MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON CORRECTIONS, PAROLE, AND PROBATION

Seventy-Ninth Session
May 31, 2017

The Committee on Corrections, Parole, and Probation was called to order by Chairman James Ohrenschall at 10:10 a.m. on Wednesday, May 31, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Steve Yeager, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman Keith Pickard (excused)

GUEST LEGISLATORS PRESENT:

Senator Pat Spearman, Senate District No. 1

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Erin McHam, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

James E. Dzurenda, Director, Department of Corrections
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Carrisa Tashiro, Rights Attorney, Nevada Disability Advocacy and Law Center
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association

Chairman Ohrenschall:
[Roll was called and Committee protocol was explained.] I will now formally open the hearing on Senate Bill 402 (2nd Reprint).

Senate Bill 402 (2nd Reprint): Restricts the use of certain disciplinary action on persons in confinement. (BDR 16-1087)

Senator Pat Spearman, Senate District No. 1:
It is an honor to be here today to present Senate Bill 402 (2nd Reprint), which addresses the often-discussed, heavily studied, and unsavory practice of solitary confinement of prisoners. In short, this bill restricts the use of solitary confinement for persons held in confinement. This is why S.B. 402 (R2) is important. Before I discuss the specifics of S.B. 402 (R2), it is important for you to know the context of the issue of solitary confinement.

Solitary confinement is a form of imprisonment in which an inmate is isolated from any human contact with the exception of members of prison staff, often up to 22 to 24 hours a day. Such confinement can range for a day or two to several decades. Many experts have studied the psychological and physical effects of solitary confinement. Some of these studies date back to the early 1800s. What is consistently found is that solitary confinement can cause any number of mental disorders, enhance existing disorders, negatively impact rehabilitative efforts, and increase suicidal tendencies. The practice can also have profound physical effects resulting in increased headaches, heart palpitations, weight loss, dizziness, muscle pain, hypertension, and the list goes on.

The Nevada Legislature has addressed this issue many times over the years. Most recently, Senator Tick Segerblom sought to prohibit the practice of solitary confinement in Senate Bill 107 of the 77th Session. As introduced, this bill would have prohibited the use of solitary confinement except under certain circumstances, including if a person presented a serious and immediate threat of harm to themselves, others, or to the security of the facility and if all other less restrictive options had been exhausted. The measure would have provided that when a person is held in solitary confinement, it must be for a minimum time required to address the threat of harm and only if the mental and physical health of the person is not compromised. Senate Bill 107 of the 77th Session was amended two times during the 2013 Legislative Session, with the final bill ultimately authorizing a state, local, and regional facility for the detention of children to subject a child to corrective room restriction only if the less restrictive options had been exhausted and only for a specific purpose.

The other result of S.B. 107 of the 77th Session was a requirement for the Advisory Commission on the Administration of Justice to study solitary confinement. The Advisory Commission accepted two rather informative reports on the issue during the 2013-2014 legislative Interim. Unfortunately, no formal recommendations were made.

Here we are today, three years later, and nothing further has been done to address the detrimental effects of solitary confinement in all of Nevada's detention facilities. While S.B. 107 of the 77th Session did put limits on the use of solitary confinement for children, I believe it should be limited for all persons. Saying that solitary confinement could lead to devastating, lasting psychological consequences, President Obama banned the practice of holding juveniles in solitary confinement in federal prisons in January 2016. In August 2015, the Association of State Correctional Administrators (ASCA) released a study sharply critical of solitary confinement practices and called on its members to limit or end the use of solitary confinement for extended periods.

I ask you, if our nation's correctional administrators and our former President say no solitary confinement, why on earth do we still employ this practice in Nevada? It is for these reasons that I requested S.B. 402 (R2). I do not know how many of you had an opportunity to hear our hearing in the Senate Committee on Judiciary when we had a presentation from the Department of Corrections (NDOC). Director Dzurenda and his deputy said that when they got to their new positions they found some severely mentally ill inmates that had been in solitary confinement for more than five years.

Senate Bill 402 (2nd Reprint) prohibits the Department of Corrections, a private facility, or an institution from imposing solitary confinement on anyone who is detained in prison unless the offender is found guilty of an infraction after notice and a hearing has been held. The measure clarifies that an offender may request placement in solitary confinement for safety reasons. However, the offender may not be assigned to solitary confinement unless an independent assessment of the threat to the offender determines that solitary confinement is necessary for the offender's protection. In cases where disciplinary segregation is imposed, the period of segregation must be the minimum time required to address the disciplinary sanction or threat of harm and not exceed certain periods of time which are based upon the

seriousness of the offense. When disciplinary segregation is imposed, the prison must provide certain provisions and accommodations to the offender. In addition, after serving one-half of the period of disciplinary segregation, the offender is authorized to petition the warden for early release from segregation for good behavior.

Section 4 of the measure makes similar provisions by prohibiting a sheriff, chief of police, or town marshal from using solitary confinement unless there is a compelling reason to believe the prisoner presents a serious and immediate threat of harm or security and all other less restrictive options have been exhausted.

I want to reiterate. When the new Department of Corrections administration took over, they found that prisoners who had been medically adjudicated as being severely mentally ill had been placed and kept in solitary confinement for more than five years. More than five years. The director has instituted some administrative procedures that should prohibit that from happening. I want us to remember that people come and people go. He is here now and will enforce those administrative processes, but this will codify how Nevada treats those who are incarcerated. Even though we want to do correction and rehabilitation, we do not want to sacrifice humane treatment of our inmates.

Chairman Ohrenschall:
What you are informing the Committee of is shocking. We have Ms. Welborn and Director Dzurenda here as well. They would be happy to answer any questions the Committee may have as to how this will work.

Assemblyman Elliot T. Anderson:
I understand that we are undoing this, but in the past, this has been used as an in-house punishment. What does the Department do now as its highest administrative sanction within the prison system?

Senator Spearman:
I will let Director Dzurenda answer that.

Chairman Ohrenschall:
I understand you are here in the neutral position, but if you do not mind answering that question, it would be helpful.

James E. Dzurenda, Director, Department of Corrections:
Currently what are spelled out in S.B. 402 (R2) are our policies that were just approved through the Board of Prisons. We still utilize segregation based upon the immediate threat of danger to somebody else or to the inmates themselves, but it is limited. We put a maximum date on it, so it is limited up to the maximum. Inmates can be released sooner as long as their behavior has been adjusted. In the past, all programs were removed for anyone who was going into segregation or isolation, especially the programs that can help reduce anger issues. We knew that it was violent behavior that placed them into segregation and that we would be

removing the programs that could assist them in controlling that anger. We ended up changing all of our processes so those who would go into segregation would only be there for the means of protecting others and themselves.

Right now, before anyone can go into segregation, mental health and medical staff have to review them. The inmates will not be placed in segregation if their behavior is associated with their mental illness or if segregation could exacerbate their mental illness. If their medication or medical condition, such as cognitive brain disorders, mental illness, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), Alzheimer's, and many other things played a role in their behavior, we will go with the treatment of those offenders rather than placing them into those high segregation levels.

Assemblyman Elliot T. Anderson:
It is good to know that when there is life and limb at stake, that is how they would be able to handle it. Sometimes people just need some time to cool off. As long as you have sufficient procedures around that, it sounds like you have a good idea of what you are doing.

Chairman Ohrenschall:
Director, I would like to impose upon you to stay at the table in case we have any more questions about how things are operating.

Assemblywoman Krasner:
I appreciate that Director Dzurenda has made some changes. We want to have a balance where people are not put into solitary confinement for too long of a period and then they do not really know what they are doing there. That is not the purpose of solitary confinement. I have a concern with section 3, subsection 1, paragraph (a), subparagraphs (1) and (2) that would require the Department to give notice in a hearing and a psychological evaluation before putting someone in solitary confinement. I am guessing that the purpose of solitary confinement is a decision that people working in the prison make. They may not have time to give a full hearing, notice, and a psychological evaluation. It may delay putting someone in solitary confinement when it is necessary sooner than those actions can be performed. I am wondering if that might thwart the purpose of solitary confinement.

James Dzurenda:
That is part of due process from the court. We have always done that. States are required to give notice prior to placement into segregation. In a correctional facility, as an incident arises, a person is put immediately into segregation with a verbal notice. The written notice comes before the end of the shift. The supervisor has to sign off a written notice and give it to the inmate personally. The inmate is given notice that there will be a hearing within 15 days to present both his side of the case and the state's case. That is part of court due process that we have to abide by.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
Section 3, subsection 3 outlines the due process procedures that individuals will go through before they are placed in isolation. If you look at subparagraph (b), they are entitled to that hearing within 15 days, but they are still taken out of the general population while they are awaiting that hearing.

Assemblywoman Krasner:
I have one more question regarding section 3, subsection 6. I see that there are minimum time requirements—category C felony, 10 days; category B felony, 30 days. I am wondering if these are arbitrary times. Should we let people who are working in the facility decide? Obviously, not six months, that is too long. Is there any leeway on these times?

Holly Welborn:
The minimum criterion, "The period for which an offender may be held in disciplinary segregation must be the minimum time required to address the disciplinary sanction . . ." is the standard. It is dependent upon the inmate and the specific situation. Section 3, subsection 6, paragraphs (a) through (e) provide a guideline that limits how long those individuals can be placed in solitary for certain offenses.

Assemblywoman Krasner:
I understand that is a guideline, but it does say "Such a period must not exceed . . . ." I am worried about putting arbitrary times in statute. If you are telling me that all of my concerns are already in law, why are we bringing the bill?

Senator Spearman:
One of the reasons we are bringing the bill is because these things may be codified in another statute, but just like any other legislation, it is important for us to be explicit in what the standards are when we find there have been infractions. I heard that we had severely mentally ill inmates in solitary for five years—come on, really? Apparently someone was not listening or looking to where it was statutory in terms of what the court prescribed. Working with the Director, it is important for us to codify the administrative changes that you are making in law so that whether you are here or someone else comes behind you, we should never have that happen again. That is like treating people like dogs.

There are psychologists and psychiatrists who, in a longitudinal study—maybe 25 years—followed prisoners who had been in solitary confinement for extended periods of time. Forty-nine percent of those who had been treated that way came out with PTSD. We cannot let our emotions say how we are going to treat people. We have got to have a standard. We cannot treat people like dogs. It has already been proven that extended periods of solitary confinement have the opposite effect.

James Dzurenda:
Those maximum day limits are not arbitrary. Those are based upon the *United States Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing: Guiding Principles*. Senator Spearman mentioned the Association of State

Correctional Administrators' Restrictive Status Housing Policy Guidelines—I was one of the authors of those guidelines when they were submitted in 2013. What it did was to put time frames into segregation for the type of discipline. The inmate has to prove that he can behave and go back into the general population. If they misbehave, start acting up, or assault the staff, it does not mean they have to come out of there; instead they will be issued a new infraction. They could continue segregation if their behavior deems it appropriate—they are misbehaving to the point that they will be dangerous to somebody else. That is a maximum for each infraction that happened.

If they continue to assault staff or have behavior that does not warrant their being removed and put back in the population, there will be a treatment plan for that offender to address the behavior and evaluate if there are any mental health or medical issues that may be exacerbating that behavior. Those conditions can be extended if additional disciplinary behavior is necessary. The maximum date for one of those charges can be extended if the behavior escalates into other misbehavior discipline.

Chairman Ohrenschall:
To be clear, you do not see the maximum amount of time in solitary as something that would tie you or your officers' hands in an unfair way in terms of trying to keep the prison safe?

James Dzurenda:
Actually, it will be for the better. When you offer inmates an out for good behavior, they will have good behavior to get back into population. If you give them maximum times that could be years, they lose all faith in the system, they have nothing to use, and their behavior continues to get worse. This will give the inmate an out to start behaving. It still gives the staff the tools to remove that person from population, but it also gives the inmate a definite and immediate time frame. A lot of these offenders cannot think long term. When they know that it is right down the road that good behavior can do X, Y, and Z, you will see that good behavior occurs.

The other thing that is important to mention in this bill is that there is no financial impact. There is actually a positive financial impact. You will see a reduction in the numbers in segregation, which will increase bed space for us. When you start seeing a reduction of 50 or more inmates in segregation statewide, that opens up 100 beds for general population because we can double them up. That is going to help me get inmates off of the floor, which also causes misbehavior because they are put into conditions that they do not like. They are living in areas where they do not have a cell or in nonconditional areas. Around the institutions, behavior will start being adjusted for the better so we can get our population numbers under control, get people off of the floor, and help with discipline so that staff are safer. There are safer working conditions because you will not see those behaviors reoccurring.

Assemblywoman Cohen:
What are the other effective forms of discipline that you have available to you?

James Dzurenda:
Not all discipline means that you are going to go into segregation. We also have disciplinary measures called "informals." Inmates can be assigned certain duties or tasks such as cleaning duties or extra assignments. Staff have options other than putting someone into segregation. Those have to occur first, if it is a means that can change behavior instead of going into segregation. Segregation needs to be a last resort. We have to look at what the causes of behavior are. That is where we are trying to shift the agency.

Some behaviors are manipulative; some behaviors are caused because inmates are afraid that if they do not do that behavior there will be gangs that will extort them or go after them. Some behaviors are related to TBI or other diagnoses. Those things have to be factored in before someone goes into the last resort of segregation. Our objective for segregation is to control and reduce bad behavior. If we are misusing that, you will see the misbehavior getting worse, which presents itself to be more dangerous to the staff and other inmates.

Assemblywoman Cohen:
Do you find that you have other effective means?

James Dzurenda:
Yes, instead of segregation, it can be effective if you start increasing programs for behavior changes and reentry for inmates. If inmates start liking what they see with certain programs, they start behaving better because they do not want to lose those programs. We have things like K-9 training with the inmates. They resocialize dogs that have been mistreated and then we put them up for adoption. I will guarantee that those inmates will not misbehave because they would be devastated if they lost that program. There are other avenues we are starting to put into place that will be more incentive-behavior induced. If they misbehave, they are going to lose program incentives that are more effective than putting someone into segregation since they mean something more to that offender.

Sometimes inmates want to be in segregation, which is another problem that we have to address. We do not want to let the inmate misbehave in order to get to a place where they want to be. You have a lot of different things going on with certain inmates that affect behaviors. We are trying to address each one individually.

Assemblywoman Cohen:
Do you find that the inmates, because they know of the changes you have made, feel more at liberty to misbehave because they do not fear solitary?

James Dzurenda:
There are two things to look at when you are trying to address behavior. One of them is a "carrot and stick" approach. If you have things that inmates want, that will control behavior in itself—if you have good incentives. If you have bad incentives, that is another means, but long-term segregation will cause behaviors to worsen because they lose all hope of getting out and everything for which they strive. What is going to indirectly assist the staff in controlling a lot of the behaviors is the possibility of inmates going out of state to

other prisons. When inmates know that their behavior or gang activity warrants their being sent to another state—which we are looking at for 200 inmates—that is also going to control behavior dramatically. I am hoping to use that to control the gang behaviors.

My biggest concern is that you are seeing these inmates with autism, Asperger's, dyslexia, and low IQs being extorted by these gang members, and we need to stop that. When I start doing segregation effectively, when I start getting the inmates who are causing these extortion efforts out of state, it is going to slow down or eliminate a lot of the gang activities and create less victimizing of the offenders that are vulnerable. Those behaviors will be adjusted by how we are going to handle segregation. I was involved in the solitary confinement research with ASCA and saw that reduction in segregation. You could follow Colorado to a T. Their system is one of the best in the country with how they handle inmates going to segregation and how it changes behavior to be positive rather than negative. We need to start addressing the reason for the behavior and not treat all behavior exactly the same by just putting them in isolation.

There is a lot for the state to learn about this. I am going to do a lot of educating of the staff. They are starting to see the effects of this—a reduction in segregation has already been dramatic just in the last two months. When we reduce our segregation, we monitor the violence and discipline rates, and they have already gone down. We reduced our segregation and discipline, and behavior problems have already been better.

Assemblywoman Tolles:
Do you have cases where inmates may voluntarily want that segregation for longer periods of time for a variety of reasons? Perhaps they do not fit into those slots that we have discussed so far in terms of programs. It is not necessarily discipline, they are just asking for that.

James Dzurenda:
I wish there was a quick answer to this, but I could give you tons of scenarios. For inmates who have been in long-term segregation without socialization, when you try to get them out into the population, they are petrified. They are going into situations where they have never seen certain gangs or gang activities because they have been in isolation for 10 to 15 years. When you put them in a position like that, they are not going to want to be in there. That is why in the procedures that were recently approved through the Board of Prisons we have step-down units. Step-down units will get inmates who have been in long-term segregation and do not want to leave into "behavior modification units." Those will slowly socialize them by getting them around a smaller group of inmates before they go into general population where there are 100. It will try to reduce their fears before they go in by teaching them about the gangs, the manipulation aspects, what they can do when gangs start approaching them and extorting them, and how to get themselves out of these situations rather than cause bad behaviors because they want to go back into segregation.

The other piece is administrative segregation, which is still a form of isolation but it is temporary. It is for those inmates who have testified against staff, against other inmates, or in the public against other criminals. Those inmates have a very difficult time getting into

general population because the gangs start targeting them because they are "snitches" who gave information against another offender. You have those offenders who are scared to go into population. They may cause discipline issues to get themselves into segregation. We developed strong protective custody units that allow those inmates other options so that they do not have to continue bad behavior. We put them into housing units with inmates with similar cases, similar histories, and similar issues. We have avenues to get people out of there.

The things that are the most difficult to do with getting inmates to not want to be in segregation are those who have underlying medical issues such as TBI or PTSD. There are a lot of misdiagnoses. We have inmates who have a history of autism who do behaviors to be accepted. They want to be in segregation because it makes them feel like they are a tougher inmate and they will be more accepted by gangs. They think, "I should do bad behaviors so they will think I am cool. I am going to be one of them." We are treating those inmates differently so we can teach them why it is not a good idea to do what they are doing, how to change that behavior so they can be successful, and why being successful is more important than being in the gangs.

There are a lot of reasons why inmates try to get into segregation that we do not understand. You have to look at it as an individual treatment plan for every offender in segregation to find out the reasons why he got there and how you address that individual's reason. I could give you 100 different reasons of why they got in there—because they are scared, they wanted to, or they just have uncontrollable behavior. If we do not address those individual behaviors, we are going to have more people going into segregation that should not be. We can also provide more options to make them more successful.

What we have to make sure everybody understands is that 88 percent of these offenders are going home in the next 16 years. They are going back out into the community. Segregation and long-term segregation, with the way we are handling this by not treating those behaviors individually, makes them go back into the community with those behaviors still untreated. We are going to see those behaviors continue in the community, which is devastating to the victims in the community and our safety.

Holly Welborn:
I would also like to address that question very quickly. What Director Dzurenda laid out really describes some of the problems that are associated with people volunteering themselves into solitary confinement. Section 3, subsection 2 does provide that a person can make that request if they feel that they need to do so in order to protect their safety. It then goes through a specific process so they can do that.

Assemblywoman Tolles:
I did see that, but I noticed that it was only for the duration of the threat specifically. That is why I asked the question about if there were other circumstances, even if it is just sensitivity to outside stimuli and the need for quiet as opposed to disciplinary. I appreciate the treatment approach that the Director spoke of. That leads into my second question.

I heard this in testimony, but I am wondering if it is in the bill. Is there discretion that is specifically outlined? In response to the question about the maximums, you stated there may be times for the Director and the Department of Corrections to have discretion over those maximums. Is there a process for that discretion and the documentation of that? We need to protect the intent of this bill if that discretion is used to go beyond those maximums at times where it may be appropriate. Did I miss that in the bill, or is it somewhere else in statute?

James Dzurenda:
It is in our administrative regulations, not in the bill. If the inmate participates, maintains good behavior, and does what he is told to do in segregation, the inmate will be released on or before those maximum times. If you see behaviors while they are in segregation, by the administrative regulations those officers will be writing them another disciplinary infraction—they will be writing an incident report. If they make a threat, that is an infraction. That continues to add additional time, but it is a separate incident. The officers continue to monitor their actions. If their actions warrant longer than the maximum time, then they write them up with another infraction. Those infractions go through the same due process with a hearing. They stay in segregation for that infraction. If they are doing what they are supposed to do—no threats, no assaults, no "fluid throws," or any bad behavior—they will come out of there. The staff has options through our administrative regulations to continue past the maximum with additional charges. The officers will still be protected and be able to encourage good behavior, but also to increase segregation if they have to.

Assemblywoman Tolles:
I would like to revisit clarifying language to have that in this bill, not just in regulation, simply out of concern for protecting against unnecessary lawsuits. I can take that offline.

Holly Welborn:
I do want to get back to why this bill is necessary. We talked about the study that was mandated by S.B. 107 of the 77th Session. It consisted of 19 indicators regarding the use of segregation that the Department of Corrections was required to study and present to the Advisory Commission on the Administration of Justice. In February 2017, we issued a report called "Unlocking Solitary Confinement" (Exhibit C). I delivered a copy to most of your offices yesterday. This report is in response to the Department of Corrections' inability to comply with the statutory requirements of that study due to the reporting requirements. The Director at the time specifically said, on the record on multiple occasions, that solitary confinement does not exist in the Nevada prison system, that it is not happening, and that the American Civil Liberties Union (ACLU) and other advocacy organizations that were fighting on behalf of Nevada inmates were lying. This was our response. We teamed up with the Nevada Disability Advocacy and Law Center, Solitary Watch, and our national solitary reform project and issued this report. We surveyed 281 inmates and based our report on the results. It revealed the stories from their prospective and very telling statistics of what those individuals were facing. It was not until Director Dzurenda took over that there was finally an acknowledgement by the Department that isolation was being overused in the NDOC.

This is a huge problem requiring a statutory change. We do not know when there will be another change at the department level and regulation is not enough to keep oversight on these practices.

Another reason for this bill is for the state to avoid litigation. There is Supreme Court precedent set in *Davis v. Ayala* [576 U.S.___(2015)] where it said that "In a case that presented the issue, the judiciary may be required, within its proper jurisdiction and authority, to determine whether workable alternative systems for long-term confinement exist, and, if so, whether a correctional system should be required to adopt them." This has been used in multiple cases in federal court—23 cases, in fact—that have been ruled in our favor regarding the way people are being isolated, whether they be juveniles or seriously mentally ill. There are inmates who enter the prison system and leave solitary confinement after a 15-year prison sentence with mental health issues that they did not have before they got in there. These are all violations of the Eighth Amendment of the *Constitution of the United States*. We need to make a statutory change in order to protect the Department from large, class action litigation.

That is where we were going with drafting this report. It was not until Director Dzurenda took over, made serious changes, and showed an effort to reform solitary confinement in the prison system that we have been able to work together. It is a new era. We have worked together tirelessly on this language to get to a point that can work for Nevada, can protect the Department, and can protect the inmates.

Chairman Ohrenschall:
Director Dzurenda, in section 3, subsection 7 of the bill is the definition of "offender with serious mental illness or other significant mental impairment" something you are using right now? If so, how many offenders might fit that description?

James Dzurenda:
Our definition for seriously mentally ill will probably be changing again. Nationally, you could pull out ten different agencies and they will have ten different definitions for seriously mentally ill—it is that complicated. What I want to do is match what we are using with the Department of Health and Human Services so that I can have continuity in care for them going from the prison to the community with the same definition and ruling. When I had segregation evaluated at the Ely State Prison, our definition fit 88 offenders in segregation for long-term purposes at the time. Those were just individuals identified in segregation. Currently we have about 3,600 male inmates on psychotropic medication. Of those, my guess would be that one-third are seriously mentally ill.

We were originally using two different definitions, almost like we were two different states—the south was using one definition and the north another. We are reevaluating all of our offenders for their mental health. I just hired a statewide mental health director—she is coming from the East Coast. She is a psychiatrist who is going to standardize all of this. Right now, even our mental health staff is confused on delivery since we do not have a mental health delivery system in the Nevada prison system. The National Institute of

Corrections out of Aurora, Colorado is going to be coming to the state. We were offered a grant for technical assistance to develop a mental health delivery system, which will address a clear definition for seriously mentally ill.

I know we had 88 in segregation at the time. Statewide, I would guess we have 300 to 400.

Chairman Ohrenschall:
That is 300 to 400 currently in segregation?

James Dzurenda:
No, sir. We have no one in segregation now. I stopped all of that about two months ago. I pulled everyone that was seriously mentally ill out of segregation. I made a change in our administrative regulation that they cannot be put back into segregation. They go to a mental health crisis unit in Carson City at the Northern Nevada Correctional Center where they will be treated for their mental illness. It is the same thing with TBI, PTSD, Alzheimer's, and other medical diagnoses—they will not be placed into segregation. They will be treated for their illness. If we have to decrease their amount of out-of-cell time, a medical doctor or psychiatrist will make that determination based upon the immediate safety of the staff, inmates, and the individuals themselves.

Assemblywoman Krasner:
You did say that even though section 3, subsection 6 states the maximum times required, there is some discretion by the Department and the guards, and an imposition of another period of segregation can be placed on somebody who continues to act in a way that is not in the best interest of himself and everybody there, correct?

James Dzurenda:
Yes, but there has to be another issuance of a disciplinary infraction or incident that says so. The officer cannot arbitrarily put an inmate in additional time in segregation. It has to be specific behavior while in segregation such as making a threat to a staff member. That staff member is obligated to report and write an infraction on that threat, which can increase their time in segregation. They are not making a threat and getting put back into population. It has to be some type of a written report or infraction that says the inmate's behavior warrants longer terms in segregation—it cannot be arbitrary. It must be a specific action.

Assemblywoman Krasner:
I do not see that written in statute. I wonder if you would be okay with adding language that states what you just said to the bill.

Chairman Ohrenschall:
Director Dzurenda is here in neutral. The sponsor is Senator Spearman. That might be a conversation to have offline.

Assemblywoman Krasner:
Director, would you be okay with that in principle?

James Dzurenda:
I have already approved that, and it is the current language in the Department of Corrections administrative regulations. There are a lot of things in our regulations that are not in this bill. That is in the regulations already drafted and that staff have to follow.

Assemblywoman Tolles:
You stated that we have no one currently in segregation. Those 88 inmates from Ely are now in a mental health unit. Could you describe for us what that mental health unit entails as opposed to segregation?

James Dzurenda:
Those inmates are evaluated, removed from segregation, and they go to the Northern Nevada Correctional Center where the majority of our mental health staff is consolidated. They do an assessment when they get there to determine the causes of their behavior. They will then classify them in the mental health unit, whether they are acute, require continued monitoring, or need changes in psychotropic medication. Mental health staff determine that. There are stages in those units when they go to Carson City. They develop a Global Assessment Functioning score on each of those offenders that lists the seriousness of their mental health condition. They will then be placed in a unit with inmates with similar conditions. Mental health staff will treat their conditions whether that requires changing their medication, giving them psychological therapy, or whatever they need.

The psychiatrist can determine how much out-of-cell time that inmate can have based upon the diagnosis and treatment. If the psychiatrist believes an inmate who just came from segregation is still violent because of their mental illness or needs to be controlled on their medication because they had stopped taking it, they can still be detained in their cells for periods of time to be determined by the psychiatrist as a means of treatment and safety, not by custody staff. That is part of a treatment plan. If they believe that person is going to be dangerous outside of their cell, that psychiatrist will keep them in their cell, do their therapy, and change or get them on medication at cell-side until they can slowly increase his socialization.

Just because they go to a unit does not mean they are going to be completely out of their cell. It is going to be considered under a treatment plan by mental health professionals, not by the custody staff. There are still options for those who are violent. If you have an inmate who has stopped taking their psychotropic medication and has become extremely violent, you have to get them stabilized on that medication before you start letting them out into a tier unit or with other inmates. That is for the psychiatrist to determine. The custody just provides the safety and security piece around it with restraining the inmate, watching the inmate, and monitoring the inmate once he gets out of his cell. It is part of a treatment plan; it is not custody determined.

Chairman Ohrenschall:
Is there anyone who would like to testify in support?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I am here in support of the reprinted version of this bill. I appreciate the ACLU listening to some of our concerns. We were in support in the Senate, but we did recognize some areas where we had some concerns. Ms. Welborn listened to those concerns, and we are going to be working with her during the interim to address any shortfalls within the Clark County Detention Center (CCDC). The Clark County Detention Center is a whole different animal than the Department of Corrections. Either the folks in our system are there awaiting trial or they have been sentenced to 364 days or less. We have unique challenges at CCDC. We have a large volume of folks in and out. We often do not immediately know the mental health status of those folks. You have heard other bills regarding that.

We have to balance the safety and security of all inmates, not just the inmates who might pose a threat to themselves or others, but also inmates with whom they might be placed in a cell with. You may recall that we had an incident a few years ago where one inmate killed the other inmate in his cell with a small pencil that he had been given to write a letter. We do have an obligation to protect people, and sometimes we have folks that come in who are rival gang members; we have celebrities, we have officers who have been arrested and booked, we have people in protective custody who may be "snitches." There is a liability. If you had one of your loved ones booked into CCDC for an unpaid traffic violation and they were going to be there over the weekend, and we stuck someone with severe mental illness in the cell with them who is telling us that they are going to kill the next person they see just because the law prohibits us from putting someone with severe mental illness in protective custody or segregation, that would be a concern. We are in support of the current draft of the bill and look forward to working with the ACLU in the interim on concerns about how we operate at CCDC.

Chairman Ohrenschall:
Do you have any current statistics from CCDC as to how often solitary confinement is used, how long it lasts, if it is used on folks who have acute mental illness or as a punishment?

Chuck Callaway:
I put out a request for those numbers this morning to our CCDC staff, but I have not yet received those numbers. I will provide them to you as soon as I get them. We follow pretty much the same protocol as the Director described—what is in federal law through U.S. Department of Justice recommendations. In most cases, even if someone is in protective custody or segregation, those holding cells are identical to the cells that contain more than one inmate. Often there is a misconception—I call it the "*Cool Hand Luke* misconception"—where somebody has a burlap bag over their head and they are put into a tiny box where they cannot stand up or sit down, they cannot see daylight, and their food is slid in underneath the door for them. That is not the case. They are in a holding cell that is identical to the holding cell that inmates would be housed together in; they are just alone. They are also allowed the same amount of time outside of their cell as inmates in general

population are. We follow the same administrative procedures so it is not used for discipline; it is used for protection and safety of inmates. I will get you those numbers as soon as I get them.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We are in strong support of this bill and urge the Committee to support it as well.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
We, too, are in strong support of this bill. We appreciate the due process protections built within the measure in section 3. We commend Director Dzurenda for his efforts to improve the conditions for all of the inmates at the Nevada Department of Corrections.

Carrisa Tashiro, Rights Attorney, Nevada Disability Advocacy and Law Center:
The Nevada Disability Advocacy and Law Center (NDALC) is the federally mandated protection and advocacy agency for individuals with disabilities in Nevada. We collaborated with Ms. Welborn at the ACLU as well as Solitary Watch to gather survey data and produce the report that she distributed to you (Exhibit C), "Unlocking Solitary Confinement." We share Ms. Welborn's concerns regarding the overuse of solitary confinement, especially with respect to inmates with mental illness, intellectual disabilities, and traumatic brain injury. I am here today to strongly support S.B. 402 (R2).

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We are also in support of S.B. 402 (R2).

Chairman Ohrenschall:
Is there anyone who would like to testify in the neutral position? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] I would invite the presenter back up for any concluding remarks.

Holly Welborn:
I will work with this Committee on language regarding those time limits. I want to let you know that this passed the Senate Committee on Judiciary unanimously and it passed the Senate 17 to 4. I feel that some of the human connection may have been lost in this hearing. As lawmakers, you have to make practical policy decisions, but we are still talking about human beings. I have spent a considerable amount of time with these human beings during my time with the ACLU. This practice is considered torture by the United Nations. In fact, the United Nations does not recommend isolation over 15 days. When we are talking about a bill that goes up to 365 days, we are making a significant compromise in order to work with the NDOC.

I want to leave you with an excerpt from our solitary confinement report (Exhibit C):

> Chip has a mental illness, and says that he requested counseling but received no treatment while in segregation. He says solitary "had a very negative effect on my mental health."
>
> "Every time I hear a door open, or the sound of keys, I immediately jump up and run to my cell door in defense mode because I don't trust the prison guards or inmates," he wrote. "I always feel like they might attack me or kill me…so I keep my shoes on at all times and I am up very early so that I am not attacked in my sleep."
>
> "I don't trust anyone anymore…not even my own family members. I am always feeling sad, depressed, lonely, in danger, and I am very irritable…I can't function well. I can't sit…I don't laugh and socialize with others that well no more and I don't have a good sense of humor anymore. I am a very good person, I don't want to harm anyone…But after spending all those years at Ely maximum security prison I've become mentally, spiritually, and emotionally damaged/scarred!"

I will leave you with that.

Chairman Ohrenschall:
I have learned that sometimes you do not get revolution, you get evolution. There is a lot of compromise on these bills and it might not be everything you have hoped for, but it is still landmark legislation.

Director Dzurenda, I have one more question that I had neglected to ask you. Right now at the NDOC, what kind of reporting is there as to inmates who are held in solitary confinement, and how do you see that changing should S.B. 402 (R2) pass into law in terms of the public's right to know how many inmates are being held in solitary confinement, for how long, and for what reasons?

James Dzurenda:
Right now we have the Vera Institute of Justice out of New York City monitoring that data and providing us the appropriate data points that we are going to continue to keep track of—the number of inmates in segregation each week and each month; the number of disciplinary infractions that are issued by staff each day, each week, and each month. All of those will be tracking points on data points. We will be able to see how it plays a factor in safety. We are going to use data points to be able to see if violence has gone up or down when this became effective. Has the amount of segregation increased or decreased? Has the amount of treatment for offenders increased or decreased? All of those data points have to be tracked to see if this is successful. I need those data points to be able to show the staff visually so they know that with the implementation of this they should feel safer. Those are going to be important for selling the regulations long-term so that staff can see that this is something that is going to be for theirs and other's safety.

Chairman Ohrenschall:
We are impressed that the Vera Institute decided to come in and work with the NDOC. When that project ends, will the NDOC continue to report as to solitary confinement, regardless of whether this bill passes?

James Dzurenda:
I was shocked coming into this agency that we were not already using data points like this. I have always come from agencies where data is the only way to show success or to show that things need to be improved. I am trying to introduce—I have already started doing tracking points and education to our staff and wardens—what is called "CompStat." CompStat was started in New York City by Mayor Giuliani. It is used to track data inside of the city to help police officers determine whether they have to concentrate services in certain areas because it is becoming more violent or whether what they are doing is successful. If we could do that inside facilities to show what facility is improving the most, I can use that facility to teach the others how we did what we did to improve security. I can also watch data points, and the wardens will be able to determine if their facility is becoming more violent and ask, "What do I have to do to change that violence and make it safer for staff?" Data is extremely important for staff safety. They have never used that in this agency, but that is what I am used to, and that is the direction I am taking the agency. They see it, it is visual to everybody, and data will not lie because it is coming from factual reports from the staff themselves.

Chairman Ohrenschall:
It is useful to us as policy makers, too.

[All items submitted but not discussed will become part of the record: (Exhibit D), (Exhibit E), and (Exhibit F).]

We will formally close the hearing on Senate Bill 402 (2nd Reprint). Would anyone like to give public comment? [There was no one.] This meeting is adjourned [at 11:20 a.m.].

RESPECTFULLY SUBMITTED:

_____
Erin McHam
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a document titled "Unlocking Solitary Confinement: Ending Extreme Isolation in Nevada State Prisons," dated February 2017, by the American Civil Liberties Union of Nevada, Nevada Disability Advocacy and Law Center, and Solitary Watch, presented by Holly Welborn, Policy Director, American Civil Liberties Union of Nevada.

Exhibit D is a letter dated May 30, 2017, in support of Senate Bill 402 (2nd Reprint) to Chairman Ohrenschall and members of the Assembly Committee on Corrections, Parole, and Probation, authored and submitted by Holly Welborn, Policy Director, American Civil Liberties Union of Nevada.

Exhibit E is written testimony dated May 31, 2017, in support of Senate Bill 402 (2nd Reprint), authored and submitted by Janette Dean, Private Citizen, Carson City Nevada.

Exhibit F is a copy of an email containing a link to a video, dated May 30, 2017 from Mercedes Maharis to the members of the Assembly Committee on Corrections, Parole, and Probation, in support of Senate Bill 402 (2nd Reprint).