

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
February 8, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m., Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Mindy McKay, Division Administrator; Records, Communications and Compliance Division; Department of Public Safety
Erica Souza-Llamas, Records Bureau Chief; Records, Communications and Compliance Division; Department of Public Safety
Barry Gold, AARP Nevada
Jim Hoffman, Nevada Attorneys for Criminal Justice
Justin Watkins, Nevada Justice Association
John Piro, Office of the Public Defender, Clark County
Nick Shepack, ACLU of Nevada
Kendra Bertschy, Office of the Public Defender, Washoe County

CHAIR SCHEIBLE:

We will open the hearing on Senate Bill (S.B.) 19.

SENATE BILL 19: Establishes provisions authorizing certain entities to obtain information relating to the records of criminal history of certain persons responsible for the safety and well-being of children, elderly persons or persons with disabilities. (BDR 14-336)

MINDY MCKAY (Division Administrator; Records, Communications and Compliance Division; Department of Public Safety):
Erica Souza-Llamas, Records Bureau Chief of the Records, Communications and Compliance Division, will present S.B. 19.

ERICA SOUZA-LLAMAS (Records Bureau Chief; Records, Communications and Compliance Division; Department of Public Safety):
You have my written bill presentation ([Exhibit B](#)). The Records, Communications and Compliance Division houses the Central Repository for Nevada Records of Criminal History. The Repository maintains Statewide records of arrests and dispositions and is responsible for processing fingerprint-based background checks for licensing, employment and volunteer purposes that have legislative and federal authority.

Section 1 of S.B. 19 would ensure the continuation of fingerprint-based background checks of people working with the State's most vulnerable populations: children, the elderly and the disabled. Background checks are conducted under the National Child Protection Act/Volunteers for Children Act (NCPA/VCA). Up until 2019, the FBI allowed states to use federal authority, absent state statutory authority, to conduct background checks.

In January 2019, the FBI notified all states of amendments to the NCPA/VCA requiring them to have a state statute authorizing national background checks of covered individuals to continue the NCPA/VCA authority. The Records, Communications and Compliance Division has 333 active accounts utilizing the NCPA/VCA.

The Division received 13,256 NCPA/VCA fingerprint submissions in 2019 and 8,821 in 2020. Should Nevada lose its authority to conduct national background checks using the NCPA/VCA due to lack of State statutory authority, those account holders would be adversely impacted, since the Division would be required to close the accounts. Vulnerable populations would be most at risk. The Division anticipates the impact to account holders would be

minimal, but it will work closely with them should changes be required on their end.

Senate Bill 19 would enact statutory authority to allow the Division to continue to utilize the NCPA/VCA for fingerprint submissions, pursuant to the VCA as amendment to the NCPA.

SENATOR HANSEN:

Why does S.B. 19 require a two-thirds vote for passage? I do not see a tax levy.

MS. SOUSA-LLAMAS:

There is a background check fee remitted to the Repository added in section 1, subsection 3. That may require the two-thirds vote passage.

SENATOR HANSEN:

Mr. Anthony, do agree with that?

MR. ANTHONY:

That is correct.

SENATOR PICKARD:

Are we shifting from a database that just shows convictions to one that shows every type of interaction—arrests, temporary restraining orders (TPOs), citations—with law enforcement? Will anyone with an account through the Repository have access to the database? The Legislative Counsel's Digest for S.B. 19 states the State would be authorized to establish procedures whereby certain entities may request a background check to determine if someone has been convicted of a crime. On line 11 of the Digest on page 1 of the bill, entities may "obtain information relating to the records of criminal history of employees. ..." Line 15 of page 2 is a list of screening items submitted to the Repository. Is there anything in S.B. 19 requiring the Repository to make available any records other than convictions?

MS. SOUSA-LLAMAS:

The Repository is already conducting background checks under federal authority. Nothing we receive from an outside entity will change under S.B. 19.

SENATOR PICKARD:

What type of impact will the bill have on the Department of Public Safety (DPS)?

Ms. SOUSA-LLAMAS:

We have 333 open accounts for which we are conducting background checks under NCPA/VCA authority. In 2019 and 2020, we conducted a total of 22,077 checks. If the State should lose the federal authority to submit fingerprints to the FBI, all of the accounts would be closed. Most checks are conducted on people who want to work or volunteer with children, the elderly and the disabled.

SENATOR PICKARD:

Is there a threat that authority could be lost?

Ms. SOUSA-LLAMAS:

Yes, if a State statute is not enacted, the Repository could no longer operate under federal authority.

SENATOR SETTELMAYER:

Who is paying the background check fee for employees interacting with the vulnerable? Would children and the elderly now be required to pay the fee?

Ms. SOUSA-LLAMAS:

The Repository charges for State and FBI background checks. The bill would not impose a new fee on the vulnerable population. I am not sure who pays the fee, which may be a combination of applicants, authorized entities and employers.

SENATOR SETTELMAYER:

If the fee is already being paid, why would the bill increase that authority? Who does the fee go to? I would not support a bill that increases costs for senior citizens; perhaps the State should pick up the fee.

MR. ANTHONY:

Nevada Revised Statutes (NRS) 179A authorizes collection of the fee. Senate Bill 19 would further codify that authority pursuant to federal law. Either the applicant or prospective employer pays the background check fee.

BARRY GOLD (AARP Nevada):

Senate Bill 19 has the support of AARP Nevada. The State needs to continue the authority to obtain background check information. It is critically important to ensure the people who take care of and are responsible for children and frail, vulnerable, older adults pass background checks.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):

Nevada Attorneys for Criminal Justice supports S.B. 19. The bill would offer slightly more procedural protection to the Repository. In 2019, the ban-the-box bill—A.B. No. 384 of the 80th Session—passed. The bill required employers to pursue the normal employment process then perform a background check. We do not want S.B. 19 to change that.

JUSTIN WATKINS (Nevada Justice Association):

Nevada Justice Association opposes S.B. 19 because of section 1, subsection 8, which provides immunity from damages for qualified entities that do not obtain employees' criminal history records. If taxpayers create the repository of information required to be accessed, that information must be used to protect vulnerable people. If there is immunity for failing to access that information, entities are disincentivized from doing so. Instead, a limitation of damages solely arises from the accuracy of the information gleaned from the records. Thereby, if the Repository information is incorrect, the qualified entity is not liable.

CHAIR SCHEIBLE:

We will close the hearing on S.B. 19 and open the hearing on S.B. 31.

SENATE BILL 31: Makes various changes relating to public safety.
(BDR 14-337)

Ms. SOUSA-LLAMA:

You have my written bill presentation ([Exhibit C](#)). The Repository administers the Uniform Crime Reporting (UCR) program and conducts name-based background checks, pursuant to NRS 179A.103. Section 1, subsection 1 of S.B. 31 would amend the definition of a "record of criminal history" in NRS 179A.070 by replacing "district attorney" with "prosecuting attorney."

The Repository receives charging decisions from all State prosecuting offices, which includes district, city and prosecuting attorneys, plus the Office of the

Attorney General. Complete and accurate criminal history records are critical to making civil and criminal determinations for employment, licensing, firearms transfers, charging and court decisions.

Section 2 of S.B. 31 amends NRS 179A.075, subsection 8, paragraph (g). The section requires the Records, Communications and Compliance Division to prepare and post on the Repository's website an annual report on statistical crime data. Section 2, subsection 8, paragraph (h) would add an electronic means to access that data on the website.

The Repository staff spends months preparing the annual report for publication. We recently implemented the Theme-Oriented Public Site (TOPS) to search for particular crime data. Information on TOPS will be more timely than that now published annually. Data will be accessible as soon as local law enforcement agencies enter it. Senate Bill 31 would make the UCR more efficient.

Section 2, subsection 8, paragraph (g) of S.B. 31 amends NRS 179A.075, subsection 8, paragraph (h) to provide the aforementioned mechanism of data access for domestic violence statistics.

Section 3, subsection 1 of the bill relates to the Repository's Civil Name Check program, a name-based background check service pursuant to NRS 179A.103. The bill would remove subsection 5, paragraphs (a) and (b) of NRS 179A.103, authorizing the Division to continue current processes. The repeal of subsection 5, paragraph (a) will allow authorized participants in the service to receive information about prospective employees or volunteers needed to make a final hiring determination. The Civil Name Check program allows participants to request that Repository staff conduct further research into records.

The repeal of NRS 179A.103, subsection 5, paragraph (b) would relieve the Repository of the requirement to provide information pertaining to any incident for which a person is in the criminal justice system, including parole and probation. After a Nevada Supreme Court ruling in March 2020, DPS's legal counsel advised that the Repository was not authorized to disseminate information from the Division of Parole and Probation, under NRS 213.1075.

Section 4 of S.B. 31 would amend NRS 179A.350 subsection 8, paragraph (a). The Repository compiles an annual written report about TPOs and extended protection orders. It is sent to the Director of the Legislative Counsel

Bureau (LCB) on or before July 1. The bill provides for the same data access mechanism outlined in section 2 of the bill. Likewise, the collected data will be placed on TOPS, whereas the LCB Director may access the information at any time.

Section 5 of S.B. 31 also provides for data reporting, amending the contents of annual reports from the Repository for Information Concerning Crimes Against Older Persons or Vulnerable Persons. That report also goes to the LCB Director on or before July 1. The collected data will be placed on TOPS, whereas the LCB Director may access the information any time.

SENATOR HANSEN:

Data reports are due on or before July 1, but S.B. 31 would make that reporting more frequent? Is there a mechanism to ensure reports are made at least once a year? The ability to post the data electronically is good, but we need another specific date for posting once a year.

Ms. SOUSA-LLAMAS:

Data on TOPS would be available at any time. There is a six-month waiting period before Repository staff gathers information from the previous year for posting. Under S.B. 31, all information will be immediately available, maybe a month after the criminal incident after agencies enter the information into TOPS.

SENATOR HANSEN:

I was concerned that removing the guaranteed annual reporting clause would give agencies too much flexibility and might lead to procrastination. Typically, does Repository staff have a six-month window to post data, after agencies have a one-month or six-week turnaround posting time?

Ms. SOUSA-LLAMAS:

Generally, it takes about three to four months for the Repository to get data. We have recently installed new technology for our reporting mechanism. We have staff dedicated to the crime-reporting program who monitor submissions from criminal justice agencies.

SENATOR PICKARD:

The definition of "criminal history" subject to collection would be changed in section 1, subsection 1 of S.B. 31 to include warrants, arrests, citations, detentions, decisions not to prosecute, indictments, charges and dispositions of

charges. Previously, that information was available to any qualified entity, which raises ban-the-box concerns. Under the bill, is it true that when a client logs into the Repository reporting system, he or she would be able to make employment decisions based on arrests or TPOs? The latter and extended protection orders are decided merely on the standard of satisfaction in court, instead of beyond reasonable doubt. This is veering away from the standard of innocent until proven guilty. I am not suggesting we protect perpetrators, but how does this square with ban-the-box, in which mere arrests are criteria for not hiring someone?

Ms. SOUSA-LLAMAS:

The Repository does not provide protection order information in background checks. Modifying the definition of "criminal history" will not change the information provided by the Repository.

SENATOR PICKARD:

Even though the Repository is collecting information on nondisposition types of entries, are they disseminated in reports?

Ms. SOUSA-LLAMAS:

When someone is arrested without disposition information, we do release that criminal history data for purposes of background checks. Senate Bill 31 would align our current practices with fingerprint-based checks.

SENATOR PICKARD:

Please explain how that squares with the ban-the-box policy in which employers cannot use arrest records as a basis for denying employment.

Ms. MCKAY:

Repository staff will provide an answer to Senator Pickard's request and Mr. Hoffman's testimony on S.B. 19.

SENATOR OHRENSCHALL:

I am concerned about S.B. 31's deletion of the requirement to send certain reports to the LCB Director, instead posting them on TOPS. Will there be a fee for the public to read the reports?

Ms. SOUSA-LLAMAS:

There is no fee to read the reports.

SENATOR SETTELMAYER:

Can anyone access this information?

Ms. SOUSA-LLAMAS:

The reports may be accessed by anyone conducting a civil criminal history background check. Law enforcement may also access them while conducting criminal investigations.

SENATOR SETTELMAYER:

If I were a regular employer, could I access background check reports, or would I have to be in a certain category of employer, such as someone who provides services for the elderly?

Ms. SOUSA-LLAMAS:

Civil applicants for fingerprint-based checks would have to be authorized by NRS 179A. The FBI would then decide if Repository staff could release the information.

MR. HOFFMAN:

Nevada Attorneys for Criminal Justice opposes S.B. 31 because of the concerns raised by Senator Pickard. One aspect of the criminal justice system is rehabilitation, which may allow people to leave the criminal lifestyle. One of the best ways to do so is to get a job, which can be difficult if you have a record. This is especially true of people with multiple arrests who may not have been convicted. I had a client who had been arrested 40 or 50 times but only had a minor conviction for a marijuana offense. If an employer had run a background check on him, he would not be hired because of the multiplicity of arrests. While my example is extreme, things like that happen often.

My client was African American. There is a racial disparity as to who gets arrested, and minorities may not have courts or district attorneys as a check on that. Prosecutors could look at an arrest record like that and think, "Oh, this isn't really a case," because there were no convictions. However, people like my client still have a record of multiple arrests. Nevada Attorneys for Criminal Justice opposes section 3 of S.B. 31 because we think it will impede the process of rehabilitation.

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

The Clark County Office of the Public Defender opposes S.B. 31 because of section 3 and for the same reasons as Senator Pickard. The section gives access to all information, not just convictions or active involvement with the criminal justice system. Section 3 contradicts ban-the-box legislation. Our system of assumption of innocence would be greatly impacted by a change of this magnitude. It goes against legislative progress made in the Seventy-ninth and Eightieth Sessions. A Roman Catholic priest, Father Gregory Boyle, who works with gang members in Los Angeles, said, "Nothing stops a bullet like a job." Senate Bill 31 would create a barrier to employment.

The Repository is improving its redaction programming after the Legislature kept it at a technological disadvantage due to lack of funding for far too long. Sometimes, State employees are asked to do so much with so little. Repository employees must physically redact documents. They need legislative support to ensure practices like those in section 3 of S.B. 31, whereby things that are not convictions are redacted.

NICK SHEPACK (ACLU of Nevada):

Senate Bill 31 is opposed by ACLU of Nevada for the same reasons as expressed by Mr. Hoffman and Mr. Piro. We contend that people—who have been arrested but have prosecuting attorneys who choose to not prosecute—will have to explain the criminal charges to prospective employers who may deny them a job. An attorney's decision to not prosecute should not be part of one's criminal record.

Without increased funding and system modernization, providing records to employers or other authorized entities that differentiate between arrests and convictions is difficult and time-consuming. The Repository staff is tasked with doing too much with too little.

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

The Washoe County Office of the Public Defender opposes S.B. 31. We are concerned about section 3 for the reasons listed by Mr. Piro, Mr. Hoffman and Mr. Shepack. Our objections are based on fiscal issues. Policy has dictated why, in section 5, only records of convictions are provided to employers.

Employment is important to overcome the circumstances that may have initially brought offenders into the criminal justice system. This would adversely impact

people whose cases were dismissed due to false allegations and inability to prosecute. It would also impact people participating in specialty court programs whose arrest would not appear until their disposition, with a conviction up to two years later. During that time, when we are attempting to allow offenders to rehabilitate, they may have the convictions on their records, which could preclude employment.

CHAIR SCHEIBLE:

We will close the hearing on S.B. 31. We will vote to introduce Bill Draft Request (BDR) 14-549.

BILL DRAFT REQUEST 14-549: Establishes provisions relating to the administration of justice. (Later introduced as [Senate Bill 108](#).)

SENATOR OHRENSCHALL MOVED TO INTRODUCE BDR 14-549.

SENATOR CANNIZZARRO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HANSEN, PICKARD AND SETTELMAYER VOTED NO.)

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CHAIR SCHEIBLE:

Seeing no more business before the Senate Committee on Judiciary, the meeting is adjourned at 1:53 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 19	B	1	Erica Souza-Llamas/ Records, Communications and Compliance Division; Department of Public Safety	Bill Presentation
S.B. 31	C	1	Erica Souza-Llamas/ Records, Communications and Compliance Division; Department of Public Safety	Bill Presentation