

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session
March 16, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:33 p.m. on Thursday, March 16, 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:

Senator Joseph P. Hardy, Senatorial District No. 12
Senator James A. Settelmeyer, Senatorial District No. 17

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Kathleen Brady, Deputy Attorney General, Office of the Attorney General;
Department of Motor Vehicles, Department of Public Safety
Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General
David Cherry, City of Henderson
Jennifer Noble, Nevada District Attorneys Association

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Alex Ortiz, Clark County
Cesar O. Melgarejo, Veterans Policy Analyst, Office of the Governor
Kyle Davis, Coalition for Nevada's Wildlife
Tyler Turnipseed, Chief Game Warden, Division of Law Enforcement,
Department of Wildlife

CHAIR SEGERBLOM:

We will hear a presentation on the Nevada Sex Offender Registry.

KATHLEEN BRADY (Deputy Attorney General, Office of the Attorney General;
Department of Motor Vehicles, Department of Public Safety):

I represent the Department of Public Safety, which houses and maintains the Nevada Sex Offender Registry. I have an update on the implementation of the Adam Walsh Child Protection and Safety Act of 2006 and the status of litigation surrounding the State sex offender law ([Exhibit C](#)).

Prior to 2007, Nevada adopted and implemented Megan's Law for the registration of sex offenders. The Legislators of the Seventy-fourth Legislative Session unanimously passed A.B. No. 579 of the 74th Session, which changed sex offender registration requirements to conform to the Walsh Act and the federal Sex Offender Registration and Notification Act (SORNA).

The Walsh Act and SORNA were promulgated to protect the public against sex offenders, specifically offenders against children. They established a comprehensive national system of registration. Assembly Bill (A.B.) No. 579 of the 74th Session was intended to replace Megan's Law. Under the Walsh Act, instead of basing offender tiers on subjective determination of risk to reoffend, tier assignments would be based on which crimes individuals were convicted of. Registration and notification requirements were based on offenders' tier classifications.

That change impacts the frequency and procedures for reporting, duration of registration and community notification requirements, including which offenders must appear on the Sex Offender Registry's Website. However, the sex offender laws essentially remain the same with respect to registration duties. Offenders required to register under Megan's Law are still required to register under the Walsh Act. Offenses requiring registration are virtually identical.

The Legislature also passed S.B. No. 471 of the 74th Legislative Session, which imposed certain global-positioning system monitoring and movement and residency restrictions on certain sex offenders. Assembly Bill No. 579 of the 74th Session and S.B. No. 471 of the 74th Session were set to take effect on July 1, 2008. However, the Walsh Act has yet to be implemented in Nevada due to litigation.

Since the enactment of the Walsh Act, sex offenders have sought and received judicial delay of its implementation. The American Civil Liberties Union of Nevada (ACLU) filed a federal lawsuit challenging the constitutionality of A.B. No. 579 of the 74th Session and sought a preliminary injunction barring implementation of the Walsh Act.

The U.S. District Court for the District of Nevada permanently enjoined enforcement of the Walsh Act in *ACLU v. Masto*, 719 F. Supp. 2d 1258, 1260 (D. Nev. 2008), [Exhibit C](#). The Ninth Circuit Court of Appeals reversed the decision in 2012, holding that A.B. No. 579 of the 74th Session was constitutional and did not violate the Ex Post Facto or Double Jeopardy clauses of the U.S. Constitution. A copy of *ACLU v. Masto*, 670 F.3d 1046 (9th Cir. 2012) is in [Exhibit C](#).

The Nevada Supreme Court then considered the constitutionality of A.B. No. 579 of the 74th Session as it applied to juveniles in *State v. Eighth Judicial District Court (In re Logan D.)*, 306 P. 3d 369 (2013), [Exhibit C](#). In an en banc 2013 ruling, the Court held A.B. No. 579 of the 74th Session was constitutional as applied to juvenile sex offenders. The Court found A.B. No. 579 of the 74th Session was rationally related to protecting the public from juvenile offenders, did not violate procedural due process, was not constitutionally vague and did not violate the Ex Post Facto Clauses of the U.S. or Nevada Constitutions.

Following the lifting of the federal injunction and just prior to the implementation of A.B. No. 579 of the 74th Session in 2014, challenges were brought in State court to enjoin enforcement of the Walsh Act. The provisions of the law were again stayed by the Nevada Supreme Court in *Does 1-24 v. Eighth Judicial District Court*, Case No. 64890, [Exhibit C](#). On January 22, 2016, the Court declined prospective injunctive relief and allowed implementation of the Act to proceed.

The State began preparing to implement the Act on July 1, 2016. However, unnamed Doe defendants, Does 1 through 17, submitted a first amended complaint in the Eighth Judicial District Court seeking an emergency temporary restraining order, Case No. A-14-694645-C. After a hearing and reviewing pleadings, the District Court declined to issue the restraining order. Does 1 through 17 filed an emergency writ petition, Case No. 70704, with the Nevada Supreme Court on June 30, 2016, just hours before the Act's implementation. On July 1, 2016, the Court temporarily enjoined enforcement of the Act due to the expedited implementation deadline. The injunction remains in place with no briefing. The State is still implementing Megan's Law for registration of sex offenders.

On June 28, 2016, counsel for Does 1 through 17 filed a complaint, an emergency motion for a temporary restraining order and a preliminary injunction in the Second Judicial District Court, *Does A and B*, Case No. CV 16-01377. The parties stipulated to stay this proceeding on July 20, 2016, pending resolution of the Does 1 through 17 injunction.

In August 2016, the *E.B.* case, No. CV 16-01711, lawsuit was filed in the Second Judicial District Court seeking to enjoin enforcement of the Walsh Act and have it declared unconstitutional. The State denied the preliminary injunction and dismissed the case. The Court ultimately agreed with the State that the Walsh Act does not violate the Ex Post Facto or Due Process Clauses.

The State has won every legal challenge to the constitutionality of A.B. No. 579 of the 74th Session. Following every encumbrance, the Court maintained plaintiffs could not demonstrate irreparable harm and they were unlikely to succeed on the merits of their claims. State and federal courts have decided the Walsh Act does not violate the U.S. or State Constitutions.

CHAIR SEGERBLOM:

Is the State still getting the SORNA money if it is not implementing the Walsh Act?

MS. BRADY:

Yes, SORNA money is attached to the Act being enacted, if not enforced, in the State. However, the amount is reduced.

BRETT KANDT (Chief Deputy Attorney General, Office of the Attorney General):
Throughout this decades-long litigation process, the U.S. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking has deemed the State in substantial compliance with the Act, even though sometimes our enforcement of it was enjoined.

CHAIR SEGERBLOM:

I am concerned about retroactivity. How many identified sex offenders are subject to retroactivity in the State?

MS. BRADY:

What do you mean by "retroactivity"?

CHAIR SEGERBLOM:

The Walsh Act basically said we are going to change offenders' tier levels according to their crimes. At the highest levels, there is no process to reduce them. How many people did that affect?

MS. BRADY:

Tier assessments used to be based on risk. Tier 1 was the lowest risk for reoffense, and Tier 3 was the highest. Now, Tiers 1 through 3 are based on severity of offense. Previously, there were about 300 Tier 3 offenders; now, that total is closer to 3,000.

CHAIR SEGERBLOM:

That is not because there are more offenders. A changed scoring system brought in more Tier 3 people.

MS. BRADY:

Correct. Sex offenders registering under Megan's Law are still also registering under the Walsh Act. The statutes are almost identical as to who must register. A small number of people must register under the Walsh Act who did not have to register under Megan's Law. The chief change was the restructuring of tiers and who is subject to notification on the Sex Offender Registration Website.

MR. KANDT:

In July 2016, the Nevada Supreme Court issued an opinion in *McNeil v. State of Nevada*, 9 132 Nev. Adv. Op. 54 (July 28, 2016). It ruled the State Board of Parole Commissioners could not impose conditions on sex offenders subject to

lifetime supervision unless the conditions are specifically enumerated in *Nevada Revised Statutes* (NRS) 213.1243. That changed the longstanding practice of imposition of conditions that were not necessarily enumerated in NRS. The Office of the Attorney General proposed A.B. 59 to address the Court's concerns and ensure any appropriate conditions are specifically enumerated in NRS.

ASSEMBLY BILL 59: Revises provisions governing lifetime supervision of sex offenders. (BDR 16-392)

CHAIR SEGERBLOM:

We will open the work session on Senate Bill (S.B.) 115.

SENATE BILL 115: Revises provisions concerning the prohibition against carrying or possessing certain weapons while on certain property. (BDR 15-279)

PATRICK GUINAN (Policy Analyst):

The work session document notes that S.B. 115 (Exhibit D) prohibits a person from carrying or possessing various weapons, including firearms, on the property of a public library unless the person has written permission from the governing board of the library.

CHAIR SEGERBLOM:

Does this bill treat libraries like other educational institutions?

SENATOR DENIS:

Yes, the bill seeks to redefine libraries as educational institutions with respect to weapons. Senator Harris asked about the ability of library boards to create policies based on the bill's language. Section 1, subsection 3, paragraph (a), subparagraph (3) states, " ... having written permission from the governing board of the public library."

NICK ANTHONY (Counsel):

That is correct. "Written permission" could be a written policy.

SENATOR DENIS:

We have gotten many emails concerning concealed weapons permits. Whether or not S.B. 115 passes, if a public building has a metal detector or posts a

prohibition sign, concealed weapons are not allowed. In the other scenario, the only difference is the bill's open-carry provision.

CHAIR SEGERBLOM:
Does the bill prohibit open-carry?

SENATOR DENIS:
Yes, it could. However, the library board still has the ability to craft a policy allowing open-carry.

SENATOR CANNIZZARO MOVED TO DO PASS S.B. 115.

SENATOR FORD SECONDED THE MOTION.

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

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CHAIR SEGERBLOM:
We will close the work session on S.B. 115 and open the work session on S.B. 125.

SENATE BILL 125: Revises provisions governing the restoration of certain civil rights for ex-felons. (BDR 14-20)

MR. GUINAN:
Senate Bill 125 provides for the automatic restoration of voting rights for probationers and parolees after they have completed one year of their probation or parole if they were not convicted of certain offenses. It also shortens the waiting period for certain persons to petition a court for the sealing of their criminal records. Senator Ford proposed an amendment that appears in the work session document, ([Exhibit E](#)), which expands the restoration of civil rights to include serving as a juror in civil and criminal cases.

SENATOR AARON D. FORD (Senatorial District No. 11):
The City of Henderson approached me with another proposed, friendly amendment for consideration, [Exhibit E](#), to ensure:

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Any misdemeanor conviction for battery, stalking, harassment or violation of a temporary or extended protective order may be sealed after 2 years from the date of release from actual custody or from when the person is no longer under a suspended sentence, whichever occurs later.

DAVID CHERRY (City of Henderson):

The Office of the Henderson City Attorney thanks Senator Ford for accepting our proposed amendment.

SENATOR HARRIS:

I was under the impression you were going to accept the proposed amendment from the Nevada District Attorneys Association that the bill's sealing of records provisions will continue to have a delayed effect for people based on crime categories. I thought a staggered process was in that amendment, but I do not see it in [Exhibit E](#).

SENATOR FORD:

Yes, I did accept that amendment.

CHAIR SEGERBLOM:

Do you accept the language in the proposed amendment?

JENNIFER NOBLE (Nevada District Attorneys Association):

Yes, the Nevada District Attorneys Association accepts the language.

MR. ANTHONY:

Senator Harris asked who, under the sealing provisions of NRS 179.245, is prohibited from petitioning a court. Senate Bill 125 does not change that law. The crimes of persons who may not petition the court to seal records are listed in subsection 5, paragraphs (a) through (g) of NRS 179.245.

MS. NOBLE:

That is correct. Those crimes would be excluded.

SENATOR CANNIZZARO MOVED TO AMEND AND DO PASS AS AMENDED S.B.125.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON AND ROBERSON
VOTED NO.)

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CHAIR SEGERBLOM:

We will close the work session on S.B. 125 and open the work session on Senate Joint Resolution (S.J.R.) 17 of the 78th Session.

SENATE JOINT RESOLUTION 17 OF THE 78TH SESSION: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

MR. GUINAN:

Senate Joint Resolution 17 of the 78th Session proposes to amend the Nevada Constitution by replacing existing victims' rights in section 8, Article 1, with expanded provisions in the form of a victims' bill of rights, commonly known as Marsy's Law. The work session document ([Exhibit F](#)) notes the resolution must be approved in identical form by the Legislators of the Seventy-ninth Session to be voted on in the 2018 general election.

SENATOR GUSTAVSON MOVED TO DO PASS S.J.R. 17 OF THE 78TH SESSION.

SENATOR DENIS SECONDED THE MOTION.

CHAIR SEGERBLOM:

I do not like including this in the Constitution, but the voters should have the opportunity to decide that.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:

We will close the work session on S.J.R. 17 of the 78th Session and open the work session on S.B. 140.

SENATE BILL 140: Authorizes the residential confinement or other appropriate supervision of certain older offenders. (BDR 16-798)

MR. GUINAN:

Senate Bill 140 authorizes the Director of the Department of Corrections (DOC) to assign any offender not serving a sentence of death or life without the possibility of parole to the custody of the Division of Parole and Probation, DOC, to serve a term of residential confinement or other appropriate supervision for the remainder of his or her sentence. Offenders must be aged 65 or older, not convicted of violent crimes and have served at least a majority of the maximum term or maximum aggregate term of their sentences.

Senator Joseph P. Hardy has proposed an amendment in the work session document ([Exhibit G](#)) that would incorporate suggestions by the Nevada District Attorneys Association and Senator Cannizzaro to prohibit felony sex offenders from eligibility for residential confinement. The amendment would also prohibit a person convicted of DUI resulting in death or substantial bodily harm or who has been convicted of vehicular homicide from eligibility for residential confinement.

CHAIR SEGERBLOM:

Is the proposed amendment acceptable to you, Senator Hardy?

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):

Yes, but I would like to add some sponsors' names to the amendment.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 140.

SENATOR DENIS SECONDED THE MOTION.

SENATOR GUSTAVSON:

Because I would like to see further work on the bill's DUI provisions, I will vote no.

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

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CHAIR SEGERBLOM:

We will close the work session on S.B. 140 and open the work session on S.B. 8.

SENATE BILL 8: Revises provisions relating to presentence and general investigations and reports. (BDR 14-439)

MR. GUINAN:

Senate Bill 8, as in the work session document ([Exhibit H](#)), reduces the cost paid by counties to the Division of Parole and Probation for presentence investigations and reports (PSRs) from 70 percent to 30 percent of the total cost. The bill also allows counties to enter into agreements with the Division to pay the entire cost of the investigations and PSRs. The Division will agree to use the money provided by counties only for related expenses, to complete the PSRs within a specified time frame and to provide an annual report detailing how the money was spent.

The bill also provides counties may notify the Division they will assume the duties for conducting the investigations and preparation of reports with counties paying related expenses.

The Nevada Association of Counties (NACO) has a proposed amendment, [Exhibit H](#). Its purpose is to ensure the bill conforms to provisions of S.B. 9 that clarify if counties enter into agreements with the Division, the Division may agree to pay up to the cost of PSRs, rather than the total investigation cost.

SENATE BILL 9: Revises provisions relating to presentence and general investigations and reports. (BDR 14-437)

The NACO amendment also seeks to clarify that should Clark County perform presentence investigations or prepare PSRs, it will use County employees. Because the second part of the NACO amendment contains language identical to that proposed by Clark County regarding S.B. 9, it is not included in [Exhibit H](#).

SENATOR HARRIS:

I need clarification on the differences between S.B. 8 and S.B. 9. Is the discrepancy the 70 percent versus 30 percent of the payment for investigations and PSRs? Will the Senate Committee on Finance work that out later?

MR. GUINAN:

Yes.

SENATOR CANNIZZARO:

During Committee hearings, a question arose regarding who would complete PSRs if they were delegated to Clark County. I had concerns about which employees would conduct investigations or prepare PSRs, or if PSRs would be contracted out, and, since they deal with sensitive criminal information, who would have access to them. The NACO amendment clarifies in S.B. 9 that if Clark County takes over the PSR duties, they would be prepared by County employees.

MR. GUINAN:

That same language is in Clark County's proposed amendment in the work session document ([Exhibit I](#)) for S.B. 9. It has been agreed to by NACO and will be added to its proposed amendment for S.B. 8.

CHAIR SEGERBLOM:

That is to ensure good, qualified employees write PSRs. If the bill passes, the County promised us it will look for State employees to bring over so State employees are not put out of work.

ALEX ORTIZ (Clark County):

The County will work with the Division before it takes over preparation of PSRs.

CHAIR SEGERBLOM:

If you hired your own employees, would you also look to State employees for consideration to come over to the County?

MR. ORTIZ:

Yes.

SENATOR CANNIZZARO MOVED TO AMEND AND DO PASS AS AMENDED S.B. 8.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:

We will close the work session on S.B. 8 and open the work session on S.B. 9.

MR. GUINAN:

Senate Bill 9 is quite similar to S.B. 8. I again note Clark County's proposed amendment, [Exhibit I](#), changes S.B. 9's section 1, subsection 3, paragraph (a) to "The county agrees to pay up to the total cost of the presentence or general investigations and reports made by the Division" It also provides, if the County conducts the investigations or prepares PSRs, it will use County employees.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 9.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:

We will close the work session on S.B. 9 and open the work session on S.B. 33.

SENATE BILL 33: Prohibits the foreclosure of real property owned by certain military personnel or their dependents in certain circumstances.
(BDR 3-164)

MR. GUINAN:

Senate Bill 33 prohibits the foreclosure of servicemembers' residential mortgage loans while they are on active duty and for one year immediately following active duty so long as the loans were entered into before servicemembers were called to active duty or deployed. The protections will also apply to servicemembers' dependents in certain circumstances. Anyone who knowingly violates the bill's provisions is guilty of a misdemeanor and liable for damages.

During the bill's initial hearing, the Office of the Governor provided an amendment, shown in the work session document ([Exhibit J](#)), to include homeowners' association (HOA) liens in the bill. A second, conceptual

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amendment from the Office of the Governor addresses several foreclosure-related provisions, [Exhibit J](#).

The Office of the Governor also agreed to a third, friendly amendment, in [Exhibit J](#), proposed by Senator Harris to revise the bill's section 1, subsection 2, paragraph (b) to parallel federal law. The new language provides courts may " ... adjust the obligation to preserve the interests of the parties."

CHAIR SEGERBLOM:

Is that your understanding of the conceptual amendment?

CESAR O. MELGAREJO (Veterans Policy Analyst, Office of the Governor):
Yes.

SENATOR FORD:

I want to be sure the Legal Aid Center of Southern Nevada has also agreed to the conceptual amendment. Is that correct?

MR. MELGAREJO:
Yes.

SENATOR FORD:

We must look out for homeowners' interests.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED
[S.B. 9](#).

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:

We will close the work session of [S.B. 33](#) and open the work session on [S.B. 116](#).

[SENATE BILL 116](#): Revises provisions governing warnings against trespassing.
(BDR 15-76)

MR. GUINAN:

Senate Bill 116 provides that a fence made of five strands of barbed wire is adequate warning against trespassing and revises other sections of NRS regarding trespassing be revised accordingly. Senator James A. Settelmeyer has a proposed amendment in the work session document ([Exhibit K](#)) that removes provisions that define a barbed wire fence as a sufficient barrier. It replaces them with a provision prohibiting people from willfully entering "cultivated land," as redefined in the bill.

SENATOR JAMES A. SETTELMAYER (Senatorial District No. 17):

My proposed amendment, [Exhibit K](#), addresses concerns about theoretical fences on rangeland that have five strands of barbed wire. I have never seen such a fence. I have worked with environmental groups and others to redefine "cultivated land."

SENATOR FORD:

Mr. Davis, do you accept the proposed amendment?

KYLE DAVIS (Coalition for Nevada's Wildlife):

Yes, the Coalition for Nevada's Wildlife supports the bill and the proposed amendment, which addresses our concerns.

CHAIR SEGERBLOM:

My concern was with the Washoe Valley man who had all-terrain vehicles entering his ranch that extends up a hill. The bill does not address that situation.

SENATOR SETTELMAYER:

Correct. We wish we could address his concerns by having him put barbed wire fence on his land, but that creates new concerns. Provisions in the bill will make it easier for people to understand when they are trespassing on his land. Legally, fence posts will have to be painted fluorescent orange every 1,000 feet. Often, people travel across cultivated land to access backcountry areas. In the past, they had an excuse for trespassing because the boundary was unmarked. The bill will allow landowners to use the new law to go after them. It creates a rebuttable presumption people are on private property.

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CHAIR SEGERBLOM:

Does the Department of Wildlife accept the proposed amendment?

TYLER TURNIPSEED (Chief Game Warden, Division of Law Enforcement,
Department of Wildlife):

The Department of Wildlife accepts the proposed amendment. It may offer relief to the Washoe Valley man with its post-painting provision, which changes the paint spacing from 200 to 1,000 feet.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 116.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:

We will close the work session of S.B. 116. Seeing no more business before the Senate Committee on Judiciary, we will adjourn the meeting at 2:28 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	2		Agenda
	B	5		Attendance Roster
	C	70	Kathleen Brady / Office of the Attorney General; Department of Motor Vehicles, Department of Public Safety	Presentation
S.B. 115	D	1	Patrick Guinan	Work Session Document
S.B. 125	E	22	Patrick Guinan	Work Session Document
S.J.R. 17 of the 78th Session	F	1	Patrick Guinan	Work Session Document
S.B. 140	G	2	Patrick Guinan	Work Session Document
S.B. 8	H	3	Patrick Guinan	Work Session Document
S.B. 9	I	5	Patrick Guinan	Work Session Document
S.B. 33	J	4	Patrick Guinan	Work Session Document
S.B. 116	K	3	Patrick Guinan	Work Session Document