

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session
May 30, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:35 p.m. on Tuesday, May 30, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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 Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

GUEST LEGISLATORS PRESENT:

Assemblyman William McCurdy II, Assembly District No. 6
Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1
Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Alanna Bondy, American Civil Liberties Union of Nevada
Sean B. Sullivan, Office of the Public Defender, Washoe County
John J. Piro, Deputy Public Defender, Office of the Public Defender,
Clark County

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Chuck Callaway, Las Vegas Metropolitan Police Department
Rick McCann, Executive Director, Nevada Association of Public Safety Officers;
Nevada Law Enforcement Coalition
James Dzurenda, Director, Department of Corrections
John T. Jones, Jr., Nevada District Attorneys Association
Holly Welborn, American Civil Liberties Union of Nevada
Sophia Romero, Legal Aid Center of Southern Nevada
Don Soderberg, Director, Department of Employment, Training and
Rehabilitation

CHAIR SEGERBLOM:

We will open the hearing on Assembly Bill (A.B.) 303.

ASSEMBLY BILL 303 (1st Reprint): Requires that core correctional services be provided only by the State or a local government with certain exceptions. (BDR 16-1103)

ASSEMBLYWOMAN DANIELE MONROE-MORENO (Assembly District No. 1):

Assembly Bill 303 requires core correctional services—defined as housing, safeguarding, protection and disciplining prisoners—be provided only by State and local governments ([Exhibit C](#)). The duties must be assigned to correctional staff who are certified under the Nevada POST as certified category II or III officers.

As a retired correctional officer, I have seen the need for improved services and reform in our criminal justice system. There are no private, for-profit or local correctional facilities in Nevada. There is one federal facility in southern Nevada that A.B. 303 does not involve. The bill will ensure private, for-profit corporations do not set up operations in the State by taking over existing governmental entities or building new private facilities.

Nevada has tried unsuccessfully to use private companies to manage adult and juvenile facilities. Assembly Bill 303 is the result of learning from that mistake and choosing not to repeat it. The main focus of a correctional facility should be to ensure public safety while maintaining a safe, humane environment that provides rehabilitation services and prepares inmates for successful reintegration into society. Inmates are given the tools they need to properly address, treat and manage behavioral health issues, and to attain educational goals and job skills training to aid in self-improvement. This will reduce recidivism. The

mission of the State should be to put people ahead of dollars, which A.B. 303 does.

CHAIR SEGERBLOM:

I have read the State is considering sending inmates out of state. Would the bill affect out-of-state private prisons?

ASSEMBLYWOMAN MONROE-MORENO:

My initial goal was to outlaw private prisons immediately. However, Department of Corrections (DOC) Director James Dzurenda expressed his need to move some prisoners out of state. Nevada's prisons are overcrowded to the point of ordering "boats." They are plastic, boat-shaped beds with mattresses placed on the floor. Officers have to walk through inmates in regular beds but now have to maneuver around the boats. This is not a safe condition for workers or inmates.

Director Dzurenda and I reached a happy medium, [Exhibit C](#). Two DOC facilities need to be refurbished, which will take an estimated two years. I gave DOC a five-year sunset window to get those facilities up to par. The bill will go into effect July 1 for city, county and local jails.

ALANNA BONDY (American Civil Liberties Union of Nevada):

The ACLU of Nevada supports A.B. 303 because private prisons are bad for the State. There is serious lack of accountability because private prisons are only beholden to their shareholders, not the public. Their focus is maximizing profits, not rehabilitation and community safety. Private prisons are paid according to the prisoners they house and often negotiate inmate quotas into contracts. That results in an incentive to produce more inmates but not curb recidivism.

Private prisons are not government entities, so are not subject to public records laws. They censor the information that the public may access. CoreCivic, Inc., the largest corrections company in the Nation, has been embroiled in several scandals for falsifying records and data related to private prison conditions, staffing and inmate deaths.

One of the main ways private prisons reduce cost is by cutting staff. They typically staff facilities with fewer employees than does the public sector, pay lower wages, offer fewer worker benefits, provide less training and leave unfilled positions vacant for long periods, often in violation of government

contracts. The result is significantly higher turnover rates than in public sector prisons.

There are more safety and human rights concerns in private prisons. There are higher rates of inmate-on-inmate and inmate-on-staff assaults, likely due to understaffing and inadequate training. Inmates released from private prisons have higher recidivism rates due to lack of rehabilitation programs. Several private prisons have had rioting and escapes due to inadequate staffing and security. They have been subject to lawsuits based on inhumane and unsafe living conditions and lack of medical care. The ACLU has been involved in recent cases of this nature.

Proponents of private prisons often cite cost savings as the reason states may want them, but this is questionable. Evidence of savings is mixed, and studies that show savings are often financed by the private prison industry. Private prisons may indeed have reduced costs based on unsafe staff reductions, providing inadequate health care and offering fewer rehabilitation programs. They often cherry-pick inmates, which distorts cost comparisons between public and private sector prisons. Private prisons often select prisoners with fewer medical and mental health problems and reject maximum-security and death row inmates. Because private prisons take inmates who are relatively inexpensive to house, state facilities are left with more costly inmates. Some private prisons have a cap on medical expenses, with expenses above that paid by the state.

SEAN B. SULLIVAN (Office of the Public Defender, Washoe County):
The Office of the Public Defender, Washoe County, supports A.B. 303.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender,
Clark County):
The Office of the Public Defender, Clark County, supports A.B. 303.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
The Las Vegas Metropolitan Police Department (LVMPD) supports A.B. 303.

RICK McCANN (Executive Director, Nevada Association of Public Safety Officers;
Nevada Law Enforcement Coalition):
The Nevada Association of Public Safety Officers and the Nevada Law
Enforcement Coalition support A.B. 303.

JAMES DZURENDA (Director, Department of Corrections):

There is no fiscal note attached to A.B. 303. When the DOC contracts for out-of-state inmates, we determine which people go, not the receiving facility or company. We dictate what programs inmates do, not the company. The DOC ensures the contract says the receiving facility will offer everything to inmates that Nevada does, including videoconferencing visitation so prisoners remain connected to their families, friends and communities.

SENATOR HARRIS:

Assemblywoman Monroe-Moreno said the DOC has a five-year window in which to refurbish two facilities. Are there plans under way to upgrade for safety, and what will that cost?

MR. DZURENDA:

The Southern Desert Correctional Center's Building 8 houses 200 inmates who must be immediately removed because the foundation of the building is cracking and there are some sewage issues. A refurbishment of the areas that need immediate improvement will cost about \$10 million. The work will be guaranteed to last five years, until we either refurbish other parts of Building 8 or build new facilities. We are in the planning stage for dormitories at the Northern Nevada Correctional Center and secured housing units at Southern Desert. Our goal is to return the inmates to the State, but I have no control over our entries and releases to other states or over parole and probation.

CHAIR SEGERBLOM:

We will close the hearing on A.B. 303 and open the hearing on A.B. 327.

ASSEMBLY BILL 327 (1st Reprint): Revises provisions relating to records of criminal history. (BDR 14-658)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

Assembly Bill 327 seeks to remedy the State's cumbersome sealing of former inmates' records. In August 2016, there was a record-sealing clinic at the Doolittle Community Center in Las Vegas presented by the Legal Aid Center of Southern Nevada. We brought in everyone involved in record sealing: district attorneys, defense attorneys, judges, the Central Repository for Nevada Records of Criminal History, Legislators and the LVMPD. Public demand was greater than anticipated with lines out the door. We worked for many hours only to find many people still could not get their records sealed. A result of that clinic was a

desire to root out problematic areas in the record-sealing statute, *Nevada Revised Statutes* (NRS) 176A.870, to make it more equitable and fair for all involved.

CHAIR SEGERBLOM:

Does the bill allow district court judges to oversee the sealing process so they can deal with all of the municipal and juvenile courts?

ASSEMBLYMAN YEAGER:

Yes. We refer to that as the "superseal," which gives district courts the ability to seal records from justice, municipal and juvenile courts. Currently, if someone has a conviction in those various jurisdictions, he or she would have to go to eight or nine different courts.

SENATOR GUSTAVSON:

How many other states are doing something similar to the requirements in A.B. 327?

ASSEMBLYMAN YEAGER:

I do not know. The record-sealing process is more cumbersome than that of other states.

MR. PIRO:

Some states are more stringent than Nevada; some are less stringent.

ASSEMBLYMAN WILLIAM MCCURDY II (Assembly District No. 6):

Assembly Bill 327 authorizes a person who has been dishonorably discharged from parole or probation to apply to the court for the sealing of records relating to his or her conviction. Current law provides dishonorably discharged parolees or probationers are not entitled to that privilege.

Everyone makes mistakes, and no one is immune to life's trial and tribulations. A mistake should not result in a life sentence. One mistake may affect your chances of having a good future for you and your family. Having a criminal record will make it difficult to find a job because many employers and professional organizations conduct background checks. Landlords and loan officers also research criminal records.

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CHAIR SEGERBLOM:

Does this include restoration of the right to vote?

ASSEMBLYMAN MCCURDY:

No, that is part of another bill this Session.

SENATOR ROBERSON:

If someone has been convicted of a crime, what conditions must be met to have the records sealed?

MR. PIRO:

Currently, you have to meet the time required to seal the record and have an honorable discharge from probation or parole. If you did not get probation because the judge did not think you were fit for it and sent you to prison, you can get out and seal your record. Let us say you get probation but are still addicted to drugs. Your probation is revoked, and you get a dishonorable discharge. Time passes and you change your life. Under current statute, you will never be able to have your records sealed. When I taught record-sealing classes at the Legal Aid Center of Southern Nevada, I had people who had messed up their lives 20 years ago, but because of a dishonorable discharge still could not have their records sealed.

SENATOR ROBERSON:

Does the time required before sealing differ based on the crime?

MR. PIRO:

Yes. Section 7, subsection 1, paragraph (a) of A.B. 327 changes the times when record sealing may commence. Ten versus 15 years must pass for a Category A felony violent crime or home burglary. In paragraph (b), Category B, C or D felonies require 5 versus 12 years before sealing. A Category E felony and gross misdemeanors are two versus seven years; and misdemeanors are one year versus two years, except for certain enumerated crimes like stalking, harassment or battery.

SENATOR ROBERSON:

What change from current law are you proposing for violent misdemeanors?

MR. PIRO:

It would remain two years in the bill.

SENATOR ROBERSON:

This Committee just passed a bill that provides if you are convicted of stalking yet pose an ongoing threat to the victim, you lose your right to own a firearm forever. I supported that bill. Now you are saying you can have that stalking conviction record sealed. Is that correct?

MR. PIRO:

Yes.

SENATOR ROBERSON:

For someone convicted of a Category A felony, including murder, in ten years that record can be sealed, correct? I have a real problem with that.

MR. PIRO:

That would be 10 years after sentencing, so if you serve 30 years in prison for murder, 10 years later you can apply for record sealing. Of course, that does not mean the judge will grant it.

SENATOR ROBERSON:

A murder conviction should follow you for the rest of your life.

ASSEMBLYMAN MCCURDY:

I respectfully disagree with the Senator. No one is perfect. Current NRS provides record sealing after 15 years, but we decided 10 years would be more appropriate. As Legislators, it is incumbent that we consider our community. We say we want to reduce recidivism, give people the opportunity to move on with their lives and to reintegrate back into society and with their families. It is contradictory to say the stigma of many crimes should be a life sentence that forces people to become lepers. People have done their time and paid their debt to society. We need to keep that window of opportunity open so they know their lives are not over just because they made a mistake. Nevada accepts second chances. That is the precedence we should set for our State and other states to pursue.

SENATOR ROBERSON:

I understand the Assemblyman's perspective and do not support the current law. Murders or rapists should not have their records sealed after 15 years. The pain never goes away for victims' families. The statement that a murderer

should not be considered a leper for the rest of his or her life is wrong. We fundamentally disagree.

MR. PIRO:

Sex offenders can never seal their records and are subject to lifetime supervision.

SENATOR ROBERSON:

If this bill becomes law, people who kill other people will have that fact wiped away ten years after their release.

MR. PIRO:

It is a "may," though.

SENATOR HARRIS:

I understand how record sealing is important for employment and housing. However, how does it affect an inmate's ability to get firearms back?

MR. PIRO:

That right is never returned for certain crimes.

SENATOR HARRIS:

How do we seal records that keep that prohibition, respecting that people have the opportunity to seal records like their crimes never happened?

MR. PIRO:

The FBI would have to keep track of that through background checks.

SENATOR HARRIS:

Could people with sealed records become guardians? I believe people can fundamentally change, but there are high-risk jobs. How clean is your sealed record? What does and does not follow you?

MR. PIRO:

There are certain State agencies, including the Nevada Gaming Control Board and State Board of Nursing, that look beyond a sealing. It would be prudent for whatever agency oversees guardianships to do so.

CHAIR SEGERBLOM:

All the crimes we have discussed can be sealed under current law. The question is how quickly. Assembly Bill 327 makes the process simpler. People with multiple arrests and misdemeanors have to go through many different courts to get their records sealed.

MR. PIRO:

That is correct. The bill does not make sweeping changes to NRS. It provides for a one-stop shop for courts to clear records. A change the bill makes is to allow people with dishonorable discharges to have a chance to seal records without the rebuttable presumption attached to that.

SENATOR CANNIZZARO:

In section 8, subsection 1, paragraph (b), subparagraph (2) of Assembly Bill 327, record sealing may begin eight years after the arrest if the prosecution decided to not move forward or charges are dismissed. What is the reason behind the change from ten to eight years?

ASSEMBLYMAN MCCURDY:

I do not know.

JOHN T. JONES, JR. (Nevada District Attorneys Association):

The Nevada District Attorneys Association supports A.B. 327. Caselaw surrounding sealing is clear that when judges review requests, they need to ensure defendants have been rehabilitated. When a judge grants a petition to seal, the court looks at whether the defendant has changed his or her behavior. If, over ten years, someone keeps racking up new offenses, the chances of a judge sealing his or her case decrease exponentially with each offense. The chances the prosecutor will stipulate sealing also decrease.

CHAIR SEGERBLOM:

Would the prosecutor always be involved with and notified before any attempt to seal records?

MR. JONES:

Yes. In cases when prosecutors do not feel defendants have been rehabilitated or, based on the nature of the offense, the ten-year limitation is inappropriate, prosecutors can make recommendations to judges. Ultimately, the judge

decides. For individuals who have made one mistake, the process is expedited and they can move on with their lives.

SENATOR HARRIS:

At a hearing with a petition for sealing, does the judge make a specific finding the petitioner has been rehabilitated?

MR. JONES:

That is true in contested cases. Under the bill, prosecutors and defendants will stipulate to the sealing and, if so, I do not know if the judge would make that finding.

SENATOR HARRIS:

How many cases are stipulated?

MR. JONES:

I do not know.

SENATOR HARRIS:

What would happen if the Committee required that finding be made before a sealing could occur?

MR. JONES:

That already happens.

MR. SULLIVAN:

The Office of the Public Defender, Washoe County, supports A.B. 327. It will streamline the sealing process and help offenders reintegrate into society. As a public defender, my former clients call to say, "Mr. Sullivan, when can I move to seal my records? I've done my prison time and am discharged from probation. I am getting back together with my family and now clean, sober and rehabilitated. Please let me know when is the best possible time that I can move the court to seal."

HOLLY WELBORN (American Civil Liberties Union of Nevada):

The ACLU of Nevada supports A.B. 327. I have a chart ([Exhibit D](#)) comparing judicial expungement sealing in the 50 states. The bill is not the most radical proposal; indeed, it is quite measured. Its language works for both victims and people who have been rehabilitated and are seeking second chances.

SOPHIA ROMERO (Legal Aid Center of Southern Nevada):

After the August 2016 clinic, the Legal Aid Center of Southern Nevada has worked to seal the records of those who had signed up. However, due to the sheer volume, we have been unable to seal most of the records. Through A.B. 327, the process will be greatly improved and many people will benefit. Even though the Office of the District Attorney, Clark County, has signed off on record sealings, many judges have set hearings for them. Typically, the district attorney says there are no objections to the sealing and then the judge questions the petitioner. The judges are thorough when asking what people have done to change their lives with anger-management classes, counseling or 12-step programs. One of my clients testified he had become very involved with his church and joined a 12-step program. Even if the sealing is not contested and the district attorney agrees the record should be sealed, the judge has the discretion to set a hearing and require testimony from the defendant about why the records should be sealed.

MR. CALLAWAY:

The LVMPD is neutral on A.B. 327. The bill will impact the LVMPD's resources because we do not collect a fee for sealing records. Our staff has to track down incidence reports, seal the information and redact the reports. We would like to see an amendment to allow us to collect a fee for record sealing not to exceed our costs.

Assembly Bill 327 does not include misdemeanor traffic offenses. That could also pose a significant resource issue if LVMPD had to track down records to seal a year after speeding tickets were issued. I have a philosophical issue with dishonorably discharged people being able to seal their records who did not follow rules of the court or judges.

The only way to get your right to possess a firearm is through a pardon, so sealing your records will not do that. A loophole develops when someone's records are sealed but technically he or she is prohibited from owning a firearm. There is no way for an officer in the field to know that.

DON SODERBERG (Director, Department of Employment, Training and Rehabilitation):

The Department of Employment, Training and Rehabilitation (DETR) is neutral on A.B. 327. It is as much a workforce bill as a criminal justice bill. As Assemblyman McCurdy said, it is sometimes hard or impossible to apply for

certain jobs with any kind of felony record. With a number of employers DETR assists with recruiting, there is an absolute bar against applicants with felony records, no matter how long ago, their qualifications or how rehabilitated they may be. Employers looking for workers come to DETR from California, which has a statute that flat-out prohibits applicants with felonies from more than seven years past from being rejected. So, the employers tell us not to send them those applicants.

There are people who appear to have been rehabilitated and are qualified to enter training we have for particular companies. However, DETR cannot send them to the training or interviews due to their felony convictions. There are workforce ramifications with individuals who may be qualified and have turned their lives around not being able to apply for the new jobs coming to the State, while employers are telling DETR they need more qualified workers.

SENATOR ROBERSON:

Is it the policy of DETR or private employers to not hire ex-felons?

MR. SODERBERG:

That is the policy of many private companies. No State agencies, including DETR, have the policy, with the exception of certain types of positions. The DETR has hired people with felony backgrounds.

SENATOR ROBERSON:

My understanding of A.B. 327 is the Legislature is trying to hide felony status from private companies. It is hard for me to wrap my head around that. If you are a felon, you are a felon, which the sealing of records does not change. We are proposing to obscure the fact that companies are unwittingly hiring people who, based on company policy, are prohibited from being hired.

MR. SODERBERG:

Yes. Essentially what you are saying is correct. If someone with a sealed record is otherwise qualified for a job, the company would not know that.

SENATOR ROBERSON:

That is the antithesis of transparency. People in both parties are always talking about transparency. With this bill, we are trying to become less transparent. Especially with businesses hiring in our State, it is wrong to signal we want to limit transparency.

CHAIR SEGERBLOM:

For the record, Nevada already allows sealing of records, and the bill just changes the time frames.

ASSEMBLYMAN MCCURDY:

Mr. Callaway addressed potential fiscal impacts of A.B. 327 and the LVMPD's inability to apply fees. The original bill had a fiscal note from the Department of Public Safety, but it was deemed unnecessary. To address Senator Roberson's concerns, we should definitely allow qualified and willing people to participate in our workforce. If that means we have to look at hiring people with dishonorable discharges, let us do so. After they have served time and waited to seal their records, they should have the opportunity to get on with their lives. We can save the State money while showing people there is a light at the end of the tunnel even if they made a mistake and allow them to become positive contributors to society.

People do not seek to have their records sealed so they can get into trouble again. In the last record-sealing clinic, we saw people who had been out of trouble for more than 20 years who are just trying to move on. They have families and are trying to enter master's degree programs. The burden on their shoulders and the cloud over their heads are preventing them from moving on.

SENATOR FORD:

Assemblyman McCurdy, if it were not for people like you talking about this issue, it would not be addressed. Only one person in this room opposes the bill. Our Country punishes people appropriately but does not overly condemn them. Assembly Bill 327 gives people the opportunity to reintegrate into and become active social agents in society, as opposed to burdens and charges on it. To have a State agency testify that the bill is about employment says wonders about what you are trying to do.

CHAIR SEGERBLOM:

It goes without saying the people who will be helped most by the bill are people of color because they are the most adversely impacted by our criminal justice system. Felony convictions are way out of proportion for them.

We will open the work session on A.B. 181.

ASSEMBLY BILL 181 (2nd Reprint): Revises provisions governing the restoration of civil rights for certain ex-felons. (BDR 14-720)

PATRICK GUINAN (Policy Analyst):
Assembly Bill 181, as addressed in the work session document ([Exhibit E](#)), revises provisions governing restoration of civil rights for certain felons. There are no amendments.

SENATOR FORD MOVED TO DO PASS A.B. 181.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS GUSTAVSON, HARRIS AND ROBERSON VOTED NO.)

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CHAIR SEGERBLOM:
We will open the work session on A.B. 278.

ASSEMBLY BILL 278 (1st Reprint): Revises provisions relating to the support of children. (BDR 11-892)

MR. GUINAN:
Assembly Bill 278, as addressed in the work session document ([Exhibit F](#)), revises provisions relating to child support. There are no amendments.

SENATOR HARRIS MOVED TO DO PASS A.B. 278.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SEGERBLOM:

Seeing no more business before the Senate Committee on Judiciary, we are adjourned at 2:32 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	5		Attendance Roster
A.B. 303	C	2	Assemblywoman Daniele Monroe-Moreno	Fact sheet
A.B. 327	D	20	Holly Wellborn / American Civil Liberties Union of Nevada	Judicial Expungement Sealing Chart
A.B. 181	E	1	Patrick Guinan	Work Session Document
A.B. 278	F	1	Patrick Guinan	Work Session Document