

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
March 3, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Wednesday, March 3, 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

GUEST LEGISLATORS PRESENT:

Senator Heidi Seevers Gansert, Senatorial District No. 15

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Gina LaCascia, 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
Jennifer Noble, Chief Deputy, Washoe County District Attorney's Office
Andre Wade, Director, Silver State Equality
Will Pregman, Battle Born Progress
Christine Saunders, Progressive Leadership Alliance of Nevada
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association

CHAIR SCHEIBLE:

Anyone intending to testify today may submit written comments. Each person will have two minutes to testify; you may also simply state you agree with a former testifier. When the hearings for the bills are concluded, there will be time for public comment. To submit written testimony during or after the meeting, the email address is SenJUD@sen.state.nv.us.

Today's hearing on Senate Bill (S.B.) 137 is now open. We have a special guest with us today, Senator Seevers Gansert, who will present S.B. 137.

SENATE BILL 137: Establishes provisions relating to certain information and records concerning public safety. (BDR 14-7)

SENATOR HEIDI SEEVERS GANSERT (Senatorial District No. 15):

I have with me today Mindy McKay from the Department of Public Safety (DPS) to help with questions regarding S.B. 137. I have also submitted a presentation for the Committee's review ([Exhibit B](#)).

The purpose of this bill is to create a check on the system of information transmission from the courts. The courts send the required information to the Central Repository for Nevada Records of Criminal History, which is then uploaded into a system and shared with the FBI's National Instant Criminal Background Check System (NICS). We want to make sure the information is transmitted and accurate.

I have submitted this bill because an audit was conducted which showed that DPS was not receiving information to be transmitted per statute by the courts. A number of statutes require information to be sent and when the audit was completed, only one-third of Nevada's 74 courts at the time were sending records. A backlog of about 900,000 records were received by DPS but not uploaded at the time of the audit.

Since the audit, the Department added temporary staff, the backlog has been uploaded, and the Department is up to date. What was not addressed at that time was whether all the courts were sending all required information according to statute.

Under law, the information required to be sent includes: adjudication of mental illness or commitment to a mental health facility, misdemeanor conviction of

domestic violence, felony conviction without a pardon from any state or United States jurisdiction as an adverse party to an extended order for protection orders. These types of information are required to be transmitted promptly to the Repository where it is uploaded and shared with the FBI's database.

The first part of this bill authorizes the Repository to monitor agencies of criminal justice in this State for compliance of statutory requirements. This is to make sure the information is accurate and does not expand on the information being sent for background checks—just what is supposed to be sent and is in fact being sent in a timely manner.

One of the questions posed on this bill was, "What happens when there is a change, such as a temporary protection order (TPO)?" Systems in place include processes that revise and update this type of information. Mindy McKay can explain this section if the Committee has any questions.

I did bring a similar bill last Session, but it ended up failing at the last minute of the Legislature. I again bring this bill because the information on background checks being required and processed needs to be accurate and up to date.

When DPS does the monitoring and the information received is not accurate or not being provided in a timely manner, the Department will not provide a report. An annual report would be useful in this situation because there are many reports unless we have outliers. If there is an instance where the statute is not being met, that information would be reported.

CHAIR SCHEIBLE:

Is there anyone else here to present S.B. 137?

MINDY MCKAY (Division Administrator, Records, Communications and Compliance Division, Department of Public Safety):

I have other staff with me, and we are here to answer any questions the Committee may have.

SENATOR SEEVERS GANSERT:

How does the DPS make sure information is accurate when there is a change or an amendment required in criminal records or a TPO?

Ms. MCKAY:

There are multiple mechanisms for removing records of information subject to monitoring from the Department's various systems. Temporary protection orders are entered into the Repository with an expiration date, and the system will not show the TPO if the expiration date is expired. The system is programmed to automatically remove the TPO from an active status and place it on an inactive status upon expiration. If the court orders a dissolution of a TPO, there is functionality within the TPO program that allows the user of the system to dissolve the TPO.

For the uniform crime reports, we have validations built into the system to check for incorrect or invalid information. The system is programmed to not accept the data if these validations are not met.

The mental health adjudications must go through a court process, and a subsequent court order must be issued to remove mental health records from the NICS agencies.

The agencies in criminal justice can utilize the DPS system to add, change or delete, which is a process established for records of criminal history to ensure accuracy of those records.

SENATOR PICKARD:

Nothing in the bill says where the report goes. Can you provide this information?

SENATOR SEEVERS GANSERT:

The report will be posted on the DPS website so there is transparency. Since a lot of different agencies receive so many reports, we wanted to make sure there is a transparent process in place and post the reports. We only wanted to create this process if there were outliers—courts not providing the information in a timely manner as required by statute.

SENATOR OHRENSCHALL:

Senator Seevers Gansert stated that the compliance rate in her estimation among the courts is only about 33 percent. Do you know why the compliance rate is that low? Have you seen any improvement?

ERICA SOUZA-LLAMAS (Records Bureau Chief, Records, Communications and Compliance Division, Department of Public Safety):

We have a 100 percent reporting rate from the courts. When we started our backlog efforts with the dispositions back in 2014, we were at a 24 percent reporting rate. Now, 74 courts in the State are reporting to the Repository.

SENATOR SEEVERS GANSERT:

If the question now is "Why do we have this bill?" there are a couple of components. First, is all the information being transmitted? Second, is the information being transmitted in a timely manner? We also want to be sure the information being uploaded by the DPS is accurate.

When the audit took place in 2012, we realized that the courts were not reporting consistently. When the information was being transmitted, it was not getting a timely upload. This information is critically important and needs to be accurate; this is the reason why I brought the bill.

CHAIR SCHEIBLE:

I have a question regarding section 1, subsection 2, which gives the Repository authority to adopt policies and procedures to carry out the provisions of the bill. What is the process for the Repository to create the policies if there already is a process in place? If this is an administrative task, who would be doing that at the Repository—what would the process of creating policies and procedures be?

Ms. SOUZA-LLAMAS:

This would be administrative, and we already have some policies established in regard to internal policies that deal with monitoring we conduct in multiple program areas.

CHAIR SCHEIBLE:

There was also a mention of two related issues with the transmission and uploading of that information. Who uploads the information that is transmitted?

SENATOR SEEVERS GANSERT:

The DPS is responsible for uploading the information. The DPS then shares this information with the FBI.

Ms. SOUZA-LLAMAS:

With regard to the records of disposition, the DPS has a dual data entry. Each disposition record is entered in the program, and then the data is entered for the FBI.

CHAIR SCHEIBLE:

If the problem is with the uploading not being done in a timely manner, how does this bill help?

Ms. SOUZA-LLAMAS:

The initial backlog of over 900,000 records was entered and completed in 2018 and included disposition records received since that time. Today, the DPS is current. When a disposition is received from a court, it takes about three weeks on average to get it entered into the database with the State and FBI.

SENATOR SEEVERS GANSERT:

The audit records from 2012 indicated some courts were not transmitting the required information and some were only transmitting part of the information. This is why we wanted to give DPS the authority to request the information directly and to make sure what was being received was complete, accurate and timely. If not, the Department would report on which courts were not following statute. This is the check system we want to create—but not be heavy-handed in doing so.

When deciding to bring a bill like S.B. 137, you have choices. You could say we will audit the entity, or we could say we will do an annual review. With this in mind and in talking with DPS, it was best to give DPS the authority to request the information directly from the courts. The Department can then make sure it is receiving accurate information on a timely basis. If not, DPS would be able to report it.

Based on the information in the past of a big gap in communication, we do not want that to happen again.

JENNIFER NOBLE (Chief Deputy, Washoe County District Attorney's Office):

We are in opposition to S.B. 137. We would like to have reference in the bill language to *Nevada Revised Statutes* (NRS) 179A.070, which defines criminal history. This will assist in resolving any issues in the future.

Ms. SOUZA-LLAMAS:

We are neutral to S.B. 137. I have submitted written testimony for the Committee's review ([Exhibit C](#)). If Legislators would like an overview of any of the programs at DPS, we are always available to answer questions.

SENATOR OHRENSCHALL:

The written testimony of the last witness mentions that the Repository collects fingerprint data. Is there any other data of biometric markers that the Repository keeps track of?

Ms. SOUZA-LLAMAS:

In some instances, we receive mugshot photos associated with criminal fingerprints submitted to the DPS.

SENATOR SEEVERS GANSERT:

Due to a communication issue with regard to a district attorney's (DA) office, I will follow up with that DA to discuss any issues or concerns relating to S.B. 137 and advise the Committee.

CHAIR SCHEIBLE:

This concludes the testimony on S.B. 137 and this hearing is now closed. The hearing on S.B. 148 is now open, and Senator Harris will be presenting.

SENATE BILL 148: Establishes provisions regarding the reporting of hate crimes.
(BDR 15-715)

SENATOR DALLAS HARRIS (Senatorial District No. 11):

I am proposing an amendment to the bill and have provided the amendment to the Committee ([Exhibit D](#)). When speaking about the bill, I will be referring to the amendment rather than the bill as originally drafted.

Senate Bill 148 seeks to codify in statute the reporting of hate crimes in Nevada and to ensure that the data gathered in relation to those crimes is reported to the FBI for inclusion in its annual report and made publically available. Before we discuss the specifics of the bill, I would like to explain why the need is important for us to pass this bill.

The most recent data available from the FBI showed that in 2019, hate crimes across the United States rose to the highest level in over a decade. While

Black people continue to experience vastly more hate-motivated crimes than any other sector of the population, bias-motivated crimes went up across the board. Hispanic and Jewish populations saw the highest year-over-year increases. Asian Americans and transgender people also saw increases in the number of attacks. In Nevada, we saw an overall increase between 2018 and 2019 of nearly 79 percent, with the increase related to rape, race, ethnicity or ancestry of nearly 130 percent. Perhaps equally alarming, according to the FBI, out of more than 15,000 law enforcement agencies that voluntarily take part in reporting hate crimes, in 2019, only 2,172 agencies reported a hate crime at all. That leaves 86 percent of agencies not reporting a single hate crime. This includes law enforcement agencies in 71 cities with populations over 100,000 people. Clearly, there is a national problem with data collection and reporting.

While I am happy to note that we in Nevada are already compiling and tracking this type of information, our law enforcement agencies are not statutorily required to do so—nor is the Central Repository statutorily required to provide this information to the FBI or to the public. This is something that the Legislature should address. Tracking and reporting this type of data is vital if we are to have any success in stopping these crimes. Likewise, how this information is gathered and disseminated must not be subject to political interference of any kind or to the changing dispositions of agency leadership.

For these reasons, S.B. 148 as amended addresses data-gathering and reporting in two ways. First, it ensures that Nevada law enforcement agencies report hate crimes to the Repository each month. The Repository then reports this information to the FBI. Second, it requires the Repository to make this information publically available.

Section 1 of the amendment sets the requirement for reporting by law enforcement agencies and follows previously established guidelines for monthly reporting, including what information should be in the reports.

Section 2 of the amendment makes clear that reports are to be submitted in a manner prescribed by the Director of the DPS, and that all records of such reporting must be provided to the FBI and made publically available.

I hope this Committee will agree with me that codifying the statute requirements for data collection and reporting on hate crimes is vitally important

if we are to understand and shed further light on this issue in a consistent and meaningful way. I have Ms. McKay from DPS here to answer any questions that may be more technical.

SENATOR PICKARD:

In reviewing NRS 179A.175, it appears this reporting is already required, but I do not see any specifications or any guidance going forward. What standard will be used?

What are the problems currently experienced, and why would we go to a monthly report? Other than quadrupling the amount of effort the law enforcement agencies already perform, how does that rapid information change anything that we already do?

SENATOR HARRIS:

I will answer the second question first. The bill as initially drafted was going to require a quarterly report, but it is my understanding that they are already reporting these types of crimes on a monthly basis. That is the current practice—there is no intention to create any additional work on law enforcement agencies.

I will answer your first question, then ask Ms. McKay to follow up if she has any further information. There is an established standard for how these crimes are reported. This bill would not change the current practice.

CHAIR SCHEIBLE:

Does that answer your question, Senator Pickard?

SENATOR PICKARD:

I am trying to find where the standard information is located so we can get it on the record and people will know where to look so they can understand the standard themselves.

Ms. MCKAY:

Senator, is your question, "What is the standard used to constitute prejudice?"

SENATOR PICKARD:

Yes. Where do we find the standard used to establish what constitutes manifesting evidence of prejudice based on race, color, religion and et cetera?

Ms. MCKAY:

To answer that question, I would need to take it to our legal personnel. Perhaps the Committee's legal counsel would be able to answer that question. If not, would you like me to talk to my deputy attorney?

CHAIR SCHEIBLE:

I will follow up with our Legal Division and get an answer for the Committee before we have a work session on this bill.

SENATOR HANSEN:

Of the categories listed, the one that seems to be conspicuously absent is "sex." For example, rape is considered a violent act; if a man hates a woman and rapes her, why is not sex included as one of the categories that would be considered as a hate crime?

SENATOR HARRIS:

That is a great question. I am not looking to change the standard practice around hate crime reporting. This is definitely something I would be willing to discuss further, but it would probably need to be a separate bill.

SENATOR HANSEN:

I have some real issues with the whole concept, and here is why. If someone came into the Legislative Building and shot me because he or she did not like my political opinions, but then that same individual shot you because he or she did not like the color of your skin, you would be considered a greater victim in a hate crime concept than I would. To me, we should be punishing people for the acts. I am uncomfortable with coming up with categories that essentially punish a thought that we find offensive. If I am a victim and you are a victim of the same basic thing, being shot for whatever reason, I do not see why you should be considered within an enhanced victim category and I would not. The whole hate crime thing, the hate speech and all that, is a slippery slope.

CHAIR SCHEIBLE:

I appreciate that Senator Hansen may not agree with our hate crime statutes, but I do want to point the Committee to NRS 207.185, the hate crime statute that defines categories or classes of people who are protected and for whom a hate crime enhancement would apply if there is evidence that the crime was motivated by hatred or bias. My reading of this bill has it consistent with those definitions set forth in NRS, which was established by this Legislative Body.

Senator Harris, did you want to respond?

SENATOR HARRIS:

Senator Hansen, the first situation that you described in which someone shoots you for politically motivated reasons could under certain circumstances be considered terrorism. We have something that covers politically motivated violence. I have to disagree that when someone shoots you simply because of an immutable characteristic, this is something we need to discourage as strongly as we can with new law.

SENATOR HANSEN:

I would say that an immutable characteristic would also be one's physical sex. This would be a category—even though as the Chair pointed out, our statute does not cover that—that certainly would be, especially in this day in age when we talk about sex as a category in equal rights amendments and everything else. For some reason in a hate crime concept, it fails to do that.

SENATOR SETTELMAYER:

Before we changed the statute, all this was being referred to the Attorney General; is there a reason the Attorney General will no longer be receiving said information?

SENATOR HARRIS:

By making this information publically available, the Attorney General has the ability to receive the information from the Central Repository. One of the reasons why I took that out is because the Repository is already collecting this information, and it is not my intention to add any additional work for anyone. Under current practice, information is sent to the Repository, the Repository uploads it and submits it to the FBI. That information is still available to the Attorney General if he or she feels the need to access the information for any reason.

SENATOR PICKARD:

Can you repeat the citation to the statute, please?

CHAIR SCHEIBLE:

I cited to NRS 207.185.

SENATOR OHRENSCHALL:

The increase in hate crimes in the last several years has been very disturbing. More information and transparency is to everyone's benefit.

ANDRE WADE (Director, Silver State Equality):

I am in support of S.B. 148 as the increase in hate crimes is concerning, and we need to have better data to address the issue.

With regard to the word "sex" not being listed as a category, perhaps gender identities would satisfy that concern. You may want to consider using the term "gender identity" for this reason.

WILL PREGMAN (Battle Born Progress):

We are in support of S.B. 148. Hate crimes at this time, especially to certain communities such as the Asian-American communities, are at an all-time high. The community and the many others that are victims of hate crimes, and the State as a whole, will benefit from the extended reporting on hate crimes that this Legislature proposes. We need to have data available to better understand how marginalized communities are being affected by hate crimes. We will be able to find solutions for those who are affected.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):

We are in support of S.B. 148. I echo the sentiments of those who spoke before me. At a time when we are seeing a rise in hate crimes, especially against Asian-American communities, it is imperative that Nevada have accurate reporting. We urge you to support this bill.

MS. SOUZA-LLAMAS:

We are in neutral on S.B. 148. I have submitted written testimony ([Exhibit E](#)) for the Committee's review.

ERIC SPRATLEY (Executive Director, Nevada Sheriffs' and Chiefs' Association):

We support S.B. 148 in its original version. With the amendment and monthly reporting, this puts me in a position where I do not know if all of the members could meet the requirements. Although they should be able to do so under the new National Incident Based Reporting System once that is rolled out in a year or so. The amendment moves us to a position of neutral and possibly to opposition.

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CHAIR SCHEIBLE:

Mr. Spratley, I am sure Senator Harris would be happy to work with you on your concerns in the amendment.

SENATOR PICKARD:

Ms. Souza-Llamas, how often are these reports received by DPS?

Ms. SOUZA-LLAMAS:

We receive these reports monthly from the criminal justice agencies.

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CHAIR SCHEIBLE:

That now concludes the hearing on S.B. 148. The meeting is now adjourned at 1:55 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
S.B. 137	B	1	Senator Heidi Seevers Gansert	Presentation
S.B. 137	C	1	Erica Souza-Llamas / Records, Communications and Compliance Division	Neutral Statement
S.B. 148	D	1	Senator Dallas Harris	Proposed Amendment
S.B. 148	E	1	Erica Souza-Llamas / Records, Communications and Compliance Division	Neutral Statement