

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session  
March 29, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:05 p.m. on Monday, March 29, 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  
Pam King, Committee Secretary

**OTHERS PRESENT:**

Holly Welborn, American Civil Liberties Union of Nevada  
Deborah Striplin, Prison Rape Elimination Act Coordinator, Department of Corrections  
Alex Camberos, Battle Born Progress  
Jameelah Lewis, Friends Committee on National Legislation  
Allison Rosas, Nevada Coalition to End Domestic and Sexual Violence  
Lisa Rasmussen, Nevada Attorneys for Criminal Justice  
Christine Saunders, Progressive Leadership Alliance of Nevada  
Jasmin Tobon, Community Organizer, Planned Parenthood  
J. Burkholz  
Nickollii Warner  
John Piro, Clark County Public Defender's Office  
Alyssa Cortes, Silver State Equality

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Sy Bernabei, Executive Director, Gender Justice Nevada  
Brooke Maylath  
Kendra Bertschy, Washoe County Public Defender's Office  
Janine Hansen, State President, Nevada Families for Freedom  
Karen England, Nevada Family Alliance  
Jack Kelly, Partner, National Association of Settlement Purchasers  
Scott Anderson, Chief Deputy, Office of the Secretary of State

CHAIR SCHEIBLE:

I will open this meeting with Senate Bill (S.B.) 258.

SENATOR OHRENSCHALL:

I open the hearing on Senate Bill 258.

**SENATE BILL 258**: Makes various changes relating to corrections. (BDR 16-825)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

It is my pleasure to present S.B. 258. Holly Welborn from the American Civil Liberties Union (ACLU) is here to walk us through the background of the bill. Members of the Department of Corrections (DOC) will answer any questions.

The purpose of S.B. 258 is to require DOC to establish guidelines, rules and policies to better serve the inmate populations in its custody who are transgender, intersex or otherwise gender-diverse. It is important that we implement policies specifically targeted toward these communities so they can be safe, treated with dignity and respect while in the custody of DOC.

This special class of inmates faces challenges, questions and problems that other members of the population within DOC custody do not face. They have been overlooked for a long time.

Many people who are incarcerated at DOC identifying as gender-diverse, transgender or intersex have experienced special difficulties in adapting to life within DOC. They have not received adequate medical care or access to commissary items. The staff is not properly trained in cultural competence.

For those reasons, it is important to introduce S.B. 258, requiring DOC to update its policies and adopt robust policies for the treatment of transgender, gender-diverse and intersex individuals.

Ms. Welborn will present the background on these issues and walk through the bill.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

It is important to talk about the background and why we decided to go down the road of ensuring that DOC adopts certain regulations and makes it a statutory requirement with the imposition of a deadline.

Let us define what it is to be transgender. A transgender person is someone whose gender identity—internal sense of being male, female or some other gender—is different from his or her sex assigned at birth. Some transgender people experience clinically significant distress as a result of the incongruence between their assigned sex and their gender identity.

The medical diagnosis given to people who experience that type of distress is called gender dysphoria. Gender dysphoria is a serious medical condition that often requires treatment to align the body with one's gender identity. Medically necessary treatment for gender dysphoria may include hormone therapy, gender-converting surgery or a multitude of other treatments.

When a person is incarcerated, the need for this care does not disappear. The U.S. Constitution requires that prisons offer medically necessary care for individuals with gender dysphoria. The courts of this jurisdiction are clear that failure to provide medically necessary treatment for gender dysphoria could result in significant injury and unnecessary infliction of pain on an incarcerated person. Disregarding an excessive risk to one's health and failure to provide medically acceptable care violates the Eighth Amendment to the U.S.-Constitution.

Despite this clear U.S. Court of Appeals for the Ninth Circuit caselaw, DOC is behind in ensuring its regulations are in compliance with the Ninth Circuit.

We, along with the national ACLU LGBTQ and HIV Project, our National Prison Project and local transgender rights advocacy organizations, notified DOC in 2016 that its Medical Directive 121, which limited hormone therapy for gender dysphoria to pre-incarceration treatment regardless of medical necessity known as a prescreen policy, was unconstitutional.

There have been some adjustments to that medical directive. While it has improved, the updates continue to suggest that at any time DOC may discontinue or refuse to initiate treatment of hormone therapy during an individual's incarceration, regardless of medical need, and not make any provision for surgical treatment regardless of medical necessity in an individual case.

As stated before, the Eighth Amendment bars a prison from denying access to certain types of treatment based on a blanket policy that does not allow for medical judgment based on the individual.

In addition to that medical directive, some policies that have not been updated are still constitutionally problematic, including limitations on clothing such as undergarments and those items denied on the basis of sexual orientation. The DOC violates Prison Rape Elimination Act (PREA) standards for skin searches, allowing opposite sex correctional officers to conduct skin searches without considering the individual's own views with respect to safety and more.

Senate Bill 258 is necessary to impose a deadline on adopting those regulations. It is helpful to the State to avoid further litigation in the future and bring DOC into compliance with Ninth Circuit caselaw and with certain litigation settlements already imposed on DOC since that decision was rendered.

It is a simple bill that provides definitions. Section 5, line 14 of page 2, is straightforward and requires DOC to adopt regulations that apply the generally accepted standards of care and best practices for the supervision, custody, care, security, housing, medical and mental health treatment of offenders.

It requires use of respectful language and currently accepted terminology that accounts for and protects the rights of the incarcerated person and prohibits discrimination against offenders who are transgender, gender-nonconforming, gender nonbinary and intersex.

Perhaps the most important component of this bill is the January 1, 2022, deadline imposed in section 8, page 3, line 17. Section 7 requires DOC to implement training in cultural competency for interacting with transgender individuals we believe should be statutory. This deadline is critical to force DOC to comply with Ninth Circuit caselaw and settlements underway and to protect the dignity and rights of transgender incarcerated individuals.

SENATOR PICKARD:

I am not antagonistic to the idea. We should always treat people, in or out of prison, with respect to afford them dignity. They have a right to that.

I want to "split some hairs" to make sure the record is clear. For example, you said the Eighth Amendment guarantees or prohibits lack of medical care. The reality is the Eighth Amendment does not say anything about medical care. That comes from a case. I do not know how many cases you are referencing because you just referred to the Ninth Circuit. My guess is there are probably several cases. Can you tell us what those cases are?

SENATOR OHRENSCHALL:

Ms. Welborn, if you do not have them handy, feel free to email us any citations after the hearing.

MS. WELBORN:

The case that is controlling for the Ninth Circuit—*Edmo v. Corizon, Inc.*, 935 F.3d 757 (2019)—comes out of the Idaho Department of Corrections. The disposition of that case made its way up to the U.S. Supreme Court that denied certiorari.

That case determines a lengthy analysis of what is referred to as the deliberate indifference standard as when DOC or any institution violates or is deliberately indifferent to a medical necessity. It is medically unacceptable that DOC or any other entity consciously disregard an excessive risk to the plaintiff's health—then they have been deliberately indifferent in violation of the Eighth Amendment.

In *Edmo* when the standard was applied to the individualized circumstances of this particular plaintiff, the court found that surgical treatment was medically necessary for this individual. She was harming herself, and the circumstances arose to that type of care being medically necessary. It is not a blanket mandate, but it says you must look at the individualized circumstances of a particular individual to assess whether that level of care is medically necessary.

SENATOR PICKARD:

Looking at *Edmo*, my understanding is it had to do with sex reassignment surgery for an individual and DOC did not think it medically necessary. What do we define as medically necessary? I have heard from the medical community an

argument as to that. Idaho had said this is not an emergency, no harm if this person's gender is not physically changed, and yet the plaintiff had a doctor who said that he would suffer irreparable harm if surgery was not done. That was the basis for the Ninth Circuit case.

There is still an open question as to what is medically necessary? Who assigns or how is gender assigned at birth?

SENATOR OHRENSCHALL:

Pardon me, Senator Pickard. Could you just boil down your question to exactly what you are asking?

SENATOR PICKARD:

Sure.

SENATOR SCHEIBLE:

I can address Senator Pickard's question, and Ms. Welborn could as well. Your question boils down to what does it mean for something to be medically necessary?

It is a term of art. It is a term that has definitions within Nevada law and within the broader medical community. I think you sat on a committee where I presented a similar bill covering procedures for people who are transgender on their health insurance policies. Medical necessity has been defined most comprehensively by the World Professional Association for Transgender Health (WPATH), formerly Harry Benjamin International Gender Dysphoria Association, an interdisciplinary professional association founded in 1978 to improve understandings of gender identities and to standardize treatment of transsexual, transgender and gender-nonconforming people. These are known as the WPATH Standards.

The WPATH Standards outline what is medically necessary in terms of the difference between necessity and convenience and necessity versus desire. It outlines about five different factors that say a person who does not receive this treatment will continue to experience the negative effects of what it is that ails them—whether diabetes, heart disease, gender dysphoria or bipolar disorder. They have to be procedures that are well-established and accepted within the medical community. In these cases, we are often talking about things like a gender affirmation surgery, a surgical intervention. The definition of medically

necessary encompasses a process through which that person has to meet with not only a physician who specializes in plastic surgery or general surgery but also with a mental health professional, a psychiatrist or a therapist to determine if something is medically necessary.

We also have a definition of medically necessary that almost mirrors the WPATH Standards in the Nevada Medicaid policy.

Most people who are in the custody of DOC would be subject to the Medicaid designation of medically necessary, which is what I just outlined for WPATH. It requires certain elements be met such as establishing a scientifically proven treatment for a specific purpose that accounts for the severity of the treatment versus the severity of the symptoms and the availability of the treatment versus the severity of the symptoms and encourages a team of medical professionals to conclude what would be necessary.

MS. WELBORN:

The WPATH Standards are what most medical professionals who are treating a person with gender dysphoria follow. This is a long process. Surgical procedures are considered at the end of the process once a person has gone through all of these other benchmarks.

The regulations should reflect this bill in the openness, the individualism of a particular person and his or her medical needs at that time to ensure treatment is not interrupted throughout the long process because it can have detrimental effects on that incarcerated individual.

SENATOR PICKARD:

Thank you for that. One thing we talked about in the Commerce and Labor Committee hearing was that the WPATH Standards have not been adopted by the American Medical Association or by the State. We have mirrored segments, but we seem to be stopping short of adopting all standards.

How many people are we talking about? How many people are going to be caught up in this?

MS. WELBORN:

I know of at least four individuals who would be impacted by this policy, but the PREA Coordinator for DOC is here and might answer that question.

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

We have approximately 50 inmates who have self-identified as transgender. I do not know how many have been diagnosed with gender dysphoria. That would be a medical question I would defer to the DOC Medical Director, Dr. Michael Minev, but I do not know if he is present today.

SENATOR PICKARD:

We are talking somewhere between 4 and 50. For my purposes, that is probably a good enough answer.

SENATOR HANSEN:

Ms. Striplin, if an inmate is transgender whose biological sex is male, does DOC put inmates in the female correction facilities and vice versa?

MS. STRIPLIN:

We do case-by-case reviews by the PREA Standards. At this time, we do not have anybody housed at the women's facility. There is a transgender female, but we have done approximately ten reviews on a case-by-case basis to consider them for housing at the female facility.

SENATOR HANSEN:

The next question goes to legal. Under section 5.2 of S.B. 258, can you tell me the legal definition of transgender, gender-nonconforming, gender nonbinary and intersex? We need to get this on the record for the future so we know what we are talking about.

SENATOR SCHEIBLE:

Those terms are all defined within the bill in sections 2, 3 and 4 starting on line 4 of page 2.

SENATOR HANSEN:

They are not all defined. I would like to get it on record from counsel to say what specifically in Nevada law we are going to be addressing when these specific terms are used.



SENATOR OHRENSCHALL:

As the Chair stated, Senator Hansen, those are found in the text of the legislation. I am not sure if there is additional information that counsel can provide, but if there is, I am happy to defer to Mr. Anthony.

SENATOR HANSEN:

I am looking for the definition of transgender and intersex. Maybe I have overlooked it, but transgender is not there. I do see gender-nonconforming and gender nonbinary. I do not see intersex either. Intersex and transgender, are they legal terms?

SENATOR SCHEIBLE:

In section 4, "intersex means a condition in which a person is born with external genitals, internal reproductive organs, chromosome patterns or an endocrine system that does not conform to the traditional gender binary of male and female."

I will follow up with the definition of transgender. It is defined elsewhere in the *Nevada Revised Statutes* (NRS); otherwise, it would have been included in this bill.

SENATOR HANSEN:

When people are incarcerated within the prison system, do they have to make a declaration of what they are at the time that they come in? Also, if they do make a declaration, do they say "I am gender nonbinary?" Is that binding on them for their entire prison stay, or is it a fluid situation?

Can someone claim to be gender nonbinary and then later say they are intersex, or are these stationary things once they are actually incarcerated? Do they have to make this declaration?

MS. STRIPLIN:

By the PREA Standards, we do an assessment requiring DOC to ask all incoming inmates how they identify whether transgender or intersex, which is more of a medical term where someone's chromosome patterns do not match. It is not that they identify, they are born that way. If people identify as transgender, it is fluid and they can change if they no longer identify as transgender and want to be identified as bisexual or gender-nonconforming. We leave that fluid, and inmates can change it at any time they choose.

SENATOR HANSEN:

You do not see that as any kind of a major administrative problem down the road when a prisoner could claim one sexual orientation at one point, six months later claim another and then six months later claim another one?

That is the problematic part of this topic. You cannot come into the prison system and claim you are White and then later claim you are Black because those are obvious characteristics.

Sexual characteristics are fluid. Are we placing a tremendous burden on you, Ms. Striplin, to make all of these determinations to not get sued? It is up to you to set up medical teams of healthcare professionals and mental healthcare professionals who come to the prison system and do evaluations on these inmates. Then the individuals can later change what they felt at the time the original claim was made.

This is too much of a burden on DOC in some exceptional fluid situations.

SENATOR SETTELMAYER:

Like Senator Hansen, I cannot find the definition of transgender in NRS. How is this bill potentially going to work with other legislation we have involving solitary confinement? Is it common for individuals identifying as intersex and transgender to be put in solitary confinement for protection?

MS. WELBORN:

Yes, many transgender individuals are placed in either protective custody, administrative segregation or some level of segregation within the prison system.

It is a major problem, especially when there are prescreen policies in place. It gets in the way of a person being able to progress through his or her medically necessary therapies or from a therapeutic standpoint to determine if he or she is eligible for hormone therapy or a surgical procedure.

By stalling that process, we end up leaving people in an isolation cell for extended periods of time. Until a person can progress through that process, he or she will remain in isolation until new policies are put in place. That is why it is imperative that we allow a person to seek the medical care they need.

SENATOR SETTELMAYER:

I appreciate that, but I have a follow up question. Have any studies shown how it affects individuals once they have the surgery? Do they need less care psychologically, or do they need more? Have there been any studies in that respect?

We have people sending us lots of emails showing studies both ways. Is there anything from the *American Journal of Psychiatry* that might be looked at to understand this subject better? If so, could you send it to us?

SENATOR SCHEIBLE:

I can provide you with some resources that indicate people who receive proper treatment experience fewer medical issues, and those are often psycho-social issues.

Someone incarcerated who identifies as transgender and is not getting the treatment he or she needs is likely irritable. The person might have issues with rage, fails to get along with other inmates, fights with guards and is extremely depressed. We have seen cases of people who engage in self-harm, and when they get treatment that behavior stops.

It is not a 180-degree turn where the very next day there are no more problems. By regulating people's emotional health through the treatment of their gender dysphoria, we see that they become able to interact with other people who are in custody. They listen to guards better and engage in the programming that DOC offers.

This is a broad mandate to DOC. It does not say you have to cover this surgery or provide these hormones. The bill says DOC has to develop policy, rules and standards for people with these particular needs who are entering DOC custody. That means that there will be different needs for different people. We are not talking about taking every single person in DOC custody who identifies as gender-nonconforming or gender nonbinary and offering surgery. We are talking about a few who need surgical sex reassignment or gender affirmation surgery to treat their symptoms.

For some inmates, it might require a meeting with a counselor once a week. It might require having access to personal hygiene at the commissary—even

though they are housed in the men's prison—so they do not bleed through their garments while they are in custody.

It is things like that on a broad scale which we can do at a low cost to the prison. They are not huge burdens to the administrative side of things, but they are incredibly important projects and steps to take for the people who are in custody and suffering.

SENATOR OHRENSCHALL:

Yes, that would be great if you could share those resources with Senator Settlemeyer and the rest of the Senate Judiciary Committee.

SENATOR HANSEN:

My question goes to Ms. Striplin. We just got a perspective that the DOC does not have a policy? If you do have a policy, was it reviewed by any of these bill sponsors? Where is the lack of conformity between your policy and the policy required in this new law, assuming it passes?

MS. STRIPLIN:

We do have a policy. The national PREA standards released in August 2012 provided guidelines that we are required to follow through the U.S. Department of Justice. We follow multiple guidelines. We have a policy. It is the Prison Reform and Redemption Act.

The Department of Corrections is neutral on this bill. We maintain the majority of the definitions listed in this bill. The only one we do not have in current policy is gender nonbinary, which is easy to fix.

We also have trainer requirements provided to address communicating effectively to include LGBTQ offenders. We have already been addressing some of these things in this bill for almost eight years since the national PREA Guidelines came out.

SENATOR HANSEN:

You have already been doing these policies for eight years, and the only new issue in this bill is gender nonbinary information. Did anybody in the bill sponsorship contact DOC to make sure the bill was not simply repetitive policies already in place?

SENATOR SCHEIBLE:

I can answer that question.

SENATOR HANSEN:

I would like an answer from Ms. Striplin.

SENATOR SCHEIBLE:

You asked a question about bill sponsor, and I am the bill sponsor.

SENATOR HANSEN:

No, I asked the DOC if anybody from that organization has been contacted by the bill sponsor?

SENATOR SCHEIBLE:

I am the sponsor of Senate Bill 258. I did reach out to DOC and have had several meetings with members of the DOC administrative team.

I have not had the pleasure of meeting with Ms. Striplin, one-on-one. I have met with Director Charles Daniels about this issue and requested a written policy be put into place in DOC which specifically addresses the needs of transgender, gender-nonconforming, nonbinary and other people in their custody.

It does not exist in a form that is robust or as specific as this bill, and that is why I brought the bill forward.

SENATOR HANSEN:

I would point out that DOC has had this policy in place, by their own testimony, since 2012.

MS. WELBORN:

Yes, there is a policy; DOC Administrative Regulation 494 ([Exhibit B](#)) delineates every aspect we are talking about today. Since then, that policy has been gutted and now refers to eight different administrative regulations and Medical Directive 121 within DOC.

We have reviewed this policy and testified at the Board of State Prison Commissioner's meetings ensuring our policies comply with Ninth Circuit caselaw and best practice standards that still fall short.

We have several letters to DOC dating back to 2016, one as late as 2017, and we testified at the last Board of State Prison Commissioner's meeting when this subject was on the agenda.

I am happy to send all of that correspondence to the Committee for your records. For background, on numerous occasions we have pointed out the insufficiency of existing policies. While policies exist, there are issues with them. For example, the medical directive still provides for skin screenings by opposite sex correctional staff without considering whether that is appropriate for the particular individual.

From our perspective, that is PREA noncompliant. We have testified on the record at the Board of State Prison Commissioner's meetings to that effect.

Several other policies have not been updated. Administrative Regulation 494 has not been updated since 2015. The regulation addresses things like access to clothing, undergarments and different needs a particular individual might have. The Department of Corrections is behind in updating those policies with current standards.

SENATOR HANSEN:

I would like to hear from DOC. I know it is in a neutral position. The impression I got is that it has a main policy in place now, and there have been no lawsuits by the ACLU or others to force DOC to reach some new level of compliance. In fact, it has done a good job under the circumstances.

SENATOR PICKARD:

My concern that Ms. Welborn touched on is regulations in place do not meet the standards some would like. However, they have been through the regulatory process approved by the Legislative Commission. So we are putting the responsibility on DOC to presumably follow some standard. The bill speaks to some of that, although it does not adopt a standard. We are just perpetuating the same problem if we do not give DOC clear guidance—if we are not following the science.

One of the emails I received was related to DNA and that DNA tells you what the sex is. This is a biological fact. The medical community also says there is such a thing as gender dysphoria. We have seen that in the *Diagnostic and Statistical Manual of Mental Disorders* definition. What standard are we going to

make DOC follow if it is not biological science? We need to further pursue what standard it should follow.

MS. WELBORN:

There has been litigation filed against DOC for failure to come into compliance with Ninth Circuit standards. We cannot talk too much about that because of confidentiality provisions in those settlements, but those policies have not been changed.

Medical Directive 121 ([Exhibit C](#)) was last reviewed in October 2019 after the *Edmo* decision. No changes were made to the medical directive. The last time the medical directive was updated was October 17, 2018, prior to *Edmo*. The current directives are not in compliance with this jurisdiction's caselaw. Reworks and updates are needed to ensure compliance. We have been clear about that on the record with the Board of State Prison Commissioners at their meetings.

We will continue working with DOC. We issued demand letters notifying DOC that these regulations were out of compliance prior to the *Edmo* decision. We went through a series of caselaw, and some law firms pursued lawsuits with some success in getting these Administrative Regulations in compliance with Ninth Circuit law.

SENATOR OHRENSCHALL:

If this legislation passes, would it help bring Nevada into compliance with Ninth Circuit caselaw?

MS. WELBORN:

That is correct.

SENATOR PICKARD:

I certainly appreciate your perspective. The ACLU takes positions on many issues; you win some, and you lose some. Sometimes, you get regulations to comply with your desires or your interpretation of whether something is in compliance; sometimes you do not.

The ACLU is not going to create a standard that DOC has to follow. That is our job. Or it is the Commission's job to promulgate the regulations and then make that the standard.

I am hearing that DOC has a standard you do not like, but it is operating under that standard. The bill does not contain a standard. The ACLU does not create a binding standard on DOC that under the Commission, has the regulations in place to follow. I do not see an end to this spiral here. We must have a standard that we live by, which we have. The Commission has promulgated the regulations and created the standard. The ACLU does not like that standard, but the ACLU does not fix the standard. That is the Commission's job. So how do we fix the problem?

SENATOR OHRENSCHALL:

If we do not come into compliance with Ninth Circuit caselaw, is there not a danger that a federal master may dictate these things instead of allowing the Legislature to decide and come into compliance? That would be my fear.

SENATOR SCHEIBLE:

I would like to address this. Part of the legislative process is to direct DOC to meet and develop a new standard higher than the current standard.

We could have written the bill to adopt the text of the *Edmo* decision, but that would not be good policy because it does not account for the uniqueness of Nevada. It does not allow DOC to develop a policy that fits within its other policies. We have an understanding with DOC whose fiscal note does indicate it will have to make a policy change to comply with the mandates of S.B. 258.

If this is passed, it will have to start training staff in more cultural competence and develop a new medical directive. I am asking DOC to do this because the current standards are deficient. They are deficient legally and from a policy perspective.

I am not taking the words directly from *Edmo*; I am not taking the words from WPATH; and I am not taking words from another state that I think meets the standards of the Ninth Circuit in telling DOC to adopt those verbatim.

I am asking NDOC to raise the level of the standards it has for caring for and treating people with gender-nonconforming, gender nonbinary and gender dysphoria symptoms. The standards set forth in section 5 of S.B. 258 include generally accepted standards of care and best practices for supervision. Looking to the current Ninth Circuit caselaw would be a great way for DOC to determine the accepted standard of care and best practices.



I think that prohibiting discrimination has a legal definition. Senate Bill 258 is intended to raise the standard of those policies within DOC. It would be foolish for DOC to adopt a policy that does not also clear the bar of the Ninth Circuit caselaw. Technically, the bill does not call for it; however, it should. I hope that it will be used as a tool to meet the standard set forth in the *Edmo* decision and other subsequent legal jurisprudence.

SENATOR HARRIS:

Senator Scheible, I do not know if this is for you or for someone at DOC, but it seems this bill is designed to raise the level of care for a few inmates. I have not heard anything on the record that this would simultaneously require any lessened care or cause harm to other inmates. Does S.B. 258 have any negative implications for any inmates?

SENATOR SCHEIBLE:

I hope Ms. Striplin will weigh in here as well. This is an example where it is not a zero-sum game. We are not taking away care, rights, respect and dignity from anybody else to ensure we secure it for the community identified in this bill.

MS. STRIPLIN:

I agree with Senator Scheible. This enhances our current policy. It does not impact any other inmates. It just makes it better for those who identify as transgender, intersex and gender nonbinary. It makes an improvement, and that is why we remain neutral on the bill.

ALEX CAMBEROS (Battle Born Progress):

I am in support of S.B. 258. I have provided written testimony ([Exhibit D](#)).

JAMEELAH LEWIS (Friends Committee on National Legislation):

My opinion does not reflect any of my agencies or that of my job. I support Senate Bill 258, not only in solidarity with my transgender friends and inmates who have returned home but also with my clients within the Department of Corrections.

This bill will expand and bring them all benefits, specifically for those who need gender-conforming surgery—specifically for those who are being harassed and for those who are looking for services after incarceration to include medical attention and emotional support.

This bill does a monumental amount of great things for people who identify as transgender and gender-diverse. Please support S.B. 258.

ALLISON ROSAS (Nevada Coalition to End Domestic and Sexual Violence):

We support S.B. 258. Transgender people have higher rates of poverty, stigma and marginalization. Whether incarcerated or not, they are at greater risk for sexual assault and hate-motivated violence. However, while incarcerated, LGBTQ inmates are substantially more likely to face violence and abuse more often than their counterparts.

According to the U.S. Transgender Survey, transgender people are ten times more likely to be sexually assaulted by other inmates in the facility and five times more likely to be sexually assaulted by staff. In addition to sexual assault, research has shown that transgender people in prison face a number of other challenges including being denied medical care and suffering verbal abuse and lengthy stays in solitary confinement.

This treatment can lead to higher rates of depression, mental illness, self-harm and suicide attempts. This is also detrimental to the physical, emotional and spiritual well-being of the transgender community currently incarcerated.

To protect the health and safety of transgender people in prison, it is crucial that DOC staff receive adequate and accurate training.

LISA RASMUSSEN (National Attorneys for Criminal Justice):

One of the misconceptions seems to be that we already have a policy and do not need this statute. Let me tell you why we do need this statute.

I represent several of these transgender inmates in civil rights cases who have been raped, stabbed by other inmates and denied the most basic hormone treatment and medical care. I am not talking about sexual reassignment surgery, I am talking about basic things.

When I visit one of my clients, I have had staff tell me, "Wait right here, Ms. Rasmussen, we will bring him right out." I have corrected staff and said, "her." Using the correct pronoun is a basic thing. The staff have looked at me and said, "No ma'am, this is a men's prison." Well it happens to be my transgender female clients who would love to be transferred to a female prison but have been denied that request.

In another one of my cases, I had a client request a kite while her federal lawsuit was pending. She requested a kite, a DOC-544 form to say, "May I go to the doctor." She was handed a mock kite that said "Hurt feelings Kite." The form requested that she put her name where it says, "Whiner's name," put the date her feelings were hurt, the time her feelings were hurt, the name of the real man who hurt her feelings. Then it said, "Reason for leaving this report?" You could check a box that says, "I am thin-skinned, I am a wimp, I have womanlike hormones, I am a crybaby, I want my mommy, and my feelings are equally hurt."

Then under the narrative box it says, "Tell us in your own sissy words how your feelings were hurt?" Finally, it cautions that repeatedly filling out this form might end in or result in wall-to-wall counseling, which is a military term for basically beating people into compliance. This form was given to my transgender client while our federal lawsuit was pending, within the last two years.

If any of you think that we do not have a problem and already have a policy, let me assure you that is not true. It is certainly not the fault of Ms. Striplin. I am sure she would love to have the benefit of a statute that gives DOC guidance.

No one can say there is no problem. There are a lot of lawsuits floating around, and several of them happen to be my clients. What is happening to these transgender inmates in DOC is a tragedy.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):  
I am in support of S.B. 258. I have provided written testimony ([Exhibit E](#)).

JASMIN TOBON (Community Organizer, Planned Parenthood):  
We are in favor of S.B. 258. I urge you to think of the inmates sitting in our correctional facilities right now. It is no secret that transgender, gender-nonconforming and LGBTQ Nevadans face discrimination at the hands of correctional staff for their gender identity and expression with little to no legal protection, as was touched on by a previous caller.

The trauma inflicted upon transgender, nonbinary and gender-nonconforming inmates is avoidable with adequate training and resources.

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For this reason, I urge the Committee to support Senate Bill 258. Protect our transgender, gender-nonconforming and nonbinary Nevadans who are incarcerated.

J. BURKHOLZ:

I have submitted testimony from inmate Rachel Whitted ([Exhibit F](#)).

NICKOLLII WARNER:

I have submitted testimony from inmate Daisy Lynne Meadows ([Exhibit G](#)).

JOHN PIRO (Clark County Public Defender's Office):

Definite steps need to be taken, and this is a little first step in the right direction to protect transgender people behind prison doors. If we are going to incarcerate folks, we need to provide for their protection. All this bill does is supplement and make the program better. It provides a mandate.

After hearing the last testimony, I do not know how we cannot make a mandate to protect our transgender community behind bars.

I ask this Committee to pass S.B. 258.

ALYSSA CORTES (Silver State Equality):

We are in full support of S.B. 258. This bill will ensure transgender people are provided an inclusive gender-affirming, dignifying, safe and secure living environment.

We know that failing to provide appropriate treatments can have serious implications on incarcerated patients' medical and mental health. That is why we support S.B. 258. We urge you to do the same.

SY BERNABEI (Executive Director, Gender Justice Nevada):

We are a local community-based organization championing rights for gender-diverse people. We also facilitate transgender allied training to increase awareness about who we are as gender-diverse people and why inclusive care is literally lifesaving.

If you would like to know more about those trainings, you can reach out to me and facilitate that conversation.

Gender dysphoria is real but also different for all transgender people. For me, it compliments depression, and I chose to have top surgery, which is the removal of breast tissue, to feel confident in my own body.

As a transgender person, I am scared to death of being incarcerated because of the statistical higher probability of physical, emotional and sexual violence.

Not having access to gender-affirming health care would make me depressed and lose my dignity. Just because you lose your freedom does not mean you lose all of your constitutional rights. It does not mean that anyone should be subject to violence and lose medically necessary health care.

BROOKE MAYLATH:

This is an extremely important bill. It is important to clarify some terms regarding transgender, a commonly used understated term.

Trans derives from the Latin word meaning "crossing over," as in crossing over gender. We use the term "cisgender," a commonly used scientific term from the Latin word that everyone should be familiar with.

When we hear that DNA is supposed to prove things once and for all, it is an ignorant view. Looking at intersex people in particular, XY chromosomes exist with external female genitalia quite often in terms of interchange sensitivity syndrome. There are multiple different conditions, over 70 different permutations of XY, XXY or XXX—different kinds of chromosomes. A statement that DNA proves one biology or a different biology is simply fallacious.

This is a bill to provide guidelines for staff, inmates and their families to provide an expectation of how treatment is supposed to be meted out. This is about consistency for housing, treatment and medical care to be done at an appropriate level for every individual to get a diagnosis of gender dysphoria.

Let us get away from the hate calls that have been happening. Let us concentrate on creating a consistent message for the community and treatment within DOC that meets the federal guidelines so everyone is able to succeed.

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

We urge your support of S.B. 258. Fellow Nevadans are suffering under the current policy. This bill simply ensures the policies are created by the Constitution and Ninth Circuit caselaw.

We have already heard from this Committee about problems that arise when regulations are not codified. Regardless of a person's circumstances, everyone in custody is someone who deserves to be treated humanely. The rights of everyone are diminished when the rights of one person are threatened.

JANINE HANSEN (State President, Nevada Families for Freedom):

We oppose S.B. 258. I will read my written testimony ([Exhibit H](#)).

KAREN ENGLAND (Nevada Family Alliance):

I oppose S.B. 258. I am not opposed to inmates getting any kind of medical treatment. I sympathize with someone who is struggling with gender dysphoria.

By no means, do I oppose the portion of this bill that allows them to get medical treatment, but this bill goes way beyond that. We had a caller stating that there is a diagnosis. This bill does not require a diagnosis. Inmates do not need to go through gender reassignment to be considered transgender, gender-nonconforming or gender nonbinary.

This regulation allows them to assert self-identify. Once they self-identify, per Ms. Striplin's testimony, they are allowed housing matching the biology they identify with.

Senator Harris mentioned that she has not heard of cases of biological males asserting themselves to go into the female prisons.

I have compassion for someone who is struggling with gender dysphoria. However, the answer is not to infringe on the right to privacy and safety of the other prisoners, particularly the female prisoners who are going to suffer under this policy.

There has been testimony that so far there are no problems. That is because they have not made this a far and widespread policy that this Committee is considering.

Please protect all inmates, including our female inmates, many of who are in prison because of abusive relationships including sexual and domestic violence. Please do this for our women. Say no to S.B. 258.

SENATOR SCHEIBLE:

This bill is, as discussed during the question portion of the presentation, somewhat broad. It does not say that DOC has to help any particular person or any particular place. It says DOC has to develop a policy for determining where people ought to be housed and what kind of care they ought to receive.

Every case should be evaluated individually to keep prisoners safe and to keep human dignity intact.

When we paint with broad strokes, we end up with a mess. We need to think about individuals who are affected, and I cannot imagine that it is easy to contend with gender dysphoria. I also cannot imagine it is easy to contend with being incarcerated. To do both at the same time sounds like an incredibly challenging time for any person to overcome. For us to make that more difficult is simply cruel.

SENATOR OHRENSCHALL:

I will now close the hearing on S.B. 258, and I will open the hearing on Senate Bill (S.B.) 332.

**SENATE BILL 332**: Revises provisions relating to structured settlements.  
(BDR 3-960)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

I have some special guests with me to present this bill. I am joined by the Executive Director of the National Association of Settlement Purchasers, J. Brian Dear, as well as an Associate Attorney for the National Association of Settlement Purchasers, Jack Kelly.

The purpose of S.B. 332 is to establish some regulations and require registration of organizations or companies that purchase structured settlement agreements.

For those of you who do not know, a structured settlement agreement is a legal term of art that exists in civil law. Generally, when a plaintiff wins a lawsuit and is awarded certain kinds of monetary damages or certain kinds of monetary

awards, a structured settlement calls for the disbursement of those awards over a period of time. For example, if a plaintiff is awarded \$50,000, he or she receives \$10,000 per year for five years.

A company that buys a structured settlement has the opportunity to provide the plaintiff, who would normally be receiving \$10,000 per year, a lump sum upfront. This is probably not equal to the total sum that the plaintiff would have received, but the advantage is that the individual gets to receive that sum earlier than the end of the 5-, 10- or 25-year period.

I have some guests with me to help explain the origin and purpose of the bill and the nuances of structured settlements. The purpose of the policy is to ensure that in Nevada, we only encourage or allow good actors to participate in this process by having them register with the Secretary of State. This provides guidelines for what they are allowed to do. In doing so, the State can avoid having bad actors who exploit people in need of quicker cash in these structured settlement purchase agreements.

I also want the Committee to know that I did speak with representatives from the Secretary of State's Office. The bill is lengthy and detailed. We have not had the time to dive into it to the fullest depths, but I remain committed to working with the Secretary of State's Office to work out any of their concerns or questions.

An amendment ([Exhibit I](#)) is relatively small. It makes some technical changes based on the initial language. There will be another amendment forthcoming as we work with the Secretary of State's Office and other stakeholders.

JACK KELLY (Partner, National Association of Settlement Purchasers):

I will give a little history of structured settlements. Structured settlements were created under federal tax law in the 1970s as a result of challenges that arose from issues like fluorine babies.

The U.S. House Committee on Ways and Means, at the time we worked on this, had created a system whereby we would allow for money to be paid over a long, protracted time to care for the long-term care and well-being of someone.



In the 1980s and 1990s, this tax structure was then used by individuals to settle claims for all sorts of civil litigations and torts. It was no longer used for the long-term care purpose as originally written. As a result, a cottage industry emerged where people would have the opportunity to sell portions of the structured settlement.

If you had a simple slip and fall, a consumer or a plaintiff might be told, "We are going to pay you \$100,000." Then the person suddenly realized that the \$100,000 may be paid over a 10-year period of time. The money was not actually needed for long-term care.

Congress examined this issue in 2002 after the victims' bill of 9/11 was written. Included in the bill was a provision that Congress allow the transfer of structured settlements. There was one significant requirement that Congress would require: the transfer must be approved by a court of general jurisdiction finding that the transfer was in the individual's best interest and also took into consideration the duties of his or her dependents.

As that law developed, it stated that if a structure was purchased or transferred and did not have such a court order, there would be a 40 percent tax penalty excise tax.

That was the purpose of the Structured Settlement Protection Act of 2002. The key phrase here is protection act. This ensures that a court of general jurisdiction review the case to make sure it is in the person's best interest.

In 2003, Nevada was quick in getting a law adopted to address this issue. But in 2004, the National Conference of Insurance Legislators (NCOIL) adopted a model law that was amended and updated in 2004, 2009 and 2012.

The legislation that Chair Scheible has introduced today updates this legislation to the NCOIL model act. It also includes two additional areas which require registration, the posting of bonds and some other limitations to ensure that bad apples cannot prey on individuals in this marketplace.

Those adoptions were made by the state of Louisiana by the then-Chair and President of NCOIL two years ago. The House of Representatives of the Georgia General Assembly has adopted the new model with the updated changes you

are considering today. It has cleared unanimously through the Georgia Senate Committee and is presently posted on the Senate Floor agenda for enactment.

I will walk you through what this bill does. It updates the law to reflect the current framework in the NCOIL model act. It provides for much more robust consumer disclosures to include showing the effective annual rate that the plaintiff would receive. It precludes forum shopping. It requires that the individual's action be brought in their county of residence.

This avoids problems such as someone coming over from Sacramento, California, into Reno and suddenly creating a false residency just to forum shop because the law might be looser in Nevada than in California or another state. It makes sure that you cannot forum shop within the State. You might have one court less familiar with this or too overburdened to spend the time reviewing these actions.

It requires registration. Registration ensures that the State of Nevada knows who is doing business in the State. Because of issues of judicial and civil procedure, the State does not know who is doing business in the State. The court knows who is doing business before the State.

This is the most important issue here today. It requires posting of a bond of \$50,000. If there is untoward behavior, the State has someone to turn to. This also impedes what is known as "poaching or scraping" by identifying these companies.

Let me walk you through "poaching or scraping." An individual files to have his or her structured settlement transferred. This could be in Clark County, and bad apples will go over the court docket, find the name of an individual who has submitted a transfer, call the person up and say,

I am the ABC Company. As you know, we are buying your structured settlement. You are supposed to be in court on Tuesday. We are going to rework your deal, and we are going to give you a better price. So, do not show up on Tuesday. Just work with us; we will give you a better price, and we are going to send you a gift card for \$150 to make sure you do that.

The company structures it in a way that it might not even end up completing the transaction when the person goes to court. The person does not even know who he or she has been doing business with. When it all happens, nobody knows who did it or how to find the entity. This is what registration is all about. It gives the individual the ability to go after that bad apple in the event of abuse. This is the most important provision.

When you consider this process, states such as Louisiana and Georgia have raised the question, "Is this a burdensome task for an agency to carry the registration? No, it is not."

There are likely only five or six honest, well-established companies that will register with the State. The bad apples will not register. The bad apples do not let the consumer know who they are. That is the simplicity of this law. At the same time, it brings us to the law needed to protect the citizens of Nevada.

SENATOR PICKARD:

I love this bill. We have been dealing with structured settlements in tort cases for years, and they have always been difficult to keep on track.

Will it require registration through the Secretary of State? It seems that we are leaving it to the court to decide whether the registrant has followed the law, which in at least one of my cases, required a separate lawsuit.

Is there a reason we do not have this in the Department of Business and Industry, Division of Insurance, to somehow manage this and to go after them? Was it deliberate to leave it up to the courts in a separate action against those that misbehave?

MR. KELLY:

The technical amendments raised by Chair Scheible said, "That you have to submit in your pleadings a certification or your attestation"—that you are, in fact, registered with the State.

The court does not have to bear the burden. In addition, there is a civil remedy for a private right of action the individual can pursue. If a consumer does a transfer of money and the company is not registered, the transfer and the contract is void ab initio, and the individual will get all money transferred back

to him or her. The consumer penalty hurts the fraudulent company and benefits the consumer simultaneously.

The court is not overburdened because it is a proffer of evidence the company is registered.

SENATOR PICKARD:

When talking about a private right of action, you are right; it already exists arguably because they can go after the bad apples on a civil basis. But that private right of action under the statutes still requires the recipient of that structured settlement to sue. It would mean a new lawsuit. If an administrative remedy was available, that might speed things up.

MR. KELLY:

That would be a burdensome remedy. The civil action would end up being brought by the company that the case was stolen from, which is fraud. The concern would do it on behalf of the individual to gain the benefit from that individual.

SENATOR PICKARD:

True. Thank you.

SENATOR SETTELMAYER:

You indicated if the company fails to get the approval of local jurisdictions, it may result in a 40 percent capture, potentially a capital gains loss through the Internal Revenue Service. Is that 40 percent of the total settlement or 40 percent of the amount the individual was getting?

MR. KELLY:

The individual does not pay the excise tax. The company that bought it without the court order would be subject to a 40 percent excise tax for the amount it purchased.

If the company purchased \$50,000 worth of a settlement, it would then be subject to a 40 percent excise tax on that \$50,000, paying \$20,000 to the federal government and, in effect, making the transaction upside down. It would lose money on the transaction. That was what Congress established when it did the excise tax.

SENATOR SETTELMAYER:

I appreciate that clarification. I was just trying to figure that out.

MR. KELLY:

There is no harm to the plaintiff at all.

SCOTT ANDERSON (Chief Deputy, Office of the Secretary of State):

When we received the fiscal note request on S.B. 332, it was the first time we had seen this legislation or that anyone had reached out to us.

We understand what the legislation was trying to do. However, we are uncertain if the Secretary of State's Office is the correct office for this or whether a division within the Department of Business and Industry or State financial entity would be better suited.

We have talked with Senator Scheible. There would be a fiscal impact even though it is a minor filing type or a minor number of filings. This is not generally a filing we would do, and there would have to be requirements and other considerations which would have a fiscal impact on this office.

Also, the statute itself does not give much guidance regarding the definition required in such a filing or any other direction in that way.

We have been in contact with the bill sponsor, and we will be more than happy to continue discussions to determine whether this filing does belong in the Office of the Secretary of State or somewhere else.

SENATOR OHRENSCHALL:

I am not seeing any questions from members of the Committee. I appreciate your willingness to work with the bill sponsor to see if anything needs to be ironed or hashed out.

MR. KELLY:

In response to the concerns of the Secretary of State, that actually was raised in Louisiana and Georgia. There is a small group of participants in this marketplace. I would venture that, at best, you would have five companies registered. The bad apples do not register. Great companies known to be well-established in this marketplace are happy to register.

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It is an easy process. Louisiana had the same reaction as your Secretary of State's Office, and it is quite warranted if you are not familiar with it. But Louisiana found it to be a simple process. I am confident that the Secretary of State for Louisiana would share how simple it was with the Secretary of State in Nevada. It would be easy to achieve.

SENATOR OHRENSCHALL:

I will now close the hearing on S.B. 332.

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CHAIR SCHEIBLE:

The hearing on S.B. 332 is closed, and the meeting is adjourned at 2:56 p.m.  
We will reconvene tomorrow.

RESPECTFULLY SUBMITTED:

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Pam King,  
Committee Secretary

APPROVED BY:

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Senator Melanie Scheible, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit Letter</b>	<b>Begins on Page</b>	<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
S.B. 258	B	1	Holly Welborn / American Civil Liberties Union of Nevada	NDOC Administrative Regulation 494, Transgender and Intersex Inmates
S.B. 258	C	1	Holly Welborn / American Civil Liberties Union of Nevada	Medical Directive 121, Gender Dysphoria
S.B. 258	D	1	Alex Camberos / Battle Born Progress	Written Testimony
S.B. 258	E	1	Christine Saunders / Progressive Leadership Alliance of Nevada	Written Testimony
S.B. 258	F	1	J. Burkholz	Supporting Testimony of Rachel Whitted, Inmate
S.B. 258	G	1	Nickollii Warner	Supporting Testimony of Daisy Meadows, Inmate
S.B. 258	H	1	Janine Hansen / Nevada Families for Freedom	Written Testimony
S.B. 332	I	1	Senator Melanie Scheible	Proposed Amendment