

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session  
May 25, 2005**

The Committee on Judiciary was called to order at 8:47 a.m., on Wednesday, May 25, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Mr. Bernie Anderson, Chairman  
Mr. William Horne, Vice Chairman  
Ms. Francis Allen  
Mrs. Sharron Angle  
Ms. Barbara Buckley  
Mr. John Carpenter  
Mr. Marcus Conklin  
Ms. Susan Gerhardt  
Mr. Brooks Holcomb  
Mr. Garn Mabey  
Mr. Mark Manendo  
Mr. Harry Mortenson  
Mr. John Ocegüera  
Ms. Genie Ohrenschall

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Risa Lang, Committee Counsel

Allison Combs, Committee Policy Analyst  
Judy Maddock, Committee Attaché

**OTHERS PRESENT:**

Major Bob Wideman, Deputy Chief, Nevada Highway Patrol, Department of Public Safety, State of Nevada

George Togliatti, Director, Department of Public Safety, State of Nevada

Kathleen Delaney, Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General, State of Nevada

Sergeant Bob Roshak, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada; and Legislative Advocate, representing Nevada Sheriffs' and Chiefs' Association

**Chairman Anderson:**

[Meeting called to order and roll called.] We will start with our Work Session Document ([Exhibit B](#)).

**Senate Bill 341 (2nd Reprint): Makes various changes concerning sex offenders and offenders convicted of crimes against children. (BDR 14-678)**

**Allison Combs, Committee Policy Analyst:**

Senate Bill 341 is the only bill in the Work Session Document ([Exhibit B](#).) This bill was heard last Wednesday, and it regards sex offenders and offenders convicted of crimes against children. The bill makes various changes regarding notice and registration, the psych panel, and the community notification website. Some of this is similar to another bill considered by this Committee earlier in the session.

There were a couple of proposed amendments. The first one is on page 2 of the document, and it is the penalty for violation of the registration requirements. The bill currently increases the penalty for this statute to a Category C felony. The proposal is to reinstate the Category D felony for first offenses. It also provides the subsequent offenses within a 7-year period for Category C felonies and prohibits probation for subsequent offenses. A similar proposal was heard and adopted with regard to A.B. 274. That bill was passed by this Committee and was re-referred to the Committee on Ways and Means. An alternative proposal, mentioned by Assemblyman Carpenter, was to reconsider the penalties. A possible suggestion would be, for a first offense, keeping the

Category C—proposed in the bill now for first offenses—and, for subsequent offenses, to go to a Category B felony.

[Allison Combs, continued.] The second area for possible amendment is with regard to the definition of some of the sexual offenses. This proposal is from Terri Miller on behalf of SESAME [Stop Educator Sexual Abuse, Misconduct, and Exploitation], Inc. The first part is to amend the statutes that define a sexual offense for the purposes of lifetime supervision. The duty to register in sexual assault would also include the four statutes referenced there: sexual conduct between certain employees of schools and volunteers at the schools with pupils, similar conduct between employees of the university and students under the age of 18, voluntary sexual conduct between prisoners and other persons, and the abuse of a client in a public or private mental health facility. The statutes that are referenced there are included on page 4 of this document ([Exhibit B](#)), if you would like to look at the elements of those crimes.

The second part of this proposed amendment is to amend the definition of “other sexual offense against a child,” which is under the sexual assault statute. It would include three of those offenses: sexual conduct between employees at a school and pupils, employees of colleges or universities and students, and abuse of the client in a public or private mental health facility.

Finally, there were two amendments proposed by Donna Coleman. After talking with staff, she has decided one of her amendments is not necessary. I think that she was reading the bill in a different way. On the other amendment, she suggested to be sure that the community notification website clearly indicates whether an offender has been classified as a Tier 2 or a Tier 3 offender.

**Assemblyman Horne:**

Ms. Combs, in the first proposed amendment, did you say that we passed this in another measure, where we use Category C and then use Category B for subsequent offense? If so, is that going to conflict if we do the above proposed amendment, which uses Category D and a subsequent Category C?

**Allison Combs:**

To clarify, the proposal that was passed, A.B. 274, is the first one retaining the Category D, increasing it to a C for subsequent offenses, and that is currently in that bill. So, the alternative would conflict.

**Assemblyman Horne:**

I have just a comment on the expanded definition of sexual offenses. I particularly have a problem with the sexual conduct between certain employees of colleges or universities and students. It puts them into this category for those

students that are under the age of 18. In Nevada, I believe that legal age of consent is 16. We would be setting aside a separate category just because they are in college. I am not comfortable with that.

**Assemblyman Carpenter:**

If the bill that was in Ways and Means passes, then we do not need to increase the penalty for a Class B for subsequent offenses. Is that right?

**Chairman Anderson:**

I believe this bill will end up going to Ways and Means regardless. I am under that impression. The fact that the bill will have to go to Ways and Means is why it was given exempt status. I am not sure that there is a fix to keep it out of Ways and Means.

**Assemblyman Carpenter:**

What would happen if we increased the penalty in both this bill and the other one that is in Ways and Means? Do they have to fix the conflict at the end? Is that what happens?

**Risa Lang, Committee Counsel:**

These are obviously policy choices as to what you want to set as the penalty. When the other bill was in this Committee, we had it as the way it is set forth here in subsection 1. If the Committee prefers to have a higher penalty, you can certainly do that in this bill. If they both were to go forward, there would have to be a resolution of the conflict between those two bills. If so, the Legislature would pick which penalty they wanted to go with before the final bill would be passed by the Legislature.

**Assemblyman Carpenter:**

It just seemed to me that we should increase that penalty. The big problem is that these people are not registering. If they do not register a subsequent offense, I just think that to keep it as the same penalty is not right. We should make it a higher penalty. Hopefully, they will get the message that they get to register. Those are my thoughts on it.

**Assemblyman Mabey:**

I do not understand on number 2, where it says, "... voluntary sexual conduct between a prisoner and another person." Let us say there are two persons, and one would be a prisoner and the other one would be another person, like a guard. If it is voluntary, and I know that is inappropriate, but since it is voluntary, should it fall under this category?

**Chairman Anderson:**

These are examples that fall under the proposed change by expanding the definition of sexual offenses. Currently, it is against the law for a prisoner to engage in sex with a guard or with some other trustee. Also, the same would apply to the abuse of a client in public or mental health facilities. These are all things currently in statute. In fact, there is a relatively famous case here recently where a child was abused by someone at the mental health institution for some time, over a long period of time. The sovereign immunity of the state was breached as a result.

**Assemblyman Mabey:**

I do not have any problems with the last one that you mentioned. I just wonder if they have to have lifetime supervision if it was a voluntary sexual contact in prison.

**Chairman Anderson:**

I think that is one of the difficulties. When this proposal was made to the Senate, it was rejected. I think we would be endangering the bill as a whole. I asked the presenter, and she told me that they had rejected it. I am still concerned about the Senate version of the bill.

**Assemblyman Horne:**

I just like number 1, on the violation for registration requirements. I would like number 1 instead, because it is still a significant wake-up call. I agree with Mr. Carpenter; you want to get their attention. I believe that this provides it because you are giving somebody a felony. Although it is a D felony for a first offense of failing to register, that could be where you are going to get a felony, even in case of an oversight. You hear all kinds of stories on why they did not register. The subsequent one, the C felony, is rather significant. I would prefer number 1 myself.

**Chairman Anderson:**

Is that number 1, (a), (b) and (c), and the registration in Category D felony for their first offense? Why would that subsequent offense within 7 years become a Category C, and then the prohibition against probation for any subsequent offenses? This was proposed by the Sheriffs' and Chiefs' Association?

**Assemblyman Horne:**

That is correct.

**Chairman Anderson:**

How about number 3 and the community notification website? One of the things that I remain concerned about is the possibility of the posse mentality

coming forward when you have the sex offenders. I hear stories, and very recently in Las Vegas, one of the common-interest communities put up orange speed cones on the street where a sex offender lives. Also, they used marking tape on either side of the house. Obviously, you have to go out and live someplace. It becomes a little bit of a problem for Parole and Probation to put people out in the community and back to whatever they considered. Would this cause a problem by designating Tier 1 and Tier 2s in the registry, as proposed by Ms. Coleman and the Children's Advocate Alliance in number 3?

**Major Bob Wideman, Deputy Chief, Nevada Highway Patrol, Department of Public Safety, State of Nevada:**

The provision of the bill, as it relates to amount of information that is indicated to be on the website, is not necessarily something that the Department of Public Safety is advocating one way or the other. Our participation in this process is simply in recognition of what a number of groups or persons have expressed, an interest in being able to view that particular issue.

At this time, all Tier 3s are on the website, as well as a certain number of Tier 2s. As best as we can interpret the existing language, these provisions would include all Tier 2s on the website, but not Tier 1s or Tier 0s. I am not sure we are really in a position to comment on what the outcome or the downside of information would be. We are certainly willing to let that be a policy decision for you and the members.

**George Togliatti, Director, Department of Public Safety, State of Nevada:**

Again, when we were working on S.B. 341, we bounced this idea back. Again, it is one where there are people on both sides who want to be a little bit more informed. They want more information about employers and residences. They also more or less averaged out to have the address of the individual's residence, but not necessarily the address of where the person is employed. That was through meeting between folks over on the Senate side and also with the advocate groups.

**Chairman Anderson:**

This represents a compromise that would not include this kind of designation with the difference between a 2 and a 3?

**George Togliatti:**

The issues were always up for debate—the information on the website and, again, how you tier the different levels between 0 and 3. This, again, was a compromise.

**Assemblywoman Gerhardt:**

Can you explain to me the difference between Tier 2 and Tier 3?

**Bob Wideman:**

The short answer and difference between Tier 2 and Tier 3 is that Tier 2s are those who have a history that indicates a likelihood of repeat violations. Tier 3 offenders are those who have a likelihood of repeat violations with violence.

**Assemblywoman Gerhardt:**

For a follow-up, I would like to weigh in. I think that it is very important for Tier 2 and Tier 3 to be put on the website.

**Chairman Anderson:**

So you would like the differentiation between Tier 2 and Tier 3 to appear as part of the discussion?

**Assemblywoman Gerhardt:**

Yes, I would, as in item number 3 from the Children's Advocacy Alliance.

**Chairman Anderson:**

If I am to understand, this discussion was broached during the time of the drafting of the bill, and they were okay with it at the time. Now, they would like it put back in?

**George Togliatti:**

I don't think that we had some of this discussion in detail, even at the last meeting when we were talking about tiers. I think that a lot of it was confusing about what was in A.B. 274 and Ms. Ohrenschall's bill, versus A.B. 341. In fact, I answered some questions regarding the different penalty phases that were in A.B. 274. Again, these are obviously matters that were up for debate. I can certainly concur with the tiers when we are talking the two higher tier levels. Where you have repeat offenders and the issue of violence, I think is something that must be addressed.

**Assemblyman Carpenter:**

I still think persons who fail to register for the second or third time and are only issued by us a Category C do not receive a very harsh sentence, even if they cannot get probation. Under Category C, it is a minimum 1 year and a maximum of 5 years probation, but the largest minimum that could be imposed would be 2 years. I think that is where our problem lies and why these people are not registering. We do not make the penalty strong enough to get their attention. I

think we are not doing our job here today, and that is the way that I feel about it.

**Chairman Anderson:**

In looking through the list we have at the back of the Work Session Document ([Exhibit B](#)) of the kind that fall outside into the C category, we see statutory sexual seduction, unless it is a felony or a gross misdemeanor. In other words, unless there is some extenuating circumstance, everything else is Category A and B. Then we have a D, open or gross lewdness, unless there is a felony. So there is only the one that is a C currently. We are moving it up, for a first offense, to Category B. The only three people that we are talking about are that one group of people, because everybody else has already had a B.

**Assemblyman Carpenter:**

My only argument is that we are not talking about a person that registers and does what it is he is supposed to do. If they are not registered, then they are the ones that we usually read about in the paper or hear about on television. I think that is where our problem comes from, and that is my only argument.

**Chairman Anderson:**

Mr. Horne is ready to make a motion, and I presume that includes amendments 1 and 3. I do not know what the pleasure of the Committee is. We have heard Mr. Carpenter's argument. I am more inclined to try to see whether we can move forward with the bill, because we are now requiring driver's licenses annually. We are doing several things to the people who have already been complying for some time. Those people are going to be now requiring the renewal of their driver's licenses on an annual basis with this bill and several other pieces that are going to have some impact.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS  
SENATE BILL 341, WITH THE FOLLOWING AMENDMENTS:

- AMENDMENT NUMBER 1, (A), (B), AND (C)
- AMENDMENT NUMBER 2, WITH THE DELETION OF SEXUAL CONTACT BETWEEN CERTAIN EMPLOYEES OF COLLEGE OR UNIVERSITY AND STUDENTS, AND THE SAME DELETION IN PART B
- AMENDMENT NUMBER 3.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

**Chairman Anderson:**

Mr. Horne and Mr. Conklin, on all of number 1; number 2 (a), amending the statute affecting sexual defendants to include between employees of schools or



volunteers at school and pupils, but specifically not colleges and universities, between prisoners and another person, or abuse of a client at public mental health facilities; amending the definition of "other sexual offenses" to include employees of schools and volunteers of school and abuse of clients in public or private mental health facilities; and including the tiers and the difference in the classification system of Tiers 2 and 3 to be posted at the website.

[Chairman Anderson, continued.] I do not think that I can support the expanded definition as outlined in number 2. Those things are already precluded by law. I think that we are going to be endangering the bill as a whole, since it was rejected by the Senate in their proposal. I would be more comfortable in trying to move the bill with the amendments we put in number 1 and 3. I just do not want to see the bill slow down any more than it will be with Ways and Means. It may become so late in the hunt that it will sneak under the radar. I am not positive that is true.

**Assemblywoman Gerhardt:**

How did the sponsor of the bill feel about option number 2? Do we know?

**George Togliatti:**

I felt that it would be difficult for me to speak for Senators Raggio and Titus at this stage of the game. I know that they feel strongly about the bill and what you have before you.

THE MOTION CARRIED, WITH ASSEMBLYMAN ANDERSON,  
ASSEMBLYMAN MANENDO, AND ASSEMBLYMAN CARPENTER  
VOTING NO. (Ms. Allen was not present for the vote.)

**Chairman Anderson:**

Let us turn to the next bill of the day, S.B. 304.

**Senate Bill 304 (2nd Reprint): Authorizes Attorney General to issue identity theft passports to victims of identity theft. (BDR 15-940)**

**Kathleen Delaney, Deputy Attorney General, Bureau of Consumer Protection,  
Office of the Attorney General, State of Nevada:**

It is a little bit awkward, because we were not requested by Senator Beers' office to do this. I certainly think that I can do something similar to what I did when the bill was first introduced to Senate Judiciary. I can give some background on the subject matter, and I can also speak to the bill itself in its current form and what has transpired, amendment-wise, to get it to its current

form. I did not prepare any remarks for today, but I would be happy to do that for the Committee in hopes that perhaps Senator Beers will arrive during my comments.

[Kathleen Delaney, continued.] We have been tracking this type of legislation in other states. As a reminder, S.B. 304 creates what is known in the other states that have this program as an "identity theft passport program." The idea behind the program is that it is one small step among many that individuals that have been victimized by identity theft can take to help to start to reclaim their identity and help minimize the impact the theft has had on them. The idea for the identity theft passport program first came up in the state of Virginia. It was conceived by the Attorney General and his staff in Virginia, and it has been in place there for a couple of years.

They do a very bare-bones model of this program. When the police departments receive reports of identity theft from citizens, they forward those reports to the Attorney General's Office. The Attorney General's Office issues a small card the individual can carry with him or her. The idea behind having the card is something tangible for the citizen to hold in their hand should they be stopped by police. If they are attempting to seek credit or other things that could be negatively impacted by a mistake, they should not appear to be a bad person or have done something bad in their name. This will help the police officer or the creditor understand that, at one point in time, this individual was a victim of identity theft. Also, this may not be the individual that they think it is.

There were specific anecdotes given to the Virginia Legislature. I do not have them with me today, but there were specific anecdotes of individuals being arrested at their children's birthday parties and other really egregious things. These all occurred because somebody had stolen that individual's identity, committed a crime using that individual's identity, and that individual did not have any tangible way to show that at, one time or another, they had been victims of identity theft.

It was a really innovative, intriguing concept. Virginia started it, but since that time Virginia has shared this idea with the other states. A presentation was made to our State Cyber Crime Task Force, which is headed by the Attorney General. Senator Beers, Senator Wiener, and others also participated. Nevada being such a high identity theft state and the interest to this group, I think, was the genesis for the bill.

Since Virginia passed an identity theft passport program, three other states have come online as well. They are Ohio, Oklahoma, and Mississippi. The most notable is Ohio, because they were able to secure grant funding from the federal

government, who is also very interested in this program. They secured some grant funding to do a much more escalated model of the identity theft passport program with very sophisticated equipment capturing identifiers. The police department reports are made, and they issue a very sophisticated type of card for these individuals. At this time, we are looking to explore and will probably pursue the Virginia model on limited funding. We also would look towards, if we can secure grant monies as well, perhaps escalating up to the Ohio model.

[Kathleen Delaney, continued.] Ultimately, this is a consumer protection. It is a very small thing, but to the individual who has been a victim of identity theft, it can be considered to be a very big thing to have something tangible. It does not prove anything. It does not stop anything in terms of whether the police or the creditors make ultimately the decision against the person. What it does do is tell individuals to take a second look at this person. Unfortunately, at one time or another, they were the victims of identity theft, and they may not be the bad person that you think they are.

For the reasons of innovativeness and to help these victims who have suffered on their own, trying to reclaim their identity, we think this is a really good program. We support the Senator's efforts to bring this bill forward, and we support the bill in its current form.

**Vice Chairman Horne:**

In Section 1, subsection 5 of S.B. 304, it talks about the law enforcement and predators and having the discretion on accepting this identification passport. I was curious if you know of any other jurisdiction, other than Virginia, in how this identity theft passport program has been received by law enforcement and creditors. We see different results. We see law enforcement accepting it or not accepting it, as well as creditors.

**Kathleen Delaney:**

I think that it is a little too early in the program to have any statistics or anecdotal evidence about how the program is working at this point. Unfortunately, Virginia has a very bare-bones model, and there is very little follow-up that is taking place with regard to how the program is working. However, in Ohio, because of the federal grant monies that were received, there is going to be an independent assessment of the program and its veracity at the end of this year.

Through that assessment there will be a decision made, determining whether or not additional federal funds will be available to other states. At this point in time we do not have specific information about how police or creditors have come to light yet. There may very well have been some success stories, but none have

come to light. We do not have results on an individual who was able to forestall an arrest. We are unaware of the victim being able to get credit again after having been a victim. I think that there were enough anecdotes about the problems these individuals had faced, and it was felt that any small step would be a big step to them. I apologize. Now, we do not have any anecdotes of how the program is working up to this point.

**Vice Chairman Horne:**

In subsection 8 of the same section in S.B. 304, it states that the Attorney General may accept gifts, grants, and donations from any source for the purpose of carrying out the provision of this section. I am trying to imagine grants and the fact that it has a fiscal note on it. Could you explain that section for us? What gifts do you need to carry this out?

**Kathleen Delaney:**

I cannot explain that. That section was added in the first reprint of the amendment that came from the Senate Judiciary Committee, because we had identified the fact that there may be State grant monies available to help us do a program. They were thinking more along the lines of the Ohio model, as opposed to the more bare-bones Virginia model. We raised the issue that, although federal grant monies would not be available until next year at the earliest, the state grant monies might be made available. Senator Wiener, on the Senate Judiciary Committee, purposed a generic amendment to allow the State to be able to secure these funds if available. We did not discuss specific language for the amendment. When we saw the first reprint with what the LCB [Legislative Counsel Bureau] put together at Senator Wiener's request, we understood it contained generic enabling language to allow the State to try to get various sources of funds. I am also not sure where the gift issue would come into play.

The notary association provided a great deal of the equipment to Ohio for the capture of the physical identifiers—the biometrics that act sort of as an enhancement in their program. I think that they gave significant discounts on the prices of that equipment that potentially could be deemed to get. The actual genesis behind this amendment was the fact that we had identified a possible source of State grant funds or grant funds that are available within the State that we could now go after. The fiscal note that is currently on it is a very minimal fiscal note to at least allow us to provide the Virginia model of operation, at least until we can get additional funds.

**Sergeant Bob Roshak, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada; and Legislative Advocate, representing Nevada Sheriffs' and Chiefs' Association:**

We support S.B. 304. We think that it will assist people who have been victimized and could prevent them from being victimized again. We have had issues where people who have been victims of identity theft have been stopped in Canada at the airport. They have had to call down to our agency to try to get things cleared up so they could come back into the country. We hope with this card they will possibly be recognized and will stop people from having to go through so much aggravation.

**Vice Chairman Horne:**

You know that police officers, such as yourself, have a reputation for being a little bit skeptical sometimes. Do you anticipate you will be on board, so when someone presents a card to you, it will deter you from stopping or detaining them for whatever particular reason?

**Bob Roshak:**

I think that some of that will fall into officer discretion. A lot of it will be the circumstances in which it is a minor warrant or something less than being wanted for murder or rape. Rather than arresting that person, a field interview would be conducted, where the information would be gathered on where the person lives and everything else. Since we do not know where they are, time will be given to verify. I cannot tell if it will be 100 percent accepted, but I definitely think it will help people.

My wife used to work for the municipal court, and one of her jobs was clearing up people who were arrested. If my brother would get stopped by the police and not have his driver's license, and he gave my name, he would know enough about me and it would be identity theft. It does not have to be the big blown-out theft like some have experienced. It would just be someone using your name.

ASSEMBLYMAN MABEY MOVED TO DO PASS SENATE BILL 304.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Allen and Ms. Buckley were not present for the vote.)

Assembly Committee on Judiciary

May 25, 2005

Page 14

**Chairman Anderson:**

I presume that S.B. 304 may be picked up by the Ways and Means Committee; however, it also may not be. [Meeting adjourned at 9:43 a.m.]

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

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Judy Maddock  
Committee Attaché

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Jane Oliver  
Transcribing Attaché

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** May 25, 2005

**Time of Meeting:** 8:47 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	<b>A</b>		Agenda
S.B. 341	<b>B</b>	Allison Combs, Legislative Counsel Bureau	Work Session Document