

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session  
March 13, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:11 a.m. on Wednesday, March 13, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Nicole J. Cannizzaro, Chair  
Senator Dallas Harris, Vice Chair  
Senator James Ohrenschall  
Senator Marilyn Dondero Loop  
Senator Melanie Scheible  
Senator Scott Hammond  
Senator Ira Hansen  
Senator Keith F. Pickard

**GUEST LEGISLATORS PRESENT:**

Senator Joseph P. Hardy, Senatorial District No. 12

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Pat Devereux, Committee Secretary

**OTHERS PRESENT:**

John J. Piro, Deputy Public Defender, Office of the Public Defender,  
Clark County  
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender,  
Washoe County  
Jennifer Noble, Nevada District Attorneys Association

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Tom Lawson, Captain, Division of Parole and Probation, Department of Public Safety  
Stephanie O'Rourke, Deputy Chief (North), Division of Parole and Probation, Department of Public Safety

CHAIR CANNIZZARO:

We will open the hearing on Senate Bill (S.B.) 252.

**SENATE BILL 252**: Authorizes the residential confinement or other appropriate supervision of certain older offenders. (BDR 16-1050)

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

Senate Bill 252 came about because of my training as a physician. People diagnosed with antisocial personalities are prone to criminality and often end up in prison. By the time someone is old, he or she is less likely to commit crimes. The Department of Corrections (DOC) is not allowed to use Medicare funding if elderly prisoners are in residential confinement. The State pays prisoners' room and board and medical expenses. Older prisoners are the least likely inmate population to recidivate. A Washington State study found less than 2 percent of prisoners over age 55 recidivate.

Members of the Nevada District Attorneys Association are working on a friendly amendment to ensure S.B. 252 will comport with Marsy's Law, the California Victims' Bill of Rights Act of 2008, which Nevada adopted as S.J.R. No. 17 of the 78th Session.

Senate Bill 252 is based on S.B. No. 140 of the 79th Session, which passed both Houses and then was vetoed by former Governor Brian Sandoval. In 2017, officials at DOC said the bill would only have applied to 2 inmates, which was part of the reason for the veto. However, considering that older inmates are less likely to recidivate and the State could save money, I resurrected S.B. No. 140 of the 79th Session as S.B. 252. Officials at DOC tell me the bill would now apply to up to 100 prisoners. Senate Bill 252 is enabling; it does not turn prisoners loose. After prisoners are released to residential confinement, they need to self-fund to take care of themselves.

Senate Bill 252 authorizes the director of DOC to assign certain offenders to the Division of Parole and Probation (P&P), Department of Public Safety, to serve out their sentences in residential confinement with appropriate supervision. The

offender must be at least 60 years old and have served a majority or maximum aggregate of his or her term. The inmate must not be serving a sentence of life without possibility of parole or a death sentence. He or she may not have been convicted of several crimes, including a sexual offense, certain crimes against children, a violence offense, vehicular homicide or DUI of drugs or alcohol and causing death or substantial bodily harm. The bill would become effective July 1.

SENATOR DONDERO LOOP:

Are you saying one of the reasons the Governor vetoed S.B. No. 140 of the 79th Session was DOC said it would only be applicable to 2 inmates?

SENATOR HARDY:

In his May 25, 2017, veto message ([Exhibit C](#)), Governor Sandoval wrote:

SB 140 has a noble goal, but it poses risks that are not justified by the purported benefits of changing the law. Current law already permits the Director of the Department of Corrections to allow certain inmates to serve out the remainder of their sentences in residential confinement. While SB 140 would expand the list of inmates eligible for residential confinement, testimony offered during the Senate Judiciary Committee's review of the bill estimates that the actual number of newly eligible inmates would be very low.

Additionally, the bill implicates questions related to fairness and public safety. Age alone is not a compelling reason to extend benefits to some inmates which are not afforded to others, especially when older inmates may, in certain circumstances, present a greater safety risk than younger inmates.

Finally, all inmates have the constitutional right to seek a pardon for the remainder of their sentences. Age and length of time served are factors the Board of Pardons Commissioners regularly considers when deciding a request for a pardon. No evidence has been presented that the system is not working as it should.

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SENATOR DONDERO LOOP:

Have you talked to prison officials about S.B. 252?

SENATOR HARDY:

No.

SENATOR HANSEN:

I support S.B. 252 as a commonsense bill. The State will save on inmates' healthcare costs, and public safety will not be at risk. Public safety is my No. 1 concern and the bill addresses it effectively.

SENATOR HARRIS:

How did you decide which offenses S.B. 252 will not apply to? One of them is defined in *Nevada Revised Statutes* (NRS) 484C.430 and described in the bill's Legislative Counsel's Digest as "driving under the influence of alcohol or a prohibited substance and causing death of or bodily harm to another person."

SENATOR HARDY:

When we considered carving out sexual offenses, those crimes may not go away as offenders age. "A crime against a child" was exempted for the same reason. When children grow up, memories of abuse persist for a long time. I do not want their wounds to be reopened. "A crime of violence" removes people who have hurt someone; the same is true for "vehicular homicide" in which someone dies. Driving under the influence of drugs or alcohol and causing substantial bodily harm was exempted because victims have lost limbs or their lives.

SENATOR OHRENSCHALL:

Nevada made changes to its sentencing laws in the mid-1990s, resulting in longer sentences. We now have an aging inmate population that needs more medical, palliative and hospice care as they approach the end of their lives. As a physician, do you think they have a better chance of getting that care in DOC facilities or out in the community?

SENATOR HARDY:

Either way, they are going to get care. Inmates in residential confinement will likely be eligible for Medicaid or Medicare, which they cannot access in prison except if they are admitted to a hospital. The State and federal government used to share the cost of Medicaid; now the State pays for all of it.

It is challenging to transfer inmates to the hospital. I gave a ride to a prison guard who had run out of gas while headed to Carson Tahoe Regional Medical Center. He had been called in because a prisoner had been admitted, and the guard needed to monitor him. Costs for hospital care escalate above the routine cost of caring for inmates at the prison.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):

The Office of the Public Defender, Clark County, supports S.B. 252.

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):

The Office of the Public Defender, Washoe County, believes S.B. 252 is narrowly tailored to provide for a limited number of inmates and it will not pose a significant public safety risk.

SENATOR HANSEN:

Do other states have similar laws and, if so, do any statistics indicate this may be a bad idea? We need to make sure prisoners in the program do not repeat their crimes.

SENATOR HARDY:

There are many studies about aging in prisons and the incarceration of the elderly. New York and Washington States have done recidivism studies on older inmates.

SENATOR HANSEN:

The bottom line is there is no definitive evidence on older inmates' recidivism rates. Is that correct?

SENATOR HARDY:

Washington State reports a 2 percent recidivism rate among elderly inmates. I do not know if that study was narrowly applied to a specific age limit, as S.B. 252 will do.

MS. BERTSCHY:

When I was in law school, I wrote a law review article about compassionate release for a similar bill that passed in California. The Washington State study was not as narrowly tailored as is S.B. 252.

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SENATOR HAMMOND:

New York State passed a bill similar to S.B. 252. Department of Corrections Director James Dzurenda came from New York and may have seen that state's program in action.

SENATOR HARDY:

I do not know what New York did, only that it did the study on older inmates' recidivism.

SENATOR HANSEN:

Where does Marsy's Law fit into the bill's provisions?

SENATOR HARDY:

Members of the Nevada District Attorneys Association expressed concerns about Marsy's Law. We talked about an amendment the Association is preparing with a section specifying that S.B. 252 must comport with the Law. Because Marsy's Law was passed so recently, the Association is still trying to figure out its implementation.

JENNIFER NOBLE (Nevada District Attorneys Association):

The Association supported S.B. No. 140 of the 79th Session, but we have concerns about the age change from 65 to 60 in S.B. 252. There are new provisions in section 1, subsection 1, paragraph (b) that ensure inmates who have victimized children, committed violent sexual offenses, etc., are excluded.

The Association's primary concern is how S.B. 252 squares with Marsy's Law. The Law requires that in any postconviction proceeding or proceeding in front of P&P regarding the release or change of condition of defendants, the proceedings must be noticed and victims allowed to be heard. Section 1, subsection 3, paragraphs (a) and (b) of S.B. 252 provide that victims can send a document to P&P to ascertain the release status of their victimizers. We do not think that comports with the Law.

The DOC Director makes the decision to release an offender. Marsy's Law has civil implications for whatever agency conducts inmates' releases or changes in conditions. Those implications will not impact the Association. However, they will affect the DOC, the DOC Director, victims and P&P, so we need to make sure any amendment has their input.

CHAIR CANNIZZARO:

Why would S.B. 252's conditions for release differ from a parole hearing or other forms of release into things like mental health or drug treatment programs within DOC? Why would the bill not fall within those parameters with respect to Marsy's Law?

Ms. NOBLE:

Senate Bill 252 does not provide for a release hearing. Notice and an opportunity to be heard are the critical components of Marsy's Law. In a public proceeding, victims or their survivors may address the judge or whoever is making the release decision. Victims can speak at parole hearings; S.B. 252 does not allow for any of that.

CHAIR CANNIZZARO:

We need to see if we can add provisions to that effect in order to comport with the Law.

TOM LAWSON (Captain, Division of Parole and Probation, Department of Public Safety):

The Division of Parole and Probation is neutral on S.B. 252. The P&P database shows there could be up to 100 inmates eligible for release under the bill's program. We do not know how many would be approved for release by Director Dzurenda; however, depending on how many were released, the fiscal impact to P&P would be the addition of up to four officers, plus a prerelease specialist to schedule and process the release and do parole planning.

All releases to participation in DOC programs are predicated on offenders being able to self-fund their residential confinements or house arrests. That costs between \$850 and \$1,850 per month. People subject to release may not be able to come up with this amount.

The Division has had multiple discussions with both Houses of the Legislature about its State-funded house arrest program, for which, under NRS, inmate participants are ineligible. The thought is they are more invested in their release program and planning if they can self-fund. If the house arrest program were expanded to include these inmates, P&P would request additional funding. The inmates eligible for the provisions of S.B. 252 would be a pool who could possibly participate in P&P's house arrest program.

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CHAIR CANNIZZARO:

This is not the Senate Committee on Finance, so as far as the bill's fiscal impact and additional funding for P&P programs, this Committee will not consider that.

STEPHANIE O'ROURKE (Deputy Chief [North], Division of Parole and Probation, Department of Public Safety):

Self-funding for residential confinement would be between \$850 and \$1,850 per day, not month.

SENATOR PICKARD:

How many inmates are put on probation or paroled in an average month?

CAPTAIN LAWSON:

Our total supervised population is about 21,300 offenders.

SENATOR PICKARD:

If you are talking about releasing about 100 inmates under S.B. 252 out of 21,300 total, would you need 4 more staff members?

Ms. O'ROURKE:

The P&P supervision ratio is 30 offenders to 1 officer. That is our joint financing arrangement staffing level as approved by the Legislature.

SENATOR PICKARD:

Are you at capacity and cannot take one more supervised offender without adding staff?

Ms. O'ROURKE:

We are dealing with a staff vacancy problem despite recruiting as fast as we can. If 1 person came out, obviously we could absorb that, however, not if all 100 came out. We have to plan for staff to appropriately supervise everyone.

SENATOR HANSEN:

Is Director Dzurenda from New York? Could I get his take on the program proposed in S.B. 252?

MR. LAWSON:

We will pass that along to the DOC staff.



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SENATOR HARDY:

From a medical standpoint, it may cost more to house an inmate than to release him or her to P&P. I do not know how many staff vacancies P&P has to watch over these prisoners, but is that in addition to what they need to hire overall? There must be a balance between how much it costs to have someone in prison versus participating in a self-funded program out of prison.

My family helped sponsor my cousin's son, who was in prison. Before his release, my brother pledged to hire him, and my cousin arranged for his housing. The young man was released on parole, and two or three years later, is now part owner of his own company. Under S.B. 252, as parolees age, the State will save money and allow people to learn to fend for themselves.

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CHAIR CANNIZZARO:

We will close the hearing on S.B. 252. Seeing no more business before the Senate Committee on Judiciary, we are adjourned at 8:44 a.m.

RESPECTFULLY SUBMITTED:

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Pat Devereux,  
Committee Secretary

APPROVED BY:

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Senator Nicole J. Cannizzaro, Chair

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

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	2		Attendance Roster
S.B. 252	C	2	Senator Joseph P. Hardy	Veto letter from Governor Brian Sandoval, S.B. No. 140 of the 79th Session