

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
March 23, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 9:14 a.m. on Monday, March 23, 2009, in Room 2149 of the Legislative Building, Carson City, 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 Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Senator Steven A. Horsford, Clark County Senatorial District No. 4

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

Jo Lee Wickes, Deputy District Attorney, Juvenile Division, Washoe County
District Attorney
Kristin Erickson, Nevada District Attorneys Association
Constance J. Brooks, Senior Management Analyst, Office of the County
Manager, Clark County
Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada

Senate Committee on Judiciary
March 23, 2009
Page 2

CHAIR CARE:

We have some requests for bill introductions. There were three requests for Committee bill draft requests (BDR) prior to Election Day of last year, approved by Senator Amodei. My approach is they all remain on the books. We now have the drafts.

Bill Draft Request 22-235 is from the City of Henderson seeking an amendment to the Uniform Declaratory Judgment Act.

BILL DRAFT REQUEST 22-235: Revises provisions governing land use decisions.
(Later introduced as [Senate Bill 354](#).)

Henderson wants the law amended so that you are not an aggrieved party and thus you do not have standing to seek declaratory relief based upon the decision handed down by a planning commission. The intent is you would be an aggrieved party if city council ruled adverse to you, but not simply a ruling by the planning commission, which is not binding. Does this comport with your understanding, Senator Amodei?

SENATOR AMODEI:
Yes, it does.

CHAIR CARE:
The chair will entertain a motion for introduction of BDR 22-235.

SENATOR PARKS MOVED TO INTRODUCE BDR 22-235.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
Bill Draft Request 14-193 comes from the Campus Police at the University of Nevada, Reno, and deals with sealed records.

Senate Committee on Judiciary
March 23, 2009
Page 3

BILL DRAFT REQUEST 14-193: Revises certain provisions relating to sealed records concerning criminal proceedings. (Later introduced as [Senate Bill 353](#).)

My understanding is the Campus Police feel they should be entitled to look at sealed criminal records, assuming they exist, when going through the hiring process. The Chair will entertain a motion.

SENATOR WIENER MOVED TO INTRODUCE BDR 14-193.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR CARE:

Bill Draft Request 9-866 came from Associated General Contractors of America, the Steve Holloway group, with revisions to the materialmen's or mechanic's lien statute.

BILL DRAFT REQUEST 9-866: Makes various changes to provisions governing mechanics' and materialmen's liens. (Later introduced as [Senate Bill 352](#).)

There are several changes to existing law. The Chair will entertain a motion.

SENATOR COPENING MOVED TO INTRODUCE BDR 9-866.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR CARE:

Bill Draft Request 7-1118 may have gone in when Senator Amodei was Chair of the Committee.

Senate Committee on Judiciary
March 23, 2009
Page 4

BILL DRAFT REQUEST 7-1118: Makes various changes relating to business.
(Later introduced as [Senate Bill 350](#).)

Every Legislative Session, the Business Law Section of the State Bar of Nevada seeks revisions to what I refer to as the "corporate code," Title 7 of the *Nevada Revised Statutes* (NRS). The Chair will entertain a motion.

SENATOR WIENER MOVED TO INTRODUCE BDR 7-1118.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR CARE:

Bill Draft Request 10-1145 is another homeowners' association request.

BILL DRAFT REQUEST 10-1145: Makes various changes relating to common-interest communities. (Later introduced as [Senate Bill 351](#).)

This comes from lawyers John Leach and Michael Schulman. Messrs. Leach and Schulman have submitted comments to Senate Bill (S.B.) 182 and S.B. 183. This is not an overhaul but clarification of the standard practices. The Chair will entertain a motion.

SENATOR PARKS MOVED TO INTRODUCE BDR 10-1145.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

[SENATE BILL 182](#): Makes various changes relating to common-interest communities. (BDR 10-795)

[SENATE BILL 183](#): Revises various provisions governing common-interest communities. (BDR 10-70)

Senate Committee on Judiciary
March 23, 2009
Page 5

CHAIR CARE:

Bill Draft Request 3-1151 contains amendments to NRS 40.

BILL DRAFT REQUEST 3-1151: Makes various changes relating to constructional defects. (Later introduced as [Senate Bill 349](#).)

This does not repeal NRS 40. We had a hearing on February 3 regarding construction defects. We created a Subcommittee; there were two or three hearings before the Subcommittee. This bill makes three changes to NRS 40. The first change is the definition of construction defect. The second change addresses attorney fees. The third change states the claimant executing an affidavit must understand that the existence of a construction defect will have to be disclosed before attempting to convey the residence. The Chair will entertain a motion.

SENATOR COPENING MOVED TO INTRODUCE BDR 3-1151.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

The next two bill drafts, BDR 13-1280 and BDR 52-1279, were my personal bill drafts. They are both uniform acts.

BILL DRAFT REQUEST 13-1280: Revises certain provisions of the Uniform Principal and Income Act (1997). (Later introduced as [Senate Bill 348](#).)

BILL DRAFT REQUEST 52-1279: Enacts the Uniform Debt-Management Services Act. (Later introduced as [Senate Bill 355](#).)

Bill Draft Request 52-1279 is a uniform act that regulates businesses that advise people on getting rid of debt. There are a number of entities of this nature taking advantage of those in need of their services. The Chair will entertain a motion.

SENATOR WIENER MOVED TO INTRODUCE BDR 13-1280.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR WIENER MOVED TO INTRODUCE BDR 52-1279.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

Senate Bill 235 revises the provisions relating to the jurisdiction of the juvenile court over certain offenses.

SENATE BILL 235: Revises the provisions relating to the jurisdiction of the juvenile court over certain offenses. (BDR 5-553)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):

The 2007 Legislature reestablished the Sentencing Commission under A.B. No. 508 of the 74th Session. When this Committee received the bill, it renamed that Committee to the Advisory Commission on the Administration of Justice. The Advisory Commission, under the leadership of The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court, has met monthly since July of 2007. After numerous hearings, many suggestions were made by the Commission and the Subcommittees, such as the Juvenile Justice Subcommittee. Senate Bill 235 is one of the bills recommended for consideration by the 2009 Legislature.

JO LEE WICKES (Deputy District Attorney, Juvenile Division, Washoe County District Attorney):

I would like to define for you what we see as the problem. Under current Nevada law, no court has jurisdiction over several types of crimes. Someone under the age of 18, identified as having perpetrated a crime, is charged and a warrant is issued, but they are unable to be brought to court prior to their twenty-first birthday. In my office, as we approach the perpetrator's

twenty-first birthday, we file a motion to quash that warrant and dismiss the case in anticipation of the court losing jurisdiction on their twenty-first birthday. Senate Bill 235 is aimed at addressing Category A and B felonies. Sexual assault, battery with a deadly weapon and robbery with a deadly weapon are examples of these serious offenses.

Another type of crime where there is no jurisdiction for any court in the State of Nevada is when a juvenile under the age of 18 commits one of those serious offenses and is not identified until after the juvenile's twenty-first birthday or immediately prior to their twenty-first birthday. Because of the Brianna Dennison case last summer, the deoxyribonucleic acid (DNA) of a young adult in prison for robbery was processed by the Washoe County lab. This occurred when the community gathered together to raise funds to process DNA samples that had been waiting to be processed. As a result of this processing, his DNA was matched with a sexual assault and robbery that occurred when he was 17 years old. Even though I was under a short time line, I was able to get him charged and filed a motion to certify him to adult criminal court. The order granting the motion to certify him was signed and filed on Thursday. He turned 21 on Sunday. Had we not been able to identify him when we did and get him into court, there would be no court in the State having jurisdiction over that offense. Senate Bill 235 is designed to solve this problem.

The members of the Juvenile Justice Subcommittee had been considering this issue almost from the beginning. Senator Steven A. Horsford asked a small group of us to get together and work on proposed legislation. Teresa Lowry, Assistant District Attorney; Susan Roske, Chief Deputy Public Defender, Clark County Juvenile Division; Fernando Serrano, Division of Child and Family Services and myself worked on what has become S.B. 235. We had a cross section of prosecutors, defense attorneys and representatives from the Division of Child and Family Services working together to come up with this proposal.

Senate Bill 235 presents a twofold solution. We distinguish between those cases where the alleged defendant is not identified until after he is 21 years of age. We also set forth provisions for someone who is charged and identified but not able to be brought into court until prior to his twenty-first birthday. We looked at how long a prosecutor and a defense lawyer would need to properly prepare for this type of serious offense. This proposed legislation deals with both of those cases and provides a judicial forum for those problems to be addressed. It does so by excluding from juvenile court jurisdiction those cases

where the alleged perpetrator is not identified until after the twenty-first birthday.

Under S.B. 235, that person would be automatically excluded from juvenile court jurisdiction, but it gives jurisdiction to the adult criminal court. That person, although accused after he turned 21 for this heinous crime allegedly committed before his eighteenth birthday, would be given all the rights and guarantees under our Constitution. It also seeks to strike a compromise for those juveniles identified and charged but not brought into court because we cannot locate them, and they were not picked up on their warrants soon enough. The prosecutors and defense attorneys are given a nine-month window in which they can bring them into court and file a motion to have them certified.

We have attempted to avoid some of the pitfalls that have occurred in the past. We have given the courts specific factors they need to address. They have to determine there is probable cause to believe the person committed the crime. Prosecutors and defense attorneys believe there are a series of factors that would address all the things the court should consider in deciding to discharge the case. In which case, the case would be dismissed—or go forward to the adult criminal court because of public safety and protection concerns.

Senate Bill 235 strikes the proper balance. It gives prosecutors the ability to pursue these very serious criminal offenses. It gives the defense attorneys adequate time and opportunity to defend against such an action. It provides for judicial oversight for those cases where juveniles are identified before their twenty-first birthday. It answers the concerns of the juvenile justice administrators not knowing what they could do with someone staying in the juvenile justice system, given the limitations of that system.

CHAIR CARE:

Section 2, subsection 4, paragraph (a) reads, "If the juvenile court determines that there is probable cause to believe that the person committed the delinquent act, the juvenile court shall determine whether, based upon the interests of justice and the need for protection of the public, to: (a) Dismiss the charges; or" Would that be upon the defendant's request, or could the court simply say this was not as serious as we thought? Walk me through how you envision the court going through that exercise.

MS. WICKES:

For these types of juveniles, the charge has already been filed and we have been unable to locate him. At some point, the prosecutor would file a motion with the district court judge asking to certify that individual to the adult criminal court. My guess is that would occur upon apprehension. The motion would be heard by a district court judge. The defense attorney could raise that, under the statute, the court has the option of dismissing the case outright if they believe there is not probable cause or if because of the factors listed thereafter and other considerations the court has the discretion to look at, they do not think the case needs to be transferred to the adult criminal system.

SENATOR WASHINGTON:

Section 2, subsection 5, paragraph (j) states, "Any other factor the juvenile court finds relevant." Can you give me an example of something that would be relevant in determining if this juvenile should be adjudicated to adult court?

MS. WICKES:

With the assistance of Chief Deputy Public Defender Roske, we attempted to identify the categories of things a court should consider and things juvenile courts normally consider. We tried to make this inclusive. However, it was important that the district court judge have some discretion. Not being able to anticipate every possible scenario in the future, we added that section so if there was something important in an individual case not previously enumerated, the court would have the discretion to look at that factor.

SENATOR WASHINGTON:

Is it possible the word relevant may be too broad? I am not trying to limit the court's discretion, but is it too broad? Can you clarify this for me?

MS. WICKES:

Our intent was to give the courts some discretion. Being lawyers, we love that word relevant because it can mean so many different things depending on the context in which it is placed. Clearly, the court would have to hear argument from the parties about the importance of this decision. It would be up to the court. You are right; it does give them some latitude.

SENATOR WIENER:

Under current law, the process of certification means there is a proceeding. Is that right?

MS. WICKES:
Correct.

SENATOR WIENER:

Is there any time when it is not so much a certification, but because of the nature of the crime, they are automatically considered adults? Does that ever happen? Is court procedure required to certify a juvenile up to an adult?

MS. WICKES:

Under juvenile court law, classes of crimes committed by someone under 18 are automatically excluded from juvenile court jurisdiction. The easiest one to understand is murder or attempted murder. This is never a juvenile court case. Under this proposal, someone who is identified as having perpetrated a serious Category A or B felony after their twenty-first birthday would be in exactly the same type of category. That case is automatically excluded from juvenile court jurisdiction, giving the jurisdiction over that offense to the adult criminal court.

SENATOR WIENER:

I have had some heated conversations concerning the age of prosecution. Eight-year-olds stick in my mind. Could you explain that?

MS. WICKES:

Under Nevada law, you have to be at least eight years old in order to be prosecuted for a juvenile offense. No one under the age of eight can be prosecuted for a juvenile offense. If you are under 14 years old, in order to be prosecuted for any offense, the prosecutor has to prove that you had mental capacity to understand right from wrong.

SENATOR WIENER:

That is when we get to see lots of Magnetic Resonance Imagings (MRI). I had this conversation with both sides of the bar. Under current law, though it has not happened, could an 8- to 14-year-old who commits an extraordinarily egregious crime be certified up into the adult court under certain circumstances?

MS. WICKES:

They could be charged. Some of those offenses would automatically be excluded from juvenile court jurisdiction.

SENATOR WIENER:

That would be murder and attempted murder?

MS. WICKES:

Right, and there are others such as aggravated sexual assault. If you are at least 16 years of age and have certain prior felony adjudications where the sexual assault involved use of force or the threatened use of force or violence, you would automatically be excluded from juvenile jurisdiction. The child you are considering, between 8 and 14 years old, could not be automatically excluded from juvenile court jurisdiction. They are not the proper age, and they do not have prior felony adjudication.

SENATOR WIENER:

The operative word there is automatically. Given the proper circumstances, they could be considered for certification up. This became an issue when there was a rash of incidents at schools. In Arkansas, the two perpetrators were 11 and 15 years of age. Because of their ages, Arkansas reduced the age for consideration of adult penalties. This caused us to look at Nevada law. I remember issues before the Committee where we saw copies of MRIs showing the development of the brain. The evidence is there. No matter how adult we think a 14- or 16-year-old might be, sometimes that brain picture gives different information than our subjective observation. The statute does give some leeway. It is not automatic but certainly open for consideration.

MS. WICKES:

It would depend on what the charge was in that situation. There is an exception under Nevada law for the type of occurrences you are discussing, the true Columbine or Arkansas-type incidents. That is already listed among the things that exclude you from juvenile court jurisdiction.

KRISTIN ERICKSON (Nevada District Attorneys Association):

The Nevada District Attorneys Association is in support of S.B. 235 and would like to thank Senator Parks and the Juvenile Justice Subcommittee for bringing it forward.

CHAIR CARE:

The Chair will entertain a motion.

SENATOR WIENER MOVED TO DO PASS S.B. 235.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

We will open the hearing on S.B. 274.

SENATE BILL 274: Creates an interdisciplinary committee to address issues relating to the juvenile justice system. (BDR S-627)

SENATOR STEVEN A. HORSFORD (Clark County Senatorial District No. 4):

I appreciate coming before you and join with Vice Chair Senator Wiener, Senator Parks and Senator Copening in introducing S.B. 274. This bill was a Committee recommendation from the Advisory Commission on the Administration of Justice Subcommittee on Juvenile Justice. The Committee received a copy of this report during the joint meeting February 12, 2009 with the Assembly Committee on Corrections, Parole and Probation and Senate Committee on Judiciary. Within the overall report is a Subcommittee report on juvenile justice. One of the specific recommendations that came out of the Juvenile Justice Commission was one of the same recommendations that came out of the Interim Study on the Placement of Children in Foster Care. This recommendation was the creation of this interdisciplinary committee to address issues pertaining to juveniles.

The bottom-line purpose for this bill is we need better coordination among agencies. They are doing the best they can, but they are largely working in silos. Some of these are federally mandated silos because of federal rules and regulations that have to be met, but state-level mandates have been imposed over time. One of the best practices of the Juvenile Detention Alternatives Initiative (JDAI), an initiative of the Casey Foundation, is the creation of these interdisciplinary committees that work across systems to address issues dealing with juveniles.

Section 1 of Senate Bill 274 lists the members who should be on this interdisciplinary committee. Some members are mandated based on state statute because certain stakeholders have to be part of these committees to address federal rules. Section 2 spells out a list of topic areas the Juvenile

Justice Subcommittee identified that the interdisciplinary committee should address. Rather than prescribing these solutions on our own legislatively, the idea is to form this interdisciplinary committee to identify the topics that need to be addressed and allow the committee members to work within their own purview to come up with a solution. They can do some of this on their own without legislative approval.

SENATOR COPENING:

Are these positions supposed to be made up of individuals who are already serving in some capacity in the system so it is not an additional compensation?

SENATOR HORSFORD:

Other than the Legislators who are appointed to the committee, compensation of members is received in the purview of their job. It is precedents that legislative members who serve on these types of commissions receive per diem compensation. If S.B. 274 is processed, it is our intent that some committees will be eliminated and/or streamlined into this interdisciplinary committee, if allowable. There are certain things in place that meet a certain requirement, but to the extent that this interdisciplinary committee can meet the charges required, it would help streamline and improve efficiency.

CHAIR CARE:

Senator Copening, you will note there is no effect on local government as to fiscal impact because these people will be meeting in the course of their ordinary duties. There is an effect on the State. We do not have the fiscal note, but I cannot imagine it will be all that much.

SENATOR WIENER:

I notice the sunset. I know you are speaking to the future and hoping that great things happen so that we will not have to do this anymore. Is there a reason for the sunset and not an ongoing interim? Could you help us understand that?

SENATOR HORSFORD:

The idea is utilizing the JDAI as the model. You do not put things in place forever. If this is a practice and strategy that works, hopefully the committee can come together and identify the charges within their purview to address. We may decide in a future session that there are new issues to address. We can extend it at that time and give them a new charge. Recognizing that all new

things created do not need to exist forever is the reason for the expiration provision.

CHAIR CARE:

Senator Parks has pointed out that the fiscal note probably stems from carrying out the duties of the Legislative Counsel Bureau (LCB) staff.

CONSTANCE J. BROOKS (Senior Management Analyst, Office of the County Manager, Clark County):

Clark County would like to offer support for S.B. 274. We applaud the efforts of Senator Horsford and the other sponsors for this legislation. We do see the need for the interdisciplinary team effort as well as the oversight this legislation would provide in helping us to provide better services to those who encounter the juvenile justice system. Several members of our staff who work for the Department of Juvenile Justice Services are members of the Nevada Association of Criminal Justice Administrators. This organization also supports S.B. 274.

SENATOR WIENER:

Is that the Juvenile Justice Administrators, rather than Criminal Justice? I just want to make certain for the record because they are different populations.

Ms. BROOKS:

Yes, absolutely.

REBECCA GASCA (American Civil Liberties Union of Nevada):

We support S.B. 274. It is a great bill, and we champion Senator Horsford for bringing it forward.

CHAIR CARE:

We are entertaining a motion on S.B. 274. There is no opposition to the bill. It is another product of the Advisory Commission. Those in support of the bill include Clark County and the ACLU, in addition to the testimony from Senator Horsford. There are no amendments offered.

SENATOR WIENER MOVED TO DO PASS S.B. 274.

SENATOR PARKS SECONDED THE MOTION.

Senate Committee on Judiciary
March 23, 2009
Page 15

THE MOTION CARRIED UNANIMOUSLY.

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LINDA EISSMANN (Committee Policy Analyst):
The fiscal note for S.B. 274 is from LCB. In the first fiscal year (FY) 2009-2010, it shows \$1,100 and \$443 for the second FY.

CHAIR CARE:
There is nothing else before the Committee. We are adjourned at 9:57 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: _____