the law is changed, we would no longer be in compliance with the Adam Walsh Act or Sex Offender Registration and Notification Act (SORNA) requirements. That will have an impact to certain federal criminal justice grant opportunities which require SORNA compliance.

**Chair Brower:**

It is one thing for the State to argue and convince a series of courts that the scheme is legal; it is another matter to make it work. Are you telling the Committee that you do not have concerns with your Department's ability to make the law work if it were implemented?

**Mr. Wright:**

We are ready to make it work. On two occasions we have been ready, and the stay actions have occurred right at the eleventh hour. With a little effort, we would be able to roll this out.

**A.J. Delap (Las Vegas Metropolitan Police Department):**

I echo Mr. Wright's sentiment. The Las Vegas Metropolitan Police Department is poised to pounce when necessary to implement this law.

**Mr. Kandt:**

The AG's Office opposes a wholesale repeal of A.B. No. 579 of the 74th Session and Nevada's implementation of the Adam Walsh Act—absent any constitutional, financial and practical impediments to its enforcement. In the wake of the permanent injunction and litigation that followed, the 75th Session created the Advisory Committee to Study Laws Concerning Sex Offender Registration, which was a very wise idea. That Advisory Committee has met during the interim; I, as well as Ms. Roske and Mr. Schick, are members. In our discussions, we have been open to the idea of focusing on the juvenile piece and making it fit in such a way that justice is served and the public is protected because that is the purpose of sex offender registration. It is not punitive or a punishment, it is a public safety measure.

**Chair Brower:**

From reading the case decisions I know, the idea that the registration piece being not punitive is not just your opinion, but what has been litigated, argued and decided by these courts. We want to get this right and make sure it is effective. Just because it is not punitive does not mean A.B. No. 579 of the 74th Session is working appropriately.

**Senator Segerblom:**

I am pleased with the sensible position everyone has. The reality is that we have waited 8 years and have this last chance to get it right. The juvenile piece is something we need to look at. The SORNA regulations that were the law in

2007 have changed substantially, so if we comply with SORNA, we should look at it, particularly with respect to retroactivity. Somebody who pleaded or was found guilty of a sex crime in the 1980s did not know his or her picture would be on the Internet. Perhaps that person should not be treated the same as someone who pleads guilty tomorrow, knowing what happens. As you know, once your picture is on the Internet and you are labeled as a sex offender, there is no taking that back. Even Tier 3 offenders—you have no ability to reduce that under the Adam Walsh Act—should include a provision that would allow some offenders to come down. When 50- or 60- or 70-year-olds have an impeccable record, why should they have to register as sex offenders every 90 days?

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**Chair Brower:**

I will close the hearing on S.B. 99 and adjourn the meeting of the Senate Committee on Judiciary at 2:53 p.m.

RESPECTFULLY SUBMITTED:

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Julia Barker,  
Committee Secretary

APPROVED BY:

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Senator Greg Brower, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	6		Attendance Roster
S.B. 99	C	9	Kimberly Buchanan	Written Testimony
S.B. 99	D	41	Kimberly Buchanan	ACLU v. Masto
S.B. 99	E	56	Kimberly Buchanan	State v. Eighth Jud. Dist. Ct.
S.B. 99	F	9	Kimberly Buchanan	S.M. v. State, Dep. of Public Safety
S.B. 99	G	4	Senator Tick Segerblom	Presentation
S.B. 99	H	9	Maggie McLetchie	Written Testimony
S.B. 99	I	4	National Juvenile Justice Network	Perils of Registering Youth Who Commit Sex Offenses
S.B. 99	J	3	National Juvenile Justice Network	Youth Who Commit Sex Offenses
S.B. 99	K	2	Laurie Johnson	Written Testimony