

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session  
April 24, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:19 a.m. on Wednesday, April 24, 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:**

Assemblyman Jason Frierson, Assembly District No. 8

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Committee Policy Analyst  
Nicolas Anthony, Committee Counsel  
Jenny Harbor, Committee Secretary

**OTHERS PRESENT:**

Robert Kim, Executive Committee, Business Law Section, State Bar of Nevada  
Paul Moradkhan, Las Vegas Metro Chamber of Commerce  
Bryan Wachter, Retail Association of Nevada  
Brittany Walker, Nevada Registered Agent Association, Inc.  
Sonny Vinuya, Asian Chamber of Commerce

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Ana Wood, Asian Chamber of Commerce  
Ken Evans, President, Urban Chamber of Commerce  
James Dzurenda, Director, Department of Corrections  
Chuck Callaway, Las Vegas Metropolitan Police Department  
Jim Hoffman, Nevada Attorneys for Criminal Justice, Inc.  
Jude Hurin, Department of Motor Vehicles  
Tonya Laney, Department of Motor Vehicles  
Ernie Adler, Pyramid Lake Paiute Tribe  
Stephanie O'Rourke, Deputy Chief (North), Division of Parole and Probation,  
Department of Public Safety  
Tom Lawson, Captain, Division of Parole and Probation, Department of Public  
Safety  
Megan Ortiz, ACLU of Nevada  
Christopher DeRicco, Chair, State Board of Parole Commissioners  
Sarah Adler, Nevada Coalition to End Domestic and Sexual Violence

CHAIR CANNIZZARO:

I will open the hearing on Assembly Bill (A.B.) 207.

**ASSEMBLY BILL 207 (1st Reprint)**: Revises various provisions relating to  
business entities. (BDR 7-146)

ASSEMBLYMAN JASON FRIERSON (Assembly District No. 8):

Assembly Bill 207 is a culmination of efforts over several sessions to make Nevada more competitive when it comes to corporate formation. This bill will solidify Nevada's consistent ranking as one of the most business-friendly states in the Country, which is a clear advantage. With that distinction comes a commitment to constantly create and innovate in order to be competitive. It has been said Delaware's business environment is something that people strive toward. Assembly Bill 207 will make us more competitive than Delaware as an attractive prospect for business formation.

We get calls and emails about corporate handouts and other preferential treatment when it comes to the business community. This bill is not a handout; it attempts to put Nevada ahead of the curve so we can continue to sustain a business-friendly environment.

Robert Kim and I tried to accomplish this one way in 2015 and another way in 2017. We are finally at a place where we can move Nevada forward.

Assembly Bill 207 will send a message to businesses in the State and nationally that Nevada is committed to cultivating a legal environment that fosters ease of use and predictability. Without A.B. 207, the duties of those involved with corporation formation are defined after the fact. That does not help create predictability. This bill requires people to know—up front—the responsibilities of those officers.

In seeing what happened in 2015 and 2017, this is a worthy cause. We started working on A.B. 207 last year in order to bring Nevada's law current and be a competitive and attractive prospect for businesses.

ROBERT KIM (Executive Committee, Business Law Section, State Bar of Nevada): Assembly Bill 207 is a product of a process involving members of the Executive Committee of the State Bar of Nevada's Business Law Section. It was submitted to the State Bar and all the other section leaders for review and comment. Members were given a period of time to respond. Any comments or questions were reconciled, and it was approved by the State Bar of Nevada's Board of Governors to proceed for submission to the Legislature.

This bill has been a product of a number of sessions with a focus on issues relating to the fiduciary duties of managers and members of limited liability companies (LLC). Assembly Bill 207 is meant to innovate in terms of providing new concepts and functionality so users of our entities have the range of flexibility they are looking for.

We adopted comparable statutes from other jurisdictions after carefully considering the utility and importance of those functionalities.

After attending various State Bar meetings and talking informally with other practitioners and members of the State Judiciary Branch, it was clear there was a range of issues and concerns regarding the baseline and expectations of LLC fiduciary duties. This bill is the result of all this effort.

Assembly Bill 207 also clarifies the delivery of books and records, the concept of broker nonvotes and forum selection for Nevada corporations.

I submitted a memorandum ([Exhibit C](#)) that goes through these topics. I will review the section-by-section reference and subject matter description.

Section 1 relates to forum selection, which is a concept that has developed over the past ten years and is being adopted by corporations from Delaware to California. These states are trying to gain predictability as to the forum in which internal actions and affairs are adjudicated. Section 1 is designed to acknowledge and recognize the ability of corporations, their articles and bylaws, to have such forum selection privileges. In our case, when one designates a court or venue for the adjudication of internal affairs, it must include at least one court in the State.

Sections 2, 17 and 22 clarify what delivery of records means and what a corporation is obligated to do when it receives these requests. These are common requests received in corporate governance matters. A few items needed more clarification as to delivery, right of inspection, inspection and the corporation's burden for the same. In these sections, we incorporated comments made by the Nevada Registered Agent Association, Inc., through the amendment process on the Assembly side.

Section 3 covers the duties of directors and officers. These are minor amendments meant to clarify intent.

Sections 4 to 6 deal with the concept of fractional shares and revise three sections of *Nevada Revised Statutes* (NRS) in particular: NRS 78.205, NRS 78.2055 and NRS 78.207.

Section 7 relates to standard as to distributions. We are trying to clarify when a corporation can make distributions and reconcile any potential conflicts with NRS 112—the fraudulent transfer section of statute.

Section 8 was deleted by amendment through our discussions with the Nevada Justice Association and the Assembly.

Sections 9, 15 and 16 are critically important to provide predictability to officers and directors. It is the foundation upon which those who choose to serve as officers and directors can lean on when making decisions based on their business judgment and in the best interests of their constituents. We tried to clarify—not change—the intent and reorganize sections relating to mandatory and optional indemnification for better understanding.

Section 10 deals with broker nonvotes and the concept of shares being held by brokers on behalf of holders of stock in street names. Persons like you or I may own stock, beneficially, through brokers who are the record stockholders. This clarifies when brokers can vote items on our behalf.

Section 11 amends NRS 78.3788. It is meant to define the term "issuing corporation" in the context of our antitakeover statutes.

Sections 12 and 13 are designed to clarify when any action by a Nevada corporation can be taken by written consent of the stockholders.

Sections 14, 18 and 19, relate to alter egos. The primary thrust was to adopt a standard from the existing alter ego construct for corporations but written with LLC terminology. We were told practitioners and members of the Judiciary Branch already analogize corporate alter ego statutes for LLC purposes, so we thought it appropriate to codify the same standards while making sure the terminology was suitable for LLCs.

Section 14 cleans up references in NRS 78.747—the corporate alter ego statute—so it made more sense and would cover persons who may attempt to use corporations in a manner designed to commit fraud. We do not condone such actions.

Sections 18 and 20 relate to fiduciary duty standards for LLCs. In 2013, we adopted a standard meant to clarify only a basic duty of good faith and fair dealing among members or managers depending on the type of LLC, and that the parties can adopt additional duties through their articles or operating agreement. That was not an acceptable construct at the time, so we withdrew it.

In 2017, we adopted a corporate-style construct with clear fiduciary duties—statutory duties—more like those of a corporation. That was not well-received either.

Early this Session, we asked a variety of constituents if they had an issue or preference with one standard or the other. Given NRS 86 is based on the freedom-of-contract principle, we try not to tell people how to run their businesses. We give them the ability to adopt their own standards. Having a baseline duty of good faith and fair dealing—because we are dealing with a

contract—was the right way to start. Entities that wanted to do more could add to their articles of organization or operating agreements. That construct seemed to be acceptable to all groups and is what we adopted in A.B 207.

This construct is better because it allows parties of an agreement to agree to what they want and not be bound by standards we cannot anticipate. To clarify, this standard is going to apply to LLCs organized after the effective date of the bill, not beforehand, unless they opt to have this standard as part of their LLC governance. We are not trying to change the way people are already doing business, but they will have a clear understanding of what to expect from the LLCs and from each other going forward.

Sections 21, 23 and 25 deal with series LLCs. These sections are more estate planning-driven. The proposed changes are relatively straightforward and more cleanup in nature.

Section 26 relates to dissolutions of LLCs. It amends NRS 86.531 to delete "or will be" from subsection 1, paragraph (b) to address inconsistencies with other sections in NRS 86.

Section 27 is a new section authorizing intermediate form mergers. This is an area where we are being innovative by giving public Nevada corporations the ability to affect transactions in a quicker, more efficient way. This is analogous to a concept that exists in Delaware corporate law. When we import concepts from other jurisdictions, we write standards and language in line with NRS as opposed to copying them verbatim.

Sections 28 and 29 deal with dissenter's rights. We are clarifying when dissenter's rights exist, who can assert them and eliminate any confusion that might exist as to someone who might have acquired shares after the announcement of a transaction, thus not being in a position to say he or she cannot dissent from a transaction and obtain appraisal rights.

Section 30 clarifies the consistent use of "stockholder of record" terminology. This makes sure that term relates to the actual records of a corporation, the names of the stockholders in that record and on the stock certificates themselves. We want corporate stockholder rights to be asserted by stockholders of record and not by beneficial owners.

SENATOR PICKARD:

I like a lot of what this bill does; the fiduciary duty standards piece is important to add. It appears, however, lines are being blurred between formal corporations and LLCs, specifically in sections 14, 18 and 19 that deal with alter ego standards. Alter ego is most used in a piercing instance where one tries to pierce the protections of a corporate veil and go after the assets of a misused LLC. I am apprehensive about adopting corporate definitions and usage of alter ego as these are not commonly used terms for LLCs; there is a distinction between LLCs and formal corporations. Most notably are corporate formalities. Has someone set up the LLC properly? Are minutes being kept? Are they recording everything they are supposed to record? Is the company checkbook being used for personal use? Those are the ways we typically pierce the corporate veil in my practice. My concern is that we are developing the same language in NRS 78 and inserting it into NRS 86. With that comes all the caselaw, so is this going to create more of a burden—a corporate style of record-keeping and formalities—and make it easier to pierce LLCs?

MR. KIM:

This does raise the balance we are trying to strike. As you noted, piercing the corporate veil and the actual application of the alter ego statute is an extreme remedy and should not be used lightly. It is appropriate when the three conjunctive standards in section 14, subsection 2, paragraphs (a) through (c) and in section 19, subsection 2, paragraphs (a) through (c) are met. I am okay with having similar requirements due to these high standards and such conduct that, if you did not pierce the LLC veil, you would be sanctioning fraud and promoting manifest injustice. Limited liability companies are the most common form of business entity used in the State, and the Judiciary Branch already applies the corporate construct to these entities. We are not blurring the lines by importing this concept; we are holding nefarious conduct to the same level as corporations.

SENATOR PICKARD:

I agree to a point. When corporations are abused to perpetrate a fraud, we need the resources to act and for the law to be clear. But by adopting the same language, we are opening the door to adopt all the caselaw dealing with formal corporations along with it.

We have an opportunity to define the difference between an LLC and a corporation. Instead of doing that, we are adopting the rules that apply to a

formal corporation. I am concerned we will lose the distinction between corporations and LLCs. Is it the intent of A.B. 207 to maintain that distinction while making sure we can go after those who abuse LLCs without incorporating all the caselaw that supports piercing arguments for traditional corporations?

MR. KIM:

Those are good points. We are trying to provide predictability for the Judiciary Branch to properly analyze situations. However, we are not saying the context in those corporate cases should be imported wholesale. There are key differences in the governance of LLCs and corporations. For example, a corporation is required to hold annual meetings of stockholders for the purpose of the election of directors. An LLC is not required to hold such meetings. In that instance, I would not expect the court to say the failure to hold an annual meeting on the LLC side is in and of itself an indication of failure of governance and separation.

Our intent is to provide the same construct, but the Judiciary Branch needs to interpret it in the context of the requirements of the entity and its governing documents. An LLC may have an operating pyramid that does require annual meetings. If it is not doing them, it is not following the terms and conditions by which the LLC was adopted in the first place. Clearly, standards need to be interpreted in the context of the entity it is being analyzed under or through.

SENATOR PICKARD:

There are other things LLCs do not require; an operating agreement is one of them. The purpose behind NRS 86 was to act as an operating agreement in the absence of one. A formal corporation requires a shareholder agreement and other formalities, such as regular minutes, that are not carried over into LLCs. We need to maintain a level of responsibility and the ability to go after abuses. But by adopting the language from NRS 78 wholesale, the court is going to look at LLCs in a different way. It would be easy to add language giving guidance to the court to maintain the difference in LLCs without requiring the same formalities and level of detail in the organizational structures.

We are talking constructs, and that is the core of my concern. From what I am hearing, we are not adopting the same construct. We are just using this as a means of addressing some of the abuses we have seen. I support that, but I would like to see language that makes it clear we are not adopting the



traditional corporate construct into the LLC realm. Otherwise, we do blur the lines, and we will weaken the law around LLCs.

SENATOR HANSEN:

My experience with LLCs goes back to the development world. When the economy collapsed in 2008 and 2009, I discovered developers setting up separate LLCs in each housing subdivision. Those developers would bankrupt those LLCs, making it almost impossible to pierce the corporate veil and deal with alter ego issues.

We have watched this issue for a while, and I want to make sure we are not weakening the process. During that economic downturn, this LLC process was being used to bypass any reasonable bankruptcies where there would have been the opportunity to go after the assets of an LLC. In many cases, those LLCs would dissolve, then the same people would create another LLC in another subdivision and walk away from all the debt they created. Homeowners, material men and contractors were left facing bankruptcy. Does this bill strengthen the ability of ordinary people to protect their own assets through the bankruptcy process? Does it ensure they are protected so this sort of abuse can no longer occur?

MR. KIM:

Our intent was to allow the Judiciary Branch the ability to understand what can and cannot be done in LLCs, just as much as some members of the Judiciary Branch may have thought it appropriate to analogize piercing statutes into LLCs. On the flip side, there are people who would argue the absence of those statutes mean one cannot really pierce it, or there is an absolute limitation that a judge would have to be convinced—based on the equities of the situation—to allow certain recoveries to go forward.

This bill shows the Judiciary Branch there are situations where LLCs can be pierced when appropriate, and not doing so will sanction fraud and promote manifest injustice. If a judge has any hesitation, a lawyer may argue, "If they wanted you to pierce it, there would be statutes that say exactly how to do it; we do not have a case." Assembly Bill 207 clarifies the standards as to how that can be done. This bill should not weaken this process.

SENATOR HANSEN:

I have confidence in Assemblyman Frierson, and I have no doubt the protections for consumers are going to be built in to this bill. I just wanted to put this on the record because in my experience, many good, honorable people were left facing bankruptcy from the abuse of the LLC process by developers.

MR. KIM:

We are not trying to blur lines or create ambiguity in this section. We want to make sure, in the LLC context, there are appropriate statutes in place to cover a range of situations. Any statute in NRS 86 should be interpreted in the context of other sections of NRS 86 and in the context of the operating agreement adopted by the parties who are presumably the litigants in any case. The primary analysis in any dispute needs to be the statute itself and the documents the parties have agreed to—nothing further. For the record, the Judiciary Branch should be interpreting these issues in the right context and as opposed to latching on to analyses of cases that did not use the same statutes or requirements and were driven by different policies.

ASSEMBLYMAN FRIERSON:

The notion of blurring the lines between corporations and LLCs had not been brought up before this hearing. This is not the intent of A.B. 207. The fact that only portions of law from that section are taken and adopted for LLCs suggests the portions that were not taken were to be left out. The concern about blurring the lines is addressed by the fact that we did not adopt all of the language from corporate formation into LLCs.

Senator Hansen, any time you increase the fiduciary duty of those acting on behalf of others, you are doing a good thing for citizens and those investors who are not the highest level. The example you gave is the kind of thing this bill was designed to help address.

PAUL MORADKHAN (Las Vegas Metro Chamber of Commerce):

We support A.B. 207. It will provide our members with greater clarity in areas of management responsibilities, fiduciary duties, delivery of records, the treatment of broker nonvotes and forum selection. This bill will give our members greater stability, predictability and will help Nevada maintain its competitiveness as a business-friendly State.

BRYAN WACHTER (Retail Association of Nevada):

We support A.B. 207. It clarifies differences and provides the necessary level of stability and the ability to plan that Nevada businesses are looking for. Most importantly, this bill keeps the State at the forefront in this particular area with the rest of the Country. We are proud Nevada is ranked as one of the top places to incorporate a business and to be here. We are hopeful that with the passage of A.B. 207, this will continue to be the case.

BRITTANY WALKER (Nevada Registered Agent Association, Inc.):

We support A.B. 207.

SONNY VINUYA (Asian Chamber of Commerce):

Assembly Bill 207 is a prime example of how Nevada consistently leads the Nation in creating a business-friendly climate. When our members choose to incorporate in Nevada, it comes with the expectation that our laws are clear. This bill gives this Body the opportunity to improve the experience of our Nevada entrepreneurs. Contracts are performed far more often than not, but judges only see agreements that have failed in some way. This bill alerts our members who select limited liability companies to write their operating agreements with care.

ANA WOOD (Asian Chamber of Commerce):

Assembly Bill 207 establishes a clear legislative framework for our Judiciary Branch. It can be difficult to draw conclusions about a party's state of mind at the time an LLC is formed, often with unanticipated results. This bill will help produce better outcomes when our members find themselves in the unfortunate position of litigation. The Las Vegas Asian Chamber of Commerce Board of Directors and its members appreciate the vision and foresight by leadership in backing our members and the business community. Let us safeguard Nevada's small businesses and the stable environment our business leaders and communities have come to expect.

KEN EVANS (President, Urban Chamber of Commerce):

We supported A.B. 207 during the hearing on the Assembly side, and we support it here.

Since testifying in the Assembly hearing, I received a call from one of my Urban Chamber of Commerce small business members. This person did not take the time to create an operating agreement early on and is now in the position of

having to create one with internal conflict, disagreement and discord between members.

The good thing about this bill is referenced in section 20, subsection 2 where it states, "Such other duties, including, without limitation, fiduciary duties, if any, as are expressly prescribed by the articles of organization or the operating agreement," as well as in section 22, subsection 1, paragraph (c) where it states "Copies of any then effective operating agreement of the company." If issues such as putting an operating agreement in place are brought to the attention of individuals who are thinking about doing business with each other, it can prevent the type of discord and dysfunction that impacts both owners of LLCs and their clients.

CHAIR CANNIZZARO:

I will close the hearing on A.B. 207 and open the hearing on A.B. 10.

**ASSEMBLY BILL 10 (1st Reprint)**: Revises provisions governing the duties of the Director of the Department of Corrections when an offender is released from prison. (BDR 16-204)

JAMES DZURENDA (Director, Department of Corrections):

Assembly Bill 10 changes the language in NRS to allow the Department of Corrections (DOC) to issue some type of identification to an offender who leaves the prison system and goes back to the community.

Statute ensures the DOC can only issue a verified identification to an offender. The verified identification to an offender is verified—in accordance to the *Nevada Administrative Code* (NAC)—by a birth certificate, current driver's license, military identification or passport. We obtain these forms of identification from the offender through systems, other states and countries. The only identification we receive from the courts is a sentencing judgment. That judgment only indicates there is an individual who is being sentenced with that name; it does not mean the name is verified.

Assembly Bill 10 will allow the DOC to issue some type of unverified ID card when we cannot obtain the credentials required to verify an identification. The unverified card would be clearly labeled to indicate it has not been verified and that falsifying identification can result in criminal charges. This will allow the

DOC to give offenders some type of identification going out the door so they can rent a hotel room, obtain certain types of medication and cash checks.

If an offender works in the DOC, monies made go into a special inmate account. When he or she leaves the system, we cash that account in and give it to the offender so he or she can have some money to start life over. After a certain dollar amount, we give the offender a State check. However, these checks cannot be cashed without some form of identification.

*Nevada Revised Statutes* requires the DOC to confiscate all forms of identification from an offender if we do not have verified identification. We let a significant number of offenders—close to two-thirds—out the door with no identification. They cannot cash their checks, so they are forced to sell them on the streets. They usually get 10 percent of the face value of those checks due to this illegal process. These released offenders cannot get any type of room and board or certain medications requiring identification.

When all forms of identification are taken away from an offender, it is more difficult for us to help him or her have a successful reentry into the community. Not being able to issue a DOC ID card removes a tool that keeps former offenders from victimizing the community; they are forced to either live on the street or not take much-needed medications.

It is difficult for the DOC to obtain some types of verified identification, especially when offenders were born out of the Country. Offenders born in Puerto Rico or Mexico must travel to that country to obtain verified identification. We cannot send offenders to their respective countries, so we are unsuccessful in obtaining records for those individuals.

We have inmates who do not know where they were born; they have been passed from state to state for either legal or illegal purposes throughout their childhood. In such cases, we will never be able to find birth certificates for these individuals.

Other offenders refuse to give us their birth certificates or other verified identification because they are afraid we will track them. In addition to criminal activities, some offenders believe—due to mental health issues—we are watching and tracking them.

Other states will only issue birth certificates electronically through email. Our inmates do not have email, so we are unable to give those states the requested return email addresses.

We are working with memorandums of understanding with multiple states to create a better and quicker avenue of obtaining birth certificates, but we still struggle with a large number of our offenders going into the community with no identification. This is truly more dangerous to the community and creates more victimization.

There is one sticking point to A.B. 10. The Department of Motor Vehicles (DMV) must approve through policy or NRS that the nonverified DOC ID card will not be utilized to obtain a driver's license or State-issued ID.

In regard to section 3, subsection 3, some foreign consulates do have the ability to issue consular identification cards (CIDs). Some countries like Mexico and Puerto Rico use these cards in place of birth certificates if none exist or cannot be obtained. Through its foreign policies, consulates are allowed to issue CIDs but not birth certificates. We will conduct more research to see if we can use a CID as proof of identity in order to obtain verified identification.

I support A.B. 10 the way it is written. It is consistent with what the DOC is trying to achieve with verified and nonverified identities. The ID card is simple and has the language on it: nonverified on the front and falsification language on the back.

SENATOR HARRIS:

Is there any indication banks, check cashing places or local motels will be willing to accept this identification in hopes of solving this problem? Is there a plan to familiarize those entities with the ID card so businesses feel comfortable accepting it?

MR. DZURENDA:

No. In our State, offenders will have some type of picture identification issued from a formal State agency—like the DOC—to utilize for cashing checks. We work with motels through the Division of Parole and Probation (P&P), and those entities will accept the identification card. I am not sure about the policies of other hotels in Nevada or in other states, but it will give released offenders something as opposed to nothing.

SENATOR DONDERO LOOP:

We have worked on these issues since 2009, and I thought we fixed this issue in 2011. Will A.B. 10 fix this problem?

In looking at a picture of the card, what stands out to me—and I do not have a better suggestion—is that it reads "unverified." That is like a red light flashing, "This is just something you found on the internet." The back of the card has disclaimers which I do not have a problem with, but it feels like we are setting offenders up for failure. Are we really helping these people move forward? Have you considered putting other terminology on this card?

MR. DZURENDA:

I completely agree, and that was my concern as well. I have tried to do everything possible to have something. The identification we issue, even if it is the wrong name, is linked to DNA. A false picture ID card made in the community is not linked to anything. With this bill, we would have a DOC ID card linked to a person; it just may not be the verified identification of the offender.

If the DOC is unable to obtain proper identification documents, we use the name an offender gave to the police department when he or she was arrested. That name is what the courts use. If an inmate is sentenced, that sentence judgment is not a verified identification to the offender.

This problem has been going on for many years, and statute dictating what we can do changes slightly. Legislation enacted last Session forced the DOC to confiscate all nonverified identification; that is why we are back here today.

SENATOR SCHEIBLE:

Is the DOC open to changing the look of this ID card to make it appear more legitimate?

MR. DZURENDA:

That question will also have to be posed to the DMV, as there is specific language in NAC and NRS that will affect this. I had other ideas, but other agencies and people disagreed with those ideas. I will consider any suggestions; I just want to provide these individuals with some type of identification. Anything is better than nothing. If we give them nothing, they will falsify identifications.

SENATOR SCHEIBLE:

I appreciate the difficulty people have in transitioning back into the community. Would inmates be required to accept these ID cards?

MR. DZURENDA:

No. The DOC gives them an extra tool they do not have. Even if we have to emboss the card, I want to make sure the psychotropic medications some individuals require can be obtained.

SENATOR SCHEIBLE:

I agree. The issue with psychotropic medications is probably the most salient point here. If pharmacies and doctors will accept this identification, we do solve a major problem. I foresee offenders being given two choices when they leave prison. They can obtain illegal ID cards that looks like REAL ID cards, or they can take these cards that read in big letters, "I am a felon," and that is their option to hand over at the next apartment they want to rent or when they apply for a job. That is a tough decision for somebody who is trying to do the right thing. I understand having something is better than nothing, especially for those who need medical care, so I want to keep the conversation open.

SENATOR HANSEN:

If an inmate is prosecuted as a certain name, why cannot that person leave prison with that same name even if the system is unable to locate a birth certificate? How do prison systems handle this in other areas? Is it unique to Nevada?

MR. DZURENDA:

Regarding the first question, this is not unique anywhere else. When an individual is arrested, the first thing police ask is, "What is your name?" If that person makes up a name—say it is John Doe—and he has no identification on his person, the police take him to the police station, book him and take fingerprints. If he has never been arrested, has never legally gone through immigration and no fingerprints exist, he becomes John Doe because there is no identification. Once arrested, the name John Doe is placed on a booking document. That document goes to the jail, the jail sends John Doe to court and he receives a sentence judgement with the name John Doe on that judgment. The sentence judgement goes to the DOC; we give him that name, and we release him as John Doe.



Say this man is arrested again with no identification, he gives the name James Smith and his fingerprints match the name John Doe. He does not become John Doe; he becomes James Smith. John Doe becomes that man's alias. The process repeats; the man is released as James Smith.

We have inmates with 25 to 30 different names. We use the last name provided because that is what the sentence judgment reads, and we have no way to verify any of those names. This is why the issue of coming up with verified identification around the Country affects prison systems.

We used the same process when I was in New York as we did here prior to last Session, wherein we issued a department of corrections ID card. It did not matter if it was verified. It stated on the card, "This is a sentence judgment," and the name of the offender. It is up to DMV policies in each state to accept these cards; it is not written in law. With the enactment of the REAL ID Act, identification is changing around the Country. All states are trying to figure out what to do with real and judgment names.

We brought how other states are handling identification for inmates who do not have verified identification up in the Association of State Correctional Administrators meetings last Session. All states are handling inmate ID cards differently. Florida issues every inmate an ID card that does not indicate whether it has been verified. It is embossed to show a raised seal and states it is part of an identification of a sentence judgment only.

As I have stated before, giving an offender no identification at all is dangerous.

SENATOR HANSEN:

I am worried about the stigma side of these ID cards. If someone shows up to my business with a card indicating he or she was just released from prison, it is a problem. We want to reduce recidivism and for inmates to reincorporate into society, but we are immediately stigmatizing them with this card.

Do you need any assistance with the DMV in this regard? It sounds like there are some roadblocks wherein we pass laws, but the bureaucracies do not want to engage in a harmonious identification process.

MR. DZURENDA:

I do not know if there is a right answer. I met with personnel from the DMV several times to try to come up with language that works for everyone without having to worry about what may happen in the community with false identifications or the stigma placed on individuals with these cards. Right now, released inmates are having their own ID cards made. This is a matter of weighing out what is more beneficial to the community while reducing victimization.

I would rather an offender have a nonverified DOC ID card. If the police find this card on someone, we can link the card to DNA so we know exactly who this person is, even though the community may not have that verification piece.

The way A.B. 10 is written is my best suggestion.

SENATOR HAMMOND:

I agree with what my fellow Senators have said about this issue being brought up in 2011. I understand why we are here now based on what happened in prior sessions.

When an inmate is going to be released and reenter the community, will the DOC issue this card? If the DMV is responsible for issuing the cards, how will that process work? Whose budget will these expenses come from? How long are these cards going to be valid, and can they be renewed if another form of identification cannot be obtained?

MR. DZURENDA:

We start the identification process the day an inmate comes into our system. Identifications entered into our computerized notice system indicate whether they are verified. The inmate will be issued the verified or nonverified identification at that time, and that card will not be issued again unless his or her verification changes or the card is lost. The cost to change an identification card from nonverified to verified is minimal—it is only ink—as an inmate must have a card. It is a service offered to every offender so we can utilize inmate welfare funds through statute to cover costs if needed. I do not see this being a significant cost requiring additional funding. There is no expiration date on the card, verified or unverified.

SENATOR HAMMOND:

When an inmate is released, he or she will still have that DOC ID card. It might read "unverified." If at some point he or she obtains verification, that person can go to the DMV and obtain a regular ID card or driver's license. Is that correct?

MR. DZURENDA:

You are correct.

SENATOR PICKARD:

Is the DMV issuing driver's licenses for released inmates? If so, how does that interact? It is my understanding the DMV still requires some other form of identification to obtain an ID card even if it is not a driver's license. Can you clarify this for me?

MR. DZURENDA:

I would rather have someone from the DMV answer that question. I understand they can utilize a verified DOC ID card as another form of identification under NAC, but I cannot confirm that.

SENATOR PICKARD:

Just to clarify, a nonverified card, regardless of what the DMV does, will still allow released inmates to do these other things and A.B. 10 solves the problem.

MR. DZURENDA:

This ID card will allow released inmates to do everything except obtain a driver's license or State-issued ID card through the DMV.

SENATOR DONDERO LOOP:

Is there a reason these cards cannot read "temporary" instead of "unverified?"

MR. DZURENDA:

I am happy with any language as long as it does not disrupt clarification through the DMV. Our goal is to provide released inmates with some type of identification.

SENATOR DONDERO LOOP:

As I am looking at this card, I feel we are setting these individuals up for failure. If we are really trying to help released inmates and push them out of the

system, the word "temporary" softens the language a little. I understand the disclaimer on the back, but I am not sure it needs to be there.

MR. DZURENDA:

The language on the back was requested in order to obtain support from the DMV for A.B. 10. The adjustments were made to assist with clarity and to prevent possible false identification.

SENATOR DONDERO LOOP:

This reminds me of the old paper license. I am sure it will not be confused with a driver's license, but I have not had that conversation with Julie Butler, Director, DMV.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

We support successful reentry for inmates. Any identification is better than no identification when an officer encounters people in the field. There was legislation passed last Session that allows the Clark County Detention Center, through the Hope For Prisoners, Incorporated program, to assist certain inmates with obtaining identification. We support A.B. 10.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice, Inc.):

We support A.B. 10. When criminal defense attorneys and police support a bill, it is a good compromise bill.

I understand and share the Committee's concerns. We already have a two-tier system. I have a driver's license that reads "Not for federal official use" because it is not compliant with the REAL ID Act. That is a concern of the DMV, so a possible amendment to A.B. 10 may be to include "Not for federal official use" on verified and nonverified cards. Regardless of whether this amendment is made, we support this bill.

JUDE HURIN (Department of Motor Vehicles):

We are neutral for A.B. 10. This has been an ongoing saga. The only area of concern the DMV has with any card used as acceptable identification for a name and date of birth is making sure the card has been properly vetted. As described by Mr. Dzurenda, many offenders have not been vetted properly, so we are concerned we may not fully understand the process of the DOC or confirm a person is who he or she claims to be. Our issue is not about REAL ID cards, standard driver's licenses or an ID card, it is a matter of saying, "We

know this is the person before us." That is our cornerstone issue. We are happy to continue to work with the DOC to establish better standards or work on legislation. At the same time, we cannot compromise our system by issuing credentials to an individual who says he is John Doe when he is Jim Smith. The community expects us to properly vet our credentials.

SENATOR DONDERO LOOP:

We have ID cards for people who are not U.S. citizens. Are those individuals required to have birth certificates?

TONYA LANEY (Department of Motor Vehicles):

The only ID card a person can obtain without backup credentialing is the Driver Authorization Card. That card only gives someone the authority to drive on Nevada roadways. It states the DMV has tested one's skills to be able to do so; it is not for identification purposes.

In regard to a standard driver's license that reads "Not for federal official use" versus REAL ID cards, one can use a standard ID card from Nevada to obtain a passport. We would not want to issue those standard cards to individuals because we accept passports to obtain a REAL ID card.

There is a concern if all released inmates are issued the same type of card and we accept that DOC ID card as proof of name and date of birth. If we cannot differentiate between cards that have and have not been verified, the DMV is potentially giving offenders a new identity. That is the crux of this issue.

SENATOR DONDERO LOOP:

I appreciate that piece, I am just trying to brainstorm through this. There was a time when people without birth certificates would obtain ID cards because they were not driving. Are other states issuing that type of non-driver ID card to be used solely for identification purposes?

MR. HURIN:

Not to my knowledge. Every state is fairly standardized in regard to acceptable documents required for an ID card or driver's license.

SENATOR DONDERO LOOP:

The look of the DOC ID card does not bother me as much as the wording. A released offender is going to hear, "This ID is not verified. You were an inmate." Even a pharmacist can question the validity of the card.

MS. LANEY:

We do not have a preference to the language as long as something identifies to the DMV the card has been verified. That way our staff will not run the risk of accepting unverified documentation to give someone a "true identity."

MR. HURIN:

There was a question about whether businesses will accept the Driver Authorization Card even though it states it is not a form of identification. Since its passage, we have seen a variety of businesses accept that card. You will probably have the same situation with this DOC card; some business will honor that card and others may not.

I believe the DOC is doing its best to acquire copies of birth certificates for inmates who are due to be released within a six-month time frame. I am happy to work with the Committee and the DOC to look for additional funding so this process can begin earlier. It takes time to obtain a birth certificate. We want to help inmates have proper credentials when they are released, but we want to make sure we are issuing ID cards to the right people.

SENATOR DONDERO LOOP:

I am glad to hear you are not married to the language, and that may be something we can work on.

SENATOR PICKARD:

What is the practice in place now, and how would that change with the proposed card? We want to make sure we are verifying ID cards and not becoming a purveyor of false identifications.

MS. LANEY:

We would accept a released inmate card with the understanding his or her identity has been verified in addition to other checks, such as running a social security check to make sure the name on the card matches what is in that database. Once that information has been verified, a former inmate can obtain a standard ID card that reads "Not for federal official use" if he or she does not

have the backup documentation used to obtain the DOC card. If an inmate is able to obtain a copy of his or her birth certificate before release, we would accept that same documentation, and he or she could obtain a REAL ID card. An inmate can also use a standard ID card to order his or her birth certificate or needed credentials; a REAL ID can be issued once those credentials are obtained.

We do not want to blur the lines between verified and unverified identification by giving a credential to a released inmate that would allow him or her to create a true identity if those documents have not been verified.

SENATOR PICKARD:

You would not accept a card that indicates it has not been verified, correct?

MS. LANEY:

That is correct. At that point, we would work with released offenders by going through our list of acceptable documentation they could obtain to assist them. Normally, if they come to the DMV, they want to obtain the proper credentials to drive or gain employment and are open to assistance. However, some of these individuals do not want their true identity known.

SENATOR HANSEN:

There was a bill last Session that allowed Indian tribes to issue their own photo ID cards. Apparently there has been a big roadblock with the DMV accepting those ID cards in order to obtain additional ID cards. Will A.B. 10 face a similar problem with the DMV?

MR. HURIN:

We started working with the lobbyists behind the Indian ID card before Session began. That bill from last Session did not have amendments to NRS 483, which is the drivers' licenses statute. We want to make sure the credentials tribes use to create their own card—which is a mirror image of the DOC card—are verified. Once we are given verified cards by the tribes, we plan to use the same format and process used when dealing with DOC ID cards. But we need to make sure the procedures of creating ID cards by each tribe are vetted. We found some tribes have done a fantastic job of vetting through the Bureau of Indian Affairs.

We proposed language for a bill. However, that bill did not have momentum on the first side of the House. Assemblywoman Daniele Monroe-Moreno has

committed to introduce this issue in some bill to the Senate. We are ready to testify in support of that bill, and it mirrors what we are doing with the DOC.

SENATOR HANSEN:

We seem to be talking about the same problem with two different forms of identification. Perhaps we can create an amendment to address both issues this Session.

ERNIE ADLER (Pyramid Lake Paiute Tribe):

I worked with Senator Hansen on the tribal ID bill last Session. We had problems with the tribal ID cards; these cards are not going to work well. Unless it is specified where these identifications may be used, such as to open a bank account or fill out an employment application, businesses will not accept them. This additional language will not be a guarantee of acceptance, but it may help these released inmates.

MR. DZURENDA:

We will work with the DMV to try to find some other language. As long as our released inmates can obtain some type of ID that cannot be used to falsify their identification with the DMV, I am open to the wording on the card.

CHAIR CANNIZZARO:

I will close the hearing on A.B. 10. I will open the hearing on A.B. 69.

**ASSEMBLY BILL 69 (1st Reprint)**: Revises provisions governing residential confinement of violators of parole. (BDR 16-347)

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

Assembly Bill 69 formalizes how offenders' parole conditions are modified.

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

Assembly Bill 69 mirrors existing law under NRS 213.15105. The difference is that statute allows us to place an offender who is pending potential revocation on house arrest in lieu of incarceration while going through the process of an inquiry hearing—an internal probable cause hearing—by the P&P to see if the violation justifies sending it back to the State Board of Parole Commissioners for potential revocation.



Statute does not give us the ability to place an offender who has committed a less-serious violation—one not requiring revocation—on house arrest in lieu of incarceration. We have that tool available to us for more serious offenses but not for offenders we do not want to be incarcerated while we review their violations and corrective behavior.

Unnecessary incarceration places someone at risk of losing his or her job and, in turn, jeopardizing his or her ability to pay for housing and to support children. That is not the avenue we want to go down for a lower-level violation that can be corrected through other intermediate sanctions. We are seeking the authority to provide residential confinement in conjunction with the Board while we modify the terms of the offender's supervision.

CHAIR CANNIZZARO:

Would this be while an offender is pending potential revocation, where he or she would not necessarily be up for revocation, but there should still be a sanction, or both?

MR. LAWSON:

This would be where we are not seeking revocation because statute provides us the avenue to do that for more serious revocation-justified offenses. These are for lower-level offenses.

CHAIR CANNIZZARO:

Just to clarify, this would then be a situation where somebody has violated a condition of his or her parole, but the violation is not so serious he or she would be placed back in prison and revoked from parole. It would be a sanction that says, "You still have to abide by the terms of your parole, so do not do this again."

MR. LAWSON:

That is correct. The initial form of A.B. 69 has been amended. Assemblyman Skip Daly worked with us on the amended bill. Some of the changes were under section 3, subsection 7. We amended the language from "The Board shall modify the conditions of parole" to "The Board may modify the conditions of parole." That check and balance in having the Board being able to review our actions and ultimately approve or not was important to ensure our officers were acting appropriately when requesting modifications. Additionally, section 2, subsections 2 and 3 codify the notice to the offender, and the change in

conditions must be in writing. Should the offender request the opportunity to seek counsel on whether he or she wants to admit the violation and accept residential confinement, it codifies a timeline he or she will be given to seek counsel.

When constructing the bill, we asked for the opinion of the ACLU and public defenders from the State as well as Washoe and Clark Counties. I will not speak for them, but there was overall support for the bill and the language. With the amendment, we are able to accomplish our goal of providing the ability to impose this intermediate sanction before we get to the revocation process. It will prevent destabilizing an offender for a violation when we do not feel he or she should be incarcerated.

SENATOR DONDERO LOOP:

Is this a tiered system? Is a tiered system in place?

MR. LAWSON:

We do have a tiered system of intermediate sanctions. For example, we have a matrix that says if an offense is within a certain realm and it is the first time someone committed this sort of offense, this is the expected range of intermediate sanction. It graduates depending on the number of occurrences of violations. The idea is to give our officers some guidance on a standard intermediate sanction for the range of violations we may come across, but there is always the opportunity—based on mitigating circumstances—to modify that tiered response.

SENATOR OHRENSCHALL:

This bill seems to have good intentions in terms of trying to help someone who is under supervision keep a job and a roof over one's head and take care of children.

Regarding the language on residential confinement, would that include GPS-monitoring ankle bracelets, or would it be just checking in with the officer?

MR. LAWSON:

It does include the potential for electronic monitoring.

MEGAN ORTIZ (ACLU of Nevada):

I am here on behalf of the ACLU of Nevada as well as representing John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County.

As Mr. Lawson stated, he spoke with the ACLU. We support all efforts to any alternatives to incarceration. He cited many of the things we brought up in the Assembly side. This affects employment and child care, and we always support the ability to help these people. We would like to see some data tracking from the Division to see success and failure rates. That was something Mr. Piro brought up on the Assembly side—just to see how many times intermediate sanction would be used. There were concerns on the Assembly side regarding the right to consult with counsel, but those issues have been addressed.

We favor as much mobility as possible and prefer the P&P default to drop-in centers before the heftier sanction of house arrest. Given all of the language and the work from the Assembly side, we support A.B. 69.

MR. HOFFMAN:

We oppose A.B. 69. We supported the original version of the bill and we strongly support its intent, but two issues in the amendment pose a concern.

The amendment changes the language in section 3, subsection 7 from "The Board shall modify the conditions of parole," to "The Board may modify the conditions of parole." This is a concern because the defendant is making a binding admission he or she violated parole. Under the original version of the bill, the offender receives something in exchange. It is like a guilty plea; one can agree he or she violated parole and, in exchange, receive only house arrest. This amendment blows that up because one can agree he or she violated parole, and the Board can rule to revoke his or her parole anyway. In addition, this can be used against an individual in future revocation hearings. This is not a good change, and we ask the Committee to remove it.

The other issue is the three-to-six day period for counsel. If a defendant has been arrested for his or her violation, he or she will sit in jail for three to six days. That is a problem because it defeats the purpose of the bill—to keep people out of jail. The proponent of A.B. 69 testified this will only be used for low-level or intermediate-level issues. If those issues do not involve people being arrested, we do not have a problem. Perhaps a clarification could be made to read, "It is three to six days if the person is not in custody."

We have specific issues with those two parts of the bill, but we support its intentions. We would support A.B. 69 if those changes could be made.

CHRISTOPHER DERICCO (Chair, State Board of Parole Commissioners):  
We are neutral on A.B. 69.

Some work with the P&P had gone into the amendment regarding the "shall" and "may" language from section 3, subsection 7. We did not want to have something imposed that absolutely had to be done. The term "may" would be better if house arrest was not warranted. We wanted to have the opportunity, much like we would in other cases, to impose what was best.

This bill comes to the Board, and it is an opportunity for the Division not to submit a warrant request on some type of violation for us to sign. We want to have the opportunity for an individual to remain in the community, be safely supervised and complete his or her supervision term.

MR. LAWSON:

To address Mr. Hoffman's concerns: his use of the admission by the Board if it were to request a hearing on this has been addressed in the waiver form itself. We had not explored the possibility the Board would seek a stiffer sanction than initially intended. That is a good point and, possibly, based on the Board's authority. The waiver form—which we provided to the Assembly and we would be happy to provide to this Committee—says an admission is null and void should the Board decide to hear the case and not accept the admission. It cannot be used in consideration of the Board's decision later on, so the Board would review the facts of the case fresh without the waiver or the admission of guilt per se.

The concern over arrest issues came up in our discussions with Assemblyman Daly. I gave an example about a local law enforcement entity that came in contact with a person at 2:00 a.m. We received notification via the Dangerous Offender Notification System (DONS). Depending on the circumstances of law enforcement contact in the field and the history of the offender, the on-call DONS person, officers reviewing that at 2:30 a.m. may say, "Hold them on our behalf, and we will talk to him tomorrow at the jail."

The intent was, if local law enforcement arrested someone under our hold, we would go to the jail and our officer would talk to the offender. If the officer

realizes the issue is not as serious as was thought at 2:30 a.m., we would like to release that person from jail. As we are going through this process, there is the slight potential that person would remain in jail longer than we intended.

The crux of the language of this bill says, if the offender requested the right to counsel, he or she would have a timeline and an opportunity to get out of jail quicker. The unintended consequence of the three-to-six day rule was that someone could spend more time in jail than was necessary. We wanted to prevent that from happening as best we could.

We did consider arrest issues. It was more likely someone would be arrested in the situation with a DONS hold and not a field action by the Division. If we were to arrest someone, we could unarrest. We have arrested someone, looked into the facts and circumstances closer and released him or her from custody with either modification requests from the Board or the imposition of another intermediate sanction shy of even residential confinement.

MS. O'ROURKE:

I wanted to clarify that, for whatever violation the parolee committed that caused us to submit a waiver and place him or her under State-funded house arrest, if he or she complies with the house arrest terms and is successfully taken off house arrest, that violation will not be used against this individual in the future. I wanted to put it on the record that we consider that satisfied; we are not going to violate them twice for the same instance.

CHAIR CANNIZZARO:

I will close the hearing on A.B. 69. I will open the meeting up for public comment.

SARAH ADLER (Nevada Coalition to End Domestic and Sexual Violence):

Today we celebrate Denim Day, part of Sexual Assault Awareness Month. It is a visible pushback to cultures around the world that perpetrate sexual violence and a way to stand up for victim survivors.

Sexual assault is a significant problem in our Nation and in our State. In Nevada, there were 1,865 reported rapes in 2017. This was an 8.12 percent increase from 2016, yet rape is considered to be the most underreported crime. An estimated 63 percent of sexual assaults are not reported to police. We

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appreciate those of you sporting denim today and, moreover, those on the Senate Judiciary Committee.

We have many important pieces of legislation addressing sexual assault, sexual harassment, sex trafficking and domestic violence this Session. Many of those bills will travel through this Committee. In particular, we appreciate Senator Cannizzaro's cosponsorship of A.B. 176.

**ASSEMBLY BILL 176 (1st Reprint)**: Enacts the Sexual Assault Survivors' Bill of Rights. (BDR 14-87)

Assembly Bill 176 has a significant fiscal note, but it is small compared to the need to prevent this crime and to support victim survivors.

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CHAIR CANNIZZARO:  
I will adjourn the meeting at 10:12 a.m.

RESPECTFULLY SUBMITTED:

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Jenny Harbor,  
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	6		Attendance Roster
A.B. 207	C	7	State Bar of Nevada, Business Law Section	Testimony