MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-second Session
March 2, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Thursday, March 2, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Lisa Krasner
Senator Jeff Stone

COMMITTEE MEMBERS ABSENT:

Senator Ira Hansen (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Blain Jensen, Committee Secretary

OTHERS PRESENT:

Aaron Ford, Attorney General
Alissa C. Engler, Chief Deputy Attorney General, Criminal Prosecution Division, Office of the Attorney General
John Jones, Jr., Nevada District Attorneys Association
Chris Ries, Las Vegas Metropolitan Police Department
Jason Walker, Washoe County Sheriff's Office

Gregg Herrera, Nevada Sheriffs' and Chiefs' Association
John J. Piro, Clark County Public Defender's Office
Erica Roth, Washoe County Public Defender's Office
Jim Hoffman, Nevada Attorneys for Criminal Justice
Tonja Brown, Advocates for the Inmates and the Innocent
James Shubert, Deputy Chief, Division of Parole and Probation, Nevada Department of Public Safety
Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General
Matthew Caldwell, Clark County School District Police Department; President, Police Officers Association of the Clark County School District
Mary Pierczynski, Nevada Association of School Superintendents
David Cherry, City of Henderson
Paige Barnes, Nevada Association of School Boards

CHAIR SCHEIBLE:
I will open the hearing for Senate Bill (S.B.) 36.

SENATE BILL 36: Revises provisions relating to psychosexual evaluations for sexual offenses and other crimes. (BDR 14-424)

AARON FORD (Attorney General):
I am delighted to be with you to have a conversation around two bills my Office is presenting: my colleague Alissa Engler, Chief of Prosecutions, on S.B. 36, and other colleagues working on S.B. 38. My colleagues are able to answer questions. We can follow up if there are other questions that cannot be answered today.

SENATE BILL 38: Revises provisions relating to offenses against children. (BDR 15-425)

ALISSA C. ENGLER (Chief Deputy Attorney General, Criminal Prosecution Division, Office of the Attorney General):
I submitted my testimony (Exhibit C) and will go through it to present S.B. 36 which addresses amendments to *Nevada Revised Statutes* (NRS) 176.133, 176.135, 176.139 and 176A.110.

Existing law provides that a person who solicits a child for prostitution is guilty of a felony pursuant to NRS 201.354; however, this crime is not listed as a

sexual offense anywhere within NRS. Therefore, existing law does not require or allow for a psychosexual evaluation to be arranged prior to sentencing.

A psychosexual evaluation is a report prepared by a licensed professional following a clinical interview. The evaluation uses different instruments to assess the defendant's risk level to the community and the individual's likelihood to re-offend. One instrument utilized is a Sexual Violence Risk-20 checklist, which is a 20-item checklist for risk factors of sexual violence. The item level information is integrated into a summary judgment of the level of risk—low, moderate, or high. Another instrument is the Static-2002R. This instrument is designed to assist in the prediction of sexual and violent recidivism of sexual offenders. It consists of 24 items and produces estimates for future risk based on a few factors present in any one individual.

In addition to determining an individual's risk level and likelihood of recidivism, the evaluation also makes recommendations as to treatment should a court grant probation.

Psychosexual evaluations are critical tools to a fair criminal justice system. Preconviction, these evaluations can be utilized to reach plea agreements. After entry of plea, these evaluations assist the court in determining the appropriate sentence for a defendant. The sentence can include probation with treatment.

The proposed amendments are necessary to allow for evaluations to be ordered even when a defendant does not plead to a sexual offense. Additionally, as to solicitation of a child for prostitution, the underlying facts of these cases involve an individual seeking to purchase sex from a minor. This is a crime where an evaluation should be ordered in every case.

I will provide a breakdown of the amendments by section. Section 1 of S.B. 36 amends NRS 176.133, subsection 3, to add solicitation of a child for prostitution pursuant to NRS 201.354 as a sex offense.

Section 2 of S.B. 36 amends NRS 176.135, subsections 3 and 5 to allow the Division of Parole and Probation to prepare a psychosexual evaluation as part of the presentence investigation report at the joint agreement of the prosecution and the defense in situations where the defendant has entered a plea to a felony or gross misdemeanor that is not a sexual offense.

Similar to section 2, section 3 of S.B. 36 amends NRS 176.139 to grant the Division of Parole and Probation authority to arrange for a psychosexual evaluation as part of a defendant's presentence investigation and report if the parties jointly request the evaluation, including pleas to nonsex offense.

Section 4 of S.B. 36 amends NRS 176A.110 to add solicitation of a child for prostitution pursuant to NRS 201.354 as a sex offense.

Section 5 of S.B. 36 addresses when the amendments would be enforced, which would be on or after October 1, 2023.

Additionally, in speaking with stakeholders, we are working on an amendment that we will present to this Body that relates to sections 2 and 3. It would amend when a psychosexual evaluation is ordered in a nonsex offense situation. The amendment would propose to allow such an order only in situations where the underlying crime was originally charged as a sexual offense, but the parties negotiated to a nonsexual offense.

CHAIR SCHEIBLE:
To clarify the joint request mentioned in section 2 and referenced in section 3: Would a line in a guilty plea agreement be sufficient to constitute a joint request?

MS. ENGLER:
Yes, I believe it would be sufficient in a guilty plea agreement that parties are requesting an evaluation.

JOHN JONES, JR. (Nevada District Attorneys Association):
We support S.B. 36 with the amendments.

CHRIS RIES (Las Vegas Metropolitan Police Department):
Any legislation that provides more comprehensive oversight and evaluation of sex offenders is welcome. I believe S.B. 36 will help us determine who is at risk of reoffending.

JASON WALKER (Washoe County Sheriff's Office):
We support S.B. 36.

GREG HERRERA (Nevada Sheriffs' and Chiefs' Association):
We support S.B. 36.

JOHN J. PIRO (Clark County Public Defender's Office):
We are only in opposition as written; we are working on a language fix when the parties jointly stipulate for that to happen.

ERICA ROTH (Washoe County Public Defender's Office):
Ditto.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
We oppose S.B. 36 for the same reasons as those of the public defenders. Additionally, I want to flag an issue in rural Nevada—not a lot of people can do these evaluations, and this is an ongoing difficulty. This situation is not necessarily related to the bill, but I wanted to bring it to the Committee's attention because it is important.

TONJA BROWN (Advocates for the Inmates and the Innocent):
We are in opposition of S.B. 36 for now. We have not seen the amendments, but as it stands now, we echo the sentiments of the previous individuals who are in opposition.

JAMES SHUBERT (Deputy Chief, Division of Parole and Probation, Nevada Department of Public Safety):
The Division is testifying neutral on S.B. 36 and wants to inform the Committee of the fiscal impact it would have on the Division of Parole and Probation. As mentioned, S.B. 36 adds two additional instances in which the Division would be required to arrange and pay for a psychosexual evaluation.

Sections 1 and 4 of S.B. 36 add the crime of soliciting a child for prostitution to the list of sexual offenses, which would require the Division to arrange the psychosexual evaluation. In reviewing records, the Division had 48 cases with presentence investigations completed for soliciting a child for prostitution pursuant to NRS 201.354. With S.B. 36, it would result in 48 additional psychosexual evaluations at an annual cost of $41,400 per fiscal year and $82,800 per biennium.

For reference, each psychosexual evaluation ranges between $1,350 and $1,725. Sections 2 and 3 would require the Division to arrange for a

psychosexual evaluation if the defendant and prosecuting attorney submitted a joint request for a presentence investigation that includes the psychosexual evaluation. It is hard to anticipate a true number because it is a joint request. However, if we assumed an increase of 24 requests per year, it would cost another $41,400 per year.

The Parole and Probation Division wants to make the Committee aware of the fiscal impact. As written, it has a significant impact on the Division by increasing the number of psychosexual investigations that we have to complete.

CHAIR SCHEIBLE:
For future reference, we have copies of fiscal notes that are available to us on the website, and this is a policy committee. It is not necessary to explain any fiscal notes to us, but we do appreciate your involvement in the process and being available. We will now close the hearing on S.B. 36 and open the hearing on S.B. 38.

TERESA BENITEZ-THOMPSON (Chief of Staff, Office of the Attorney General):
The Nevada District Attorneys Association approached the Attorney General's Office a few months back requesting assistance with policy initiatives. Attorney General Aaron Ford reviewed this one and decided this is something we wanted to support, which is why we endorsed the bill and created a bill draft request with them to refine the language.

MR. JONES:
With me is Detective Matthew Caldwell from the Clark County School District Police Department. Senate Bill 38 creates the crime of luring a pupil. Luring can involve the conversations or communications that occur between a perpetrator and a child leading up to the commission of a crime. It is different from but akin to grooming.

There is a luring crime in NRS 201.560. However, that statute requires an addition of other elements such as the child or person has a mental illness or the victim must be under the age of 16 and the perpetrator must be more than 5 years older than the victim. This gap in the luring statute does not cover crucial ages that occur in classroom settings. We have 16-, 17- and even 18-year-olds in our schools who are not covered by the luring statute. As law enforcement, we are unable to prosecute some egregious examples of communication based on the victim's age alone or the fact the intended conduct

was not completed. That is generally because parents discover the communications, or teachers or students notice unusual behaviors going on, allowing the administration to intervene. We are left with communications of evidence intended to commit a crime which do not rise to the level of being prosecutable. After the conclusion of my testimony, Detective Caldwell will give you examples.

What we are proposing is a new crime of luring a pupil outlined in section 2 of the bill. Section 2, subsection 1 would prohibit a person with authority over students under 18 years of age from contacting or communicating with the pupils with the intent to lure them from their homes or from places where the parents know them to be and without the parents' consent.

I do want to point out this does limit prosecution of this crime to those pupils who are under the age of 18 and I do understand this still leaves a gap of children. But people who are over the age of 18 no longer need parental permission to be someplace, and we understand this could be problematic. After speaking with the Legislative Counsel Bureau (LCB), it was determined this could potentially cause more problems than it solves.

Section 2, subsection 2 prohibits a person with authority over a student from contacting or communicating with any pupil regardless of age with the intent to encourage the pupil into engaging in sexual conduct or to use a communication device to transmit a sexual image, sexting or engage in any illegal act.

Section 2, subsection 3 prohibits a person with authority over a student under the age of 18 from contacting or communicating with the pupil with the intent to cause or encourage the pupil to engage in conduct that would make him or her become a child in need of supervision or a delinquent child as defined in NRS 201.090. This includes encouraging the child to run away, violate curfew, become addicted to alcohol or drugs, or become a habitual truant.

The penalty for violating subsections 1 and 2 is a Category C felony punishable by one to five years in prison and could be a probationable crime. Subsection 3 is punishable as a gross misdemeanor up to 364 days in the county jail and is probationable. A person with authority over a child is defined as somebody who is employed or volunteers at a school and who exercises "significant control or undue influence over the child."

Concerns raised have been with respect to this language, and I anticipate working with others to further hone this definition, but our intent is obviously to include teachers, coaches, administrators and other employees. I will note the definition in the prohibition against student-teacher sexual contact includes an employee or volunteer at a school who has contact with the child in question. We might choose to move toward something closer to that definition.

The last thing to point out with respect to section 2 is the definition of sexual conduct for purposes of this statute includes sexual conduct that occurs through use of an electronic communication device, even though the victim and the perpetrator might be in different locations. If they are engaging in sexual conduct through the means of electronic communication, that would meet the definition.

This legislation also makes conforming amendments to other statutes contained in the NRS and I can go through them. But I am just going to list sections 1, 7, 8, 10, 11, 12, 13, 16 and 17 which add this new crime to various definitions of sexual offenses or crimes against a child throughout NRS. This crime would be subject to registration based on these conforming amendments.

Section 5 adds this offense to the list of offenses when a judge is prohibited from ordering a victim to undergo a psychological examination. Section 6 adds that this crime is subject to lifetime supervision. Section 9 adds a requirement that a judge prohibits a person from possessing electronic communication devices as a condition of probation. Section 14 defines this new offense as Tier II for purposes of registration. Other sections authorize the use of this conviction for various employment and licensing decisions made by school boards or the State Board of Education. Additionally, these sections require school districts to notify law enforcement and a child welfare agency of these allegations and prescribe how those child welfare agencies should respond.

Finally, the last few sections add this offense to the list of offenses kept in the Central Repository for Nevada Records of Criminal History. Concerning substantiated abuse allegations, I have had conversations with the defense Bar and public defenders because they have concerns about the language. We have received feedback and are committed to collaborating with them to narrow the language.

MATTHEW CALDWELL (Clark County School District Police Department; President, Police Officers Association of the Clark County School District):
My primary job the last 11 years has been to investigate crimes against children where staff members are the suspects or the perpetrators. Most are sexually based, and we arrest 13 to 15 staff members per year on average. As adults in a position of authority, we have an obligation to protect our future. Every child has the right to a safe education environment free from staff members misusing their trust for the purpose of sexual exploitation. There is no current statutory authority to criminalize grooming behaviors. This law will allow law enforcement to hold those that violate the trust of our children accountable for their misconduct.

A couple of cases stick out to me, one of which was about a year or so ago where a male teacher was messaging a female student. She was roughly 16 years of age, and he was saying things to her along the lines of "she has a perfect body" and "he wants to have five kids with her." He asked her to move in with him and had doughnuts delivered to her house after he obtained her address through a student database. All these behaviors caused her to feel terrified. Unfortunately, no laws can stop him because of her age, and we are unable to prosecute him on that case.

More recently, we had another case where over 1,000 emails were sent by a staff member to a group of students in which he said racial and racially disparaging comments to them. He encouraged them to miss class and come into his classroom to hang out. He offered them shots of energy drinks, not alcohol, but to me, there is no reason to offer a child a shot of anything. It is just wildly inappropriate.

SENATOR NGUYEN:
You had mentioned there was a loophole with children between the ages of 15 and 18, is that correct?

MR. JONES:
Sixteen years old and above.

SENATOR NGUYEN:
Does this not apply to 18-year-olds still in high school?

MR. JONES:
Section 2, subsection 2 of S.B. 38 would apply to an 18-year-old who is still in high school. That is the section that prohibits the person with authority from communicating with the child with respect to sexual conduct or sexting. The other two, sections 1 and 3, would not. If the child is 18 when the actions are discovered, but they occurred before the child turned 18, we would be able to use this new statute.

SENATOR NGUYEN:
I understand what you are getting at. I have concerns about section 2. Subsections 1 and 2 seem vague. I have concern there might be unintended consequences of keeping it that broad. If you had a coach saying, "Hey, we are meeting here at the field," is that luring them out of their house? There is no sexual intent included in section 2, subsection 1 as I understand.

MR. JONES:
That is correct. There is no sexual element in subsection 1, but if the child has been authorized to engage in practice, then it would be a situation where the parent is aware of the child's involvement in practice. As noted in the section, it is a place where their parents know them to be. In that instance, a coach texting a child about practice or a teacher asking a child to engage in activity at school would meet that exception.

SENATOR NGUYEN:
I feel uncomfortable with the language. I do not think it necessarily captures exactly what you are saying. It is a little overbroad and that brings me to these new definitions: electronic communications devices or a person in position of authority, or sexual conduct or sexual image. Are those consistent with other described meanings and other statutes of a similar nature? Or are they brand-new?

MR. JONES:
For example, the statutes that prohibit sexual conduct between teachers and students have different terms than proposed in this statute. The language you mentioned is what the defense bar and public defenders asked us to tighten up, and we are committed to collaborating with them to do that.

SENATOR NGUYEN:
For our law enforcement partners as well as you, we want to make sure we have definitions. Therefore, they do not have to figure out what sexual conduct is under this subsection. I am glad to hear you are continuing to work on the language.

MR. CALDWELL:
Returning to staff members having communications with students, the district has policies that govern this. Staff members are supposed to use their district email address for communication purposes unless they have some other need. All their emails are indefinitely stored, and police detectives or prosecutors can request a complete copy of every email sent or received by the staff members from their district email. If the staff members do those things the way they should, there should be no confusion as to what their intentions are.

SENATOR NGUYEN:
Is this captured in other statutes? I feel like I have seen this case before, and I am curious as to why this is needed specifically. Does S.B. 38 confer a higher penalty than it would outside of this educational setting?

MR. JONES:
When the child is under 16 years of age, so 15 and under, we can use the current luring statute, NRS 201.560, which addresses these circumstances. The issue we have is 16-, 17- and 18-year-olds. We are unable to prosecute those. You may have seen these types of cases before in your work as a defense attorney, I am sure, but not for the older children.

MR. CALDWELL:
When I view teacher-student relationships, I look at them this way: the teacher has special access to a child that somebody else would not have. I am a 41-year-old man. If I knocked on your door and said, "I am here to hang out with your 15-year-old daughter," you would probably either grab your shotgun, call the police or slam the door in my face. But if I was a teacher at a school and said, "Hey, John is going to stay after school with me today, and I am going to help him study," you are going to trust that relationship because I am in a position of authority and a position of trust. This is why we need a law like this—to protect kids and make sure that trust is not violated.

SENATOR DONDERO LOOP:
What if this happens to a student, and the student is afraid to come forward or the situation is not discovered, and now the student graduated and tells someone or the information comes out?

MR. CALDWELL:
People can call our dispatch number, (702) 799-5411 on our website, and report any allegation that involves a staff member and this conduct. If the case falls within the statute of limitations, it will be investigated. Even if it does not fall within the statute of limitations, we will still investigate the crime to determine if something took place. We have done this in the past.

SENATOR DONDERO LOOP:
Can you remind us of the sequence? In other words, you find this out, you interview and see if there was an arrest or not. Is the teacher, coach or whoever put on administrative leave? Is the person taken out of the school setting, paid or nonpaid, it does not matter, until this straightens out? In other words, can the person still be teaching while under investigation?

MR. CALDWELL:
If a staff member is accused of some type of misconduct, the school will put the person on home status and will pay the person to keep him or her away from students. We will come in to speak with the child and a parent. We will attempt to get consent to search their electronic devices. I have personally been trained as a mobile device examiner by the National Computer Forensics Institute in Hoover, Alabama, sponsored by the U.S. Secret Service. With a computer and software program to extract the data from the cellphones, we will meticulously go through the data to determine whether a crime took place and then conduct interviews as necessary.

SENATOR DONDERO LOOP:
The staff member will not be teaching during that time. Has there ever been a time where somebody crossed the line, not far enough but across the line, and was put back into that setting?

MR. CALDWELL:
On the police side we investigate the criminality of the act. If there is a crime, then we will take appropriate action. That information is shared with employee management relations which will run an investigation for policy violations, and a

separate determination will be made by the school district. The police might not arrest somebody, and the person can still be fired. Does that answer your question?

SENATOR DONDERO LOOP:
Yes.

SENATOR HARRIS:
Is it your intention for teachers who offer students shots of energy drinks to be captured under this bill?

MR. CALDWELL:
No, my intent would be when inappropriate behavior is taking place and the person is grooming a student or has motivations other than being a mentor or a teacher which needs to be addressed. Whether it is criminal or not would have to be determined on a case-by-case fact basis.

SENATOR HARRIS:
What about students who do not want to let their parents know they are playing football? Is the football coach now potentially liable for a gross misdemeanor under section 2, subsection 1?

MR. JONES:
Parents have the right to know where the child is at this point, and if the teacher is helping the child circumvent the parental authority, then there is a problem. I do not know if it necessarily rises to the level of a violation of section 2, subsection 1, but there is a problem.

SENATOR HARRIS:
Is that a maybe?

MR. JONES:
Fact specific, but a maybe.

SENATOR HARRIS:
What about a parent who offers a child refuge from an abusive home? Is the second parent also potentially liable under section 2, subsection 1?

MR. JONES:
No, as long as the person is not a volunteer at the school exercising authority over the child. This just applies to school employees and volunteers.

SENATOR HARRIS:
That answers my question. As long as the parent does not volunteer at the school part time, this would not apply to them?

MR. JONES:
That is correct. This is just for school employees and volunteers.

SENATOR OHRENSCHALL:
My question has to do with section 2, subsection 3, the new language at the top of page 7, lines 1 through 8. If there is a communication from a person in a position of authority that leads to conduct that would cause a student to become a child in need of supervision or a delinquent child, the person is guilty of a gross misdemeanor. If there was evidence that this person in position of authority was encouraging the child to commit delinquent acts, thefts, graffiti or substance abuse, could not that already be prosecuted under the contributing to the delinquency of a minor statutes?

MR. JONES:
Potentially, if the act is completed. But what we are concerned with here are the communications that lead up to the act being completed.

SENATOR OHRENSCHALL:
Are there examples of offenses where personnel in positions of authority are in nexus to the child in need of supervision, being truant or being out past curfew?

MR. CALDWELL:
A lot of the cases that come to us start with a rumor. What usually takes place is a student will say, "Hey, I saw John hanging out in Matt's classroom when he should not have been there." The kid is somewhere students are not supposed to be because a person has authority to allow the child to do so. This contributes to delinquency when the student is supposed to be in a different classroom, learning a different subject. That typically is how the cases go. The person is with the teacher or staff and should not be there. The student should be somewhere else, which is causing the child to be a delinquent child under NRS. It can progress to a new relationship.

SENATOR KRASNER:
You mentioned that a school must notify law enforcement in certain situations. What are those situations?

MR. JONES:
An allegation that this offense occurred is when that would be triggered, and that is in the amendment to NRS. As to the other specific things that are in law, I cannot testify to those at the moment, but I can get you the information if you are interested.

SENATOR KRASNER:
It is not in law that the school must notify law enforcement?

MR. JONES:
It is the current law, and what S.B. 38 would do is add this new crime into that law.

SENATOR KRASNER:
There was a mention of truancy. If a child is merely truant and there is no allegation a teacher or volunteer is responsible, would that be reported to law enforcement?

MR. CALDWELL:
I have not been in the field in a while to deal with truancy. It used to be a citation for habitual truancy, but I am not exactly sure what that policy is now.

MR. JONES:
It is the same. There are processes in place to handle habitual truants, but what that particular process is, I cannot testify to today.

SENATOR KRASNER:
This bill would not cause information be shared with law enforcement about a child who was truant for a reason not specified as a volunteer or teacher causing that action. Traditionally, members of the Legislature have tried to keep children's information private and information between agencies would not be shared because kids are kids, and they act like kids. I just want to make sure that S.B. 38 is not going to change that.

MR. JONES:
In reading S.B. 38, if an allegation is made that somebody is a victim of this new crime in section 2, notification is supposed to be made to both law enforcement and a child welfare agency. The fact that a child has been truant due to the alleged actions of a teacher may come up in the course of those communications.

SENATOR STONE:
You mentioned if a child has been the beneficiary of some inappropriate texting as a juvenile, but the person does not report until an adult, it is covered under the statute of limitations. What is the statute of limitations, two years or more?

MR. JONES:
It is at least three, but it might be four. I am sorry, I do not know the specific number.

CHAIR SCHEIBLE:
That is something we can ask our legal counsel to follow up.

SENATOR DONDERO LOOP:
At one point there was some discussion that Washoe County may end up with young adults 18 years of age or older as substitute teachers. What happens if you have an 18-year-old student teacher with an 18-year-old student? Where does that line match?

MR. JONES:
They would be covered under S.B. 38 if the young adults are in the capacity of substitute teacher. They must be 21 years old generally to be a teacher. That scenario is not covered under the student-teacher sexual contact statute.

SENATOR DONDERO LOOP:
At one time, Washoe County either considered or put it into regulation that young people could be student teachers right out of high school.

MR. JONES:
Through emergency regulations, people with a high school diploma can serve as substitute teachers for short periods of time. I do not believe absent an emergency, like COVID-19, it applies to urban jurisdictions, but it does apply to some of our rural jurisdictions.

MR. CALDWELL:
I pulled up NRS 201.540 for sexual conduct between certain employees and students, and it states in subsection 1, paragraph (a), the suspect must be 21 years of age or older.

SENATOR NGUYEN:
Concerning the statute of limitations, not for how long it is but for the case of a scenario where a 16-year-old had this contact happen and then at the age of 25 the person decided to come forward. Would that be applicable? Is it like some of other sexual misconduct statutes when it comes to juveniles?

MR. JONES:
I want to make sure I understand the question. Are you thinking about the secret manner exceptions? I do not know if that would apply to this. I would have to research and get back with you. It is a great question.

SENATOR NGUYEN:
As for contributing or the attempt to contribute to the delinquency of a minor, the concern is contributing to the delinquency of a minor and completing the act. If you gave shots of alcohol to a minor, it would be a misdemeanor and attempting to do this would be a gross misdemeanor. Is that correct?

MR. JONES:
You are saying if the teacher contributed and gave alcohol in that one instance, I think, yes, that would be a misdemeanor. What we are trying to get at here is the broad categories of conduct. It is hard to specifically delineate what is appropriate and what is not. What we are saying is a teacher should not be encouraging a child to engage in those behaviors.

SENATOR HARRIS:
Sorry, I did not get to this the first time. Why not close the gap by upping the age in the lure statute as it exists?

MR. JONES:
That came together with some intensive negotiations for the luring statute, and we do not want to disturb the luring statute as it is currently written. This proposes an alternative.

SENATOR HARRIS:
Am I hearing that it is easier to create a new crime with this 40-page to 50-page bill than it would be to strike the age of 16 and change it to 17?

MR. JONES:
We could do that, and if this is the ultimate desire of this Committee, we will certainly be amenable. But we did discuss that potential option, and the new law was the avenue we decided to go.

MR. CALDWELL:
I think the issue at hand is the legal age of consent in Nevada is 16. Only it is not the age of consent of the person who works for the school district or as a volunteer. If you just change the luring statue, that would be problematic. You suddenly can be charged with luring, but you could have a sex act with a person and it would not be a crime.

MR. JONES:
That is a great answer. We are carving out a certain subset of individuals here, those being teachers and volunteers at a school. If you just strike it in the luring statute, you are covering other people who the Legislature may not be intending to capture.

SENATOR HARRIS:
You do not have a problem with people being able to consent to sex at 16. But if they are in school, you want to criminalize some of their potential communication. I do not get the logic behind how we can say 16-year-olds can consent to sex but cannot be somewhere their parents do not know where they are, regardless of what it is.

MR. JONES:
It is illegal for an employee of a school district to engage in sexual contact with a student. It does not matter if students are 18 years old and in some circumstances, the prohibition applies to university students and professors in that relationship. What this Legislature has said is there are certain relationships in which sexual conduct should be prohibited. What we are seeing are the steps that are leading to that sexual conduct, the communications and grooming behaviors that occur. Yet, we do not have a completed sex act. Senate Bill 38 is prohibiting somebody from taking the steps that could ultimately lead to prohibited conduct.

SENATOR HARRIS:
Is there a limiting principle on this idea of how far back we take the law before an act that is currently criminal becomes criminalized? Are we looking at criminalizing threats before you commit murder? What is the limiting principle on applying the philosophy you are applying here in other areas of the law?

MR. JONES:
I would absolutely argue the teacher-student dynamic is different. The power and influence that teachers have over students should be sacrosanct as testified to by Detective Caldwell. In other words, teachers should not be using their power and influence to encourage or groom an individual to engage in illegal conduct. That is what S.B. 38 is getting at.

CHAIR SCHEIBLE:
I am looking at NRS 201.560 right now, our current luring statute. It seems like it would be a much cleaner way to accomplish your goal to add a paragraph (c) to subsection 1 that borrows the definitions laid out on page 7, line 22. Add into NRS 201.560 a paragraph (c) stating or a person in a position of authority, as defined in the new bill, who engages in any of the described conduct with a student under the age of 18.

MR. JONES:
We could absolutely do that. This is how LCB drafted S.B. 38, and we have no objections. If that is the route this Committee wants to go, we would be supportive.

CHAIR SCHEIBLE:
It is cleaner, in that everywhere it adds section 2 of this act, it adds the luring of a student to different sections of the NRS, including the section that requires registration as a sex offender. And section 2 of this act includes subsection 1, which we already established has no sexual component. Or am I misreading it?

MR. JONES:
You are not misreading it, but as proposed in section 2 of S.B. 38, it is still a crime against the child, which would implicate some of those other sections that we are proposing to amend in statute.

CHAIR SCHEIBLE:
The last thing is more of a comment. We absolutely have a duty to our constituents and to our children to protect them in the school setting. I also think it is worth drawing a difference between a predatory teacher, coach, volunteer or person in position of authority versus a young person who is in a position of authority and making bad decisions that are not sexually or criminally based. Senate Bill 38 would cover those coaches and volunteers who may be young and dumb but not criminal, particularly those examples like coaches who want kids to practice early, and mom says "no." The coach says "How about you just tell her that practice starts at 10 a.m." He or she is not trying to get kids to engage in criminal activity but rather trying to get kids to the soccer field at 10 a.m. instead of 11 a.m. These coaches would be captured under S.B. 38 because they are encouraging a child to go somewhere. The parents are telling the child they do not want him or her to go, even though there is no intent to commit a crime once they get there, either against the child or with the child.

It is important that we acknowledge the benefit from having young people, 19- and 20-year-old college students, mentor and work with our students. Sometimes they may make mistakes that should not rise to the same level as those predatory teachers or volunteers or coaches who are victimizing children.

MR. JONES:
I accept that comment. We have had similar conversations with defense attorneys and public defenders. I understand where you are coming from and pledge to work with them.

MR. RIES:
Senate Bill 38 will serve as a deterrent for those preying on and luring our vulnerable youth. For this reason, the Las Vegas Metropolitan Police Department supports the bill.

MR. WALKER:
Washoe County Sheriff's Office supports S.B. 38.

MR. HERRERA:
Nevada Sheriffs' and Chiefs' Association supports S.B. 38.

MARY PIERCZYNSKI (Nevada Association of School Superintendents):
Our organization represents all 17 superintendents in the State, and we are in support of the legislation and protection of our children.

DAVID CHERRY (City of Henderson):
The City stands in support of S.B. 38. I just want to compliment the members of the Committee on the thoughtful discussion held today.

PAIGE BARNES (Nevada Association of School Boards):
We support S.B. 38. I would like to specifically call your attention to sections 19 through 25 and 33. We to promote a safe and respectful learning environment for our children.

MS. ROTH:
I sit here both as a criminal defense attorney who understands the nuances on many of these cases and as the daughter of a teacher of 40 years. My father was a teacher of many grades, and I agree with the sentiment that teacher student dynamics are different from when he passed away. At his funeral, an estimated 300 students showed up to talk about the difference he had made in their lives. What if a student living in an unstable home, reached out to my father and asked for a ride? That conduct falls under section 2, subsection 1. What if one of my friends on the soccer team asked my father for a ride, even though she did not have permission to go where we were going? He was a teacher, and that conduct falls under that section. We oppose the language as written because it is simply too broad. We are going to make sex offenders out of people who do not deserve it. I appreciate the willingness of the sponsor to continue to work with us, but I urge amendments need to be made.

MR. PIRO:
We have much the same concerns the Committee brought up. We are thankful the sponsor is working with us to rectify those concerns. We are not opposed to the policy. Obviously, teachers creeping out on students should be captured, but some of the things the Committee brought up create major problems. We are hoping we can get to a cleaner bill at the end and pass good policy.

MR. HOFFMAN:
I want to share the sentiments expressed by Mr. Piro and Ms. Roth. I also wanted to thank the Committee for a lot of insightful questioning. I had not thought of a lot of those concerns. In recent years, there have been students

walking out of the classroom to protest school shootings, climate change and racial injustice such as we saw with George Floyd. Some teachers are onboard with that telling the kids they will not have a pop quiz that day and will get extra credit. But as we and you know, protesting can involve civil disobedience, theoretically crimes or delinquent acts. Another concern is we have a teacher who teaches students about Martin Luther King, then students go out and get arrested for protesting. Is that teacher a felon now? We are not opposed to the core concept of S.B. 38. We have some real concerns about language and are committed to working with the sponsors to address those.

MS. BROWN:
We are opposed to S.B. 38. The language is too broad, and we echo the comments made by the public defenders. But I would like to touch on something else that was not brought up. What if you have a 15-year-old girl, and I can tell you that there are some 15-year-old girls who look 18 or 20 years old, attending a sporting event where there is a younger teacher, say 22, 23 or 24 years old. They start interacting and the next thing, he believes she is over 18 years old. She is not 18 years old and is lying to him. What happens when it is uncovered that she is only 15 years old? Do we prosecute this teacher because she was 15 years old, but based on her lies the authorities choose not to prosecute him because she did lie? They had not had a sexual act or whatever the case may be. But the family, the parents, decided to pursue it. Where does it go from there?

CHAIR SCHEIBLE:
That brings us to the conclusion of our hearing on S.B. 38, and I will adjourn the Senate Judiciary Committee at 2:06 p.m.

RESPECTFULLY SUBMITTED:

_____
Blain Jensen,
Committee Secretary

APPROVED BY:

_____
Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page No.**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Attendance Roster
S.B. 36	C	2	Alissa C. Engler/ Office of the Attorney General	Support Testimony