

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
February 9, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Tuesday, February 9, 2021, 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
Gina LaCascia, Committee Secretary

OTHERS PRESENT:

Charles Daniels, Director, Department of Corrections
Harold Wickham, Deputy Director, Department of Corrections
Deborah Striplin, Prison Rape Elimination Act Coordinator, Department of Corrections
Nick Shepack, American Civil Liberties Union of Nevada
John Piro, Clark County Public Defenders' Office
Daniele Staple, Executive Director, Rape Crisis Center
Jameelah Lewis
Jodi Hocking, Return Strong
Kendra Bertschy, Washoe County Public Defenders' Office
Leslie Turner, Progressive Leadership Alliance of Nevada
Elia Solano
Robyn Feese, Substance Abuse Program Coordinator, Department of Corrections

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CHAIR SCHEIBLE:

I will open the hearing on Senate Bill S.B. 20.

SENATE BILL 20: Revises the applicability of the Sexual Assault Survivors' Bill of Rights. (BDR 14-328)

CHARLES DANIELS (Director, Department of Corrections):

I will discuss S.B. 20, also referenced in *Nevada Revised Statutes* (NRS) 178A.160, as Sexual Assault Survivors' Bill of Rights, which was initiated in A.B. No. 176 of the 80th Session. The primary presenters will be Harold Wickham, Deputy Director, and Deborah Striplin, PREA Coordinator.

Nevada Revised Statutes does not address the barriers or safety and security risks this legislation poses to the Department of Corrections (DOC) to follow incarcerated survivors. The goal is to continue to use the standards intended to address all policy and procedures related to incarcerated survivors of sexual abuse or assault rather than impose legislation which is geared to survivors in their community.

SENATOR HARRIS:

How many incidents of sexual assault occur in DOC each year?

HAROLD WICKHAM (Deputy Director, Department of Corrections):

For 2020, the DOC records list three assaults.

SENATOR HARRIS:

Which provisions of the Sexual Assault Survivors' Bill of Rights are particularly difficult for the DOC to adhere to?

MR. WICKHAM:

The issue we have is that the bill does not address safety and security. We fall under the federal mandate of Prison Rape Elimination Act (PREA). This Act covers almost everything that the bill covers, but it does not allow for offenders to go outside of the facility to choose an advocate or to choose a facility to go to. It would also create a safety and security violation for the offender and the community.

SENATOR HARRIS:

Are you suggesting that allowing anyone in prison who is a victim of sexual assault to choose their own advocate makes the community less safe?

MR. WICKHAM:

Yes. It would make the community less safe if an offender decides to manipulate the system. For example, suppose the offender chose someone on death row who wanted to escape. The potential is there. Or if this person chose somebody who could have been a victim that the offender victimized—this would hinder the victim's ability to testify or report the incident accurately. There are concerns and unintended consequences.

SENATOR HARRIS:

As the law is written now, can someone in the community choose someone on death row to be the advocate?

MR. WICKHAM:

I am not aware if someone in the community could pull someone out from death row as the advocate.

SENATOR HARRIS:

It is my understanding that victims have the right to pick anyone they want. Someone in the community is not likely to pick someone on death row to be the advocate in order to help the inmate escape. It may not be the case if someone has been sexually victimized in prison.

MR. WICKHAM:

I agree with you. We are trying to do everything we can to minimize any safety and security risks. The PREA requirements cover anyone within the facility much like the State Bill of Rights.

MR. DANIELS:

Typically, that representation would come from a legal entity outside the facility or from individuals within the agency. Once we allow anyone and everyone to do this, some will find a way to manipulate the system by bringing in someone who may have an interest in a continual criminal enterprise, like smuggling narcotics. We would have no ability to limit who comes in. Victims or alleged victims could ask to have anyone come in they wanted. We certainly would not have the ability to say otherwise unless we can prove that the individual would

not be suitable. This would include former inmates and anyone else who could be involved in criminal activity or are otherwise being monitored. We would lose the ability to have an impact on who enters the facility. We would prefer to continue to follow under the auspices of the PREA because it does afford us the ability to mitigate who enters the facility if we believe there to be an issue.

SENATOR HARRIS:

I would encourage you to find ways to make it more feasible or at least ask us for ways to make it more feasible to give these prisoners the same rights as opposed to seeking an exemption.

CHAIR SCHEIBLE:

Has the implementation of the Sexual Assault Survivors' Bill of Rights somehow been removed from DOC? It sounds like you are saying PREA would stop applying when the Sexual Assault Survivors' Bill of Rights applies. I had assumed that DOC was required to meet the requirements of both. Is this incorrect?

DEBORAH STRIPLIN (Prison Rape Elimination Act Coordinator, Department of Corrections):

Under PREA standards, the DOC are mandatory reporters. Under the Victims' Bill of Rights, it affords the victim in the community to not have a report provided to law enforcement. This is one of the victim's concerns, that all of our staff, victims and contractors who come into our facility have made reports that they were sexually assaulted. We are required to report this. Under PREA standards, we have multiple provisions to follow to ensure we are addressing the victims accordingly. We do have criminal investigators assigned to DOC. Under the Bill of Rights, it allows the victim to choose the gender of the investigator. At this time, DOC only has two female investigators and the rest are male. We have no female investigators in the north, and this limits our ability to provide the gender that the victims request to support them through the process.

All of our inmates are transported out to local hospitals. System advocates will respond to support the victim during the sexual assault forensic examination. Upon the victim's return to our facility, we provide ongoing medical care. We ensure that the victim is no longer in the same area as the aggressor. This is when the investigation commences.

Under PREA, once the investigation has been completed, the victim is notified of the status and all results, including if charges have been filed. They are notified of all updates.

CHAIR SCHEIBLE:

I still do not see how having a State statute outlining these rights prevents anybody in the custody of DOC from also enjoying the protections of PREA.

MS. STRIPLIN:

Our concern is with the mandatory reporting component with the requirements of PREA and what is allowed for the community victims. Victims can choose not to go forward. For example, if an inmate reported being sexually assaulted, and we did not report it, at that point we could not do a thorough investigation as required by PREA because we would not be reporting it or conducting the investigation.

CHAIR SCHEIBLE:

Is that something that happened with any of the three incidences in 2020?

MS. STRIPLIN:

As far as not wanting to report?

CHAIR SCHEIBLE:

Yes.

MS. STRIPLIN:

No. The majority of the sexual assaults reported are from the victim—very rarely is it a third party, another inmate or a family member. Most of them will come forward to report the allegations, and at that point we start a coordinated response to then address everything going forward.

CHAIR SCHEIBLE:

I understand the concern that you are citing is that the people who manage the prisoners at DOC are mandatory reporters, and the concern is that people who are reporting sexual assault within DOC would not want to talk to a mandatory reporter. But historically, we have not seen that problem arise.

MS. STRIPLIN:

It has not been an option. If the victim chooses not to report, then we would not know. But once the victim discloses the report, all of our staff are required to report that to the supervisors to initiate the investigation protocols and to protect that individual.

CHAIR SCHEIBLE:

Have any of the concerns talked about today come to fruition in the last five years?

MS. STRIPLIN:

I am not aware of any other concerns.

SENATOR OHRENSCHALL:

Since the Deputy Director said there were 3 sexual assaults in 2020, I reviewed the original Sexual Assault Survivors' Bill of Rights Legislation by Senator Spearman's bill, S.B. No. 364 of 80th Session. This bill became effective October 1, 2019. Have there been any incidents since the enactment of this bill where the interplay of State law and the federal PREA has caused these types of problems for DOC? Or are these concerns because something may happen in the future?

MR. WICKHAM:

At this point, no. We have not had any problems or any indications of problems. However, we are thinking forward to ensure we have the safety and security needed for the facilities and the inmates, as well as the community.

SENATOR PICKARD:

Typically, when Congress passes a law, it either gives states the ability to regulate in the same space or it is preempted from doing that, unless we are talking about something outside of the federal law. Has this analysis been completed to determine whether we have the ability under the Victims' Bill of Rights to make these decisions? Has PREA given the states the ability to enter this field?

MR. WICKHAM:

To my knowledge, no; that has not been done.

SENATOR PICKARD:

Mr. Anthony, have you had a chance to look at this and determine whether there is an intersection that needs to be reviewed?

NICOLAS ANTHONY (Counsel):

Before every bill is drafted, our office conducts a thorough analysis on constitutional issues and preemptive issues. It is my understanding when this bill originally came forward in 2019 from Senator Spearman as the Sexual Assault Survivors' Bill of Rights, our office did look into those issues and made a determination at that time that the State law is not preempted.

SENATOR PICKARD:

It seems that if we are talking about a conflict between the State law and PREA, there may be an issue. I appreciate your diligence in your thoroughness and your analysis.

NICK SHEPACK (American Civil Liberties Union of Nevada):

We oppose S.B. 20. As the Policy Director, Holly Welborn, testified last Session during the hearing for the Sexual Assault Survivors' Bill of Rights, we have come to realize that we have not fostered an environment in which people feel they can come forth, particularly, when it comes to allegations of sexual assault. This fact is even more evident when it comes to incarcerated people. The Bill of Rights does not only protect women, but it protects everyone. This should not include just people on the outside, but incarcerated people. While PREA overlaps with the Survivors' Bill of Rights, it does not mirror them. Eliminating incarcerated people from the Survivors' Bill of Rights will greatly reduce the rights of incarcerated sexually assaulted survivors. We can work to rectify any conflicts between PREA and the Survivors' Bill of Rights—this bill, however, does not do that.

We understand the safety concerns raised by DOC, but those too can be addressed in much more nuanced legislation. If PREA regulations are stronger than the Bill of Rights, those should be followed and rightfully legally must. But the Bill of Rights has additional necessary protections for survivors that should be available to all Nevadans. We are happy to work with the Department to build a policy that ensures safety and security while also protecting victims' rights. This bill fails to do that. This bill does not fix the issues raised by the Department and strips protections away from survivors of sexual violence. This

is a sweeping response to nuanced issues with clear negative consequences for survivors of sexual assault and should not be supported.

JOHN PIRO (Clark County Public Defenders' Office):

We share the same concerns voiced by Mr. Shepack. We suggest using the same approach suggested by Senator Harris. Instead of wholesale elimination of incarcerated people from the Survivors' Bill of Rights, we go through the Survivors' Bill of Rights and research what is not practical in a prison setting and move forward from there rather than wholesale elimination. For these reasons, we oppose S.B. 20.

DANIELE STAPLE (Executive Director, Rape Crisis Center):

We oppose S.B. 20 and agree with Mr. Shepack and Mr. Piro.

If there is conflict between PREA and the Sexual Assault Survivors' Bill of Rights, the bill should be modified to state when there is a conflict that PREA would take preeminence. This bill can impact individuals who may have been assaulted when they were in the community before entering DOC as inmates. If charges were filed against the survivor's aggressor prior to being incarcerated, the survivor will require the support and advocacy needed to ensure the assault case would continue to move forward and that the survivor would receive full rights as a sexual assault survivor.

We have a full-time PREA advocate who works closely with the DOC to provide services and support for inmates who are assaulted while in prison. Now, we have support and guidance from the Just Detention International and other national experts to address issues like mandatory reporting and other barriers. There are many ways to work around those issues successfully, and we would advocate for continuing to do so.

JAMEELAH LEWIS:

I echo the same sentiments of everyone who has come before me today in opposition of S.B. 20. Sexual Assault Survivors' Bill of Rights was a step in the right direction. After researching PREA, there is one thing that has been left out of this conversation, people who are part of DOC may not always be incarcerated; they may be on parole or probation, in transitional housing or back in the community, and PREA would still apply. Some people may still choose to have access to a community, advocate or other services, allowing the PREA

standards to apply to those who are incarcerated as well as those who are anywhere within the DOC system.

I agree with Ms. Staple that there are ways we can address mandated reporting, confidentiality and getting people the investigators they are requesting. This bill will not only impact who are incarcerated, but will also affect people who may be impacted by DOC.

JODI HOCKING (Return Strong):

In 2018, the Bureau of Justice Statistics reported that from 2012 to 2015, there were close to 25,000 allegations of sexual victimization in prisons, jails and other correctional facilities. The number of allegations nearly tripled in 3 years with allegations in prisons and jails specifically increasing by 180 percent, with staff on inmate sexual misconduct increasing by 191 percent. While these statistics are alarming, we know that the numbers are likely much higher since sexual victimization is dramatically underreported due to the stigma that surrounds it. By precluding incarcerated people from the protections of sexual assault, the Sexual Assault Survivors' Bill of Rights and the State are perpetuating this stigma and sending a message that justice is merit-based and victims must reach a certain level of worthiness to be deserving of justice.

This decision will empower perpetrators and increase risk for thousands of individuals across the State. There is a nonbinary relationship between offending and victimization. People often hold both of these identities at the same time. Having committed a crime does not exempt incarcerated people from ever becoming victims and therefore should not serve as a barrier to their access to rights of protection. We should not and cannot go down the slippery slope of subjectivity, deciding who is and who is not worthy of a victim's rights and protection.

The question is, do we really believe that all sexual assault survivors deserve a victim's bill of rights? If we do, we will not further marginalize the extremely vulnerable population of incarcerated people by withholding rights that were previously deemed necessary simply for sexual assault victims to have access to. Return Strong stands with all the people who have spoken before us in opposition of S.B. 20. It does not need to be black or white. We can go back and look to make sure that all concerns are addressed without withdrawing that protection for all incarcerated people.

KENDRA BERTSCHY (Washoe County Public Defender's Office):

We oppose S.B. 20 because it is undoing the good work that was put forth in the Sexual Assault Survivors' Bill of Rights. This bill of rights was aimed at providing services to ensure that survivors understand the rights that they have to feel protected and comfortable with coming forward and go past the stigma that surrounds a victim of sexual assault. All victims deserve support and justice. This bill does exactly the opposite. It is stripping a person's rights and protection in saying that someone who is incarcerated is not worthy of receiving protection from the Sexual Assault Survivors' Bill of Rights. This will undermine the work that was done. Instead of increasing penalties, we should be providing services.

I agree with the statements in opposition that came before me. In a publication from the DOC, a PREA annual report from the calendar year 2019 indicated that there were 6 substantiated allegations of inmate sexual abuse and 2 substantiated allegations of staff on inmates. With this in mind, we need to protect all of our community members.

LESLIE TURNER (Progressive Leadership Alliance of Nevada):

I am submitting testimony in opposition of S.B. 20 and agree with all the testimony in opposition before me.

We cannot exclude victims of sexual violence who are incarcerated based on hypothetical scenarios that have not occurred. We must think further forward than just excluding people who have been raped in custody. Separate policy could be created that addresses safety concerns within reason, but NRS 178 and PREA are not mirrored. Excluding incarcerated inmates from the Survivors' Bill of Rights will leave too many gaps that will ultimately send the message that this State does not care if inmates are raped. This would result in an increase of sexual violence inside carceral facilities.

ELIA SOLANO:

I oppose S.B. 20. I agree with all who have spoken before me in opposition as well.

I have participated in numerous studies wherein I was able to listen to interviews with people incarcerated at and under DOC's control. While the PREA law overlaps some of the regulations in the Sexual Assault Survivors' Bill of Rights, there is no reason we should take away an individual's rights.

Only 10 percent of sex crimes are reported in the State; what about the other 90 percent? All inmates have the ability to report, but they are much less likely to report a sexual assault if a staff member does not ask them. The State has the responsibility to hold people accountable when someone sexually assaults another inmate or when an officer of the State is the aggressor. These are the questions that should be asked instead of waiting for a victim to come forward.

CHAIR SCHEIBLE:

I note that this testimony was given in opposition during the neutral period of the hearing.

I will now close the hearing on S.B. 20 and open the hearing on Senate Bill 32.

SENATE BILL 32: Makes various changes relating to offenders with substance use or co-occurring disorders. (BDR 16-327)

MR. DANIELS:

I will begin the presentation regarding S.B. 32, which is also covered in NRS 209.4236 and provides for programs of treatment for offenders with substance use or co-occurring disorders established by the Director of the Department of Corrections. The previous bill from 2019, S.B. No. 49 of the 80th Session, died due to a community amendment that was submitted and an increased fiscal note from \$0 to \$844,600 during 2019 through 2020 and \$1,044,492 in 2021. The primary presenters for this bill will be Harold Wickham and Robyn Feese.

This bill updates, clarifies and modernizes the establishment and operates as a program for treatment of substance abuse disorders within the DOC. This bill clarifies that programs for the treatment of offenders be established and maintained as evidence-based or based on best practices supported by research. These programs are newly defined as "Programs of Treatment for Offenders with Substance Abuse Disorders or Co-occurring Disorders." Previously, this was not well defined and was no longer accepted terminology within the field. Under these provisions the term "substance abuse disorder" is defined as a cluster of cognitive behavior and psychological symptoms indicating that the individual continues using substance despite significant substance-related problems.

The term "co-occurring disorder" is defined as the presence of at least one mental disorder and at least one substance abuse disorder as defined by the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*, published by the American Psychiatric Association in 2013.

These changes are more in line with DOC's efforts to only provide evidence-based programs to reduce recidivism and protect the communities of Nevada for the safety of all citizens.

MR. WICKHAM:

Mr. Daniels has summarized where we are. There are a few basic terminology changes in the bill request.

SENATOR OHRENSCHALL:

Do the therapeutic communities as outlined in the statute exist in which the inmates who are receiving the drug rehabilitation are separate from the general population?

ROBYN FEESE (Substance Abuse Program Coordinator, Department of Corrections):

Our substance use disorder programs are segregated from the general population.

SENATOR OHRENSCHALL:

Is there a separate therapeutic community at each DOC facility?

MS. FEESE:

We have programs at Warm Springs Correctional Center, Southern Desert Correctional Center, Three Lakes Valley Conservation Camp and Florence McClure Women's Correctional Center.

SENATOR OHRENSCHALL:

If this bill passes, will the separate areas for rehabilitation be disbanded? Will there be more substance abuse programs at the facilities? What do you envision happening?

MS. FEESE:

By modernizing this language it is now acceptable terminology and matches what we already do within the DOC. It will allow the Department flexibility to

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apply for grants which may allow the Department to expand to other programs, including co-occurring programs.

CHAIR SCHEIBLE:

We will now close the hearing on S.B. 32. This concludes our Agenda. I will now accept any public comments.

We are now finished with today's meeting of the Senate Judiciary Committee; we are adjourned at 1:53 p.m.

RESPECTFULLY SUBMITTED:

Gina LaCascia,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda