

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

**Seventy-Fourth Session  
March 13, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:10 a.m., on Tuesday, March 13, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman John Ocegura  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

Assemblyman John C. Carpenter (Excused)

**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst

Minutes ID: 522



Risa Lang, Committee Counsel  
Doreen Avila, Committee Secretary  
Matt Mowbray, Committee Assistant

**OTHERS PRESENT:**

Jerry Polaha, Chief Judge, Second Judicial District, Washoe County  
Frances Doherty, Judge, Family Division, Second Judicial District,  
Washoe County  
Ronald A. Longtin, District Court Administrator and Clerk of the Court,  
Second Judicial District, Washoe County  
Ben Graham, representing Nevada District Attorneys Association  
Richard Gammick, District Attorney, Washoe County, Representing  
Nevada State District Attorney's Association  
Ron Titus, Director and Court Administrator, Administrative Offices of the  
Court  
James Connelley, Administrator, Agriculture Enforcement, Livestock  
Identification, Department of Agriculture  
Gina Session, Senior Deputy Attorney General, Office of the Attorney  
General  
Cotter C. Conway, Deputy Public Defender, Washoe County  
Amy Coffee, Deputy Public Defender, Nevada Attorneys for Criminal  
Justice, Clark County  
Michael Pescetta, representing Nevada Attorneys for Criminal Justice  
Jason Frierson, Deputy Public Defender, Las Vegas

**Chairman Anderson:**

[Meeting called to order. Roll called.] I will open the hearing on  
Assembly Bill 191.

**Assembly Bill 191: Prohibits a permittee from carrying a concealed firearm in a  
courthouse, court facility or public building partially occupied by a court  
without proper authorization. (BDR 15-648)**

**Jerry Polaha, Chief Judge, Second Judicial District, Washoe County:**

We are trying to provide a safe and secure environment for employees and the  
people who come to court. We had an experience last year that brought home  
the importance of control in a safe environment. Prior to the incident, we  
worked on an agreement about how the security of the court buildings should  
be achieved. We ran into a roadblock, but were able to resolve it with a  
Joint Administrative Order. Judge Jay D. Dilworth, Judge Jack Schroeder,

Judge Steven Dobrescu, and I signed the Order which effectively barred weapons, except under certain circumstances, from coming into the court building. In Washoe County there is a unique situation. The old district court building, and across the street we have the Mills B. Lane Justice Center. That Justice Center houses the Family Court, the Reno Justice Court, Reno Municipal Court, and District Attorney's Office. The roadblock was caused by the difference of opinions between the judges and the district attorney. We have existing law that allows not only prosecutors, but anybody with a concealed weapon to bring it into a public building.

Our Order, implemented on July 26, 2006, said guns are not allowed unless a person notifies the deputies and receives approval from the chief judge. We do have a record of all the weapons that have been confiscated since this Order went into effect. There are not any bad guys, but we want a safe environment, so we urge you to pass this bill. It would limit people who have permits to carry a concealed weapon from entering the courts and make people who are authorized to have weapons, such as law enforcement, tell us they have a weapon on property. Since the shooting last June, we have had several safety studies—one is being conducted right now. Outside consultants have suggested that the way to create the safest building is to ban all weapons, like the federal courts have done.

**Frances Doherty, Judge, Family Division, Second Judicial District,  
Washoe County:**

On July 12, our institution was changed forever. As a result of that individual victim, we have also had institutional victimization. As presiding judge of the Family Court, an experience such as July 12 does not end. We have staff, the public, and overseers of our security on heightened alert on a daily basis. The trauma does not end. The fear continues in a palpable way. We have taken many steps with our partners including the Washoe County District Attorney's Office and other members of the judiciary to try to secure our litigants, judges, and staff. The security issue is an overwhelming challenge. This challenge is diminished by the ability of the institution, which itself was victimized, to ensure that victimization will not occur again.

What this bill attempts to do is connect the power to protect with the institution that needs protection—nothing more, nothing less. The court order that Judge Polaha refers to was our best effort in achieving such a protective environment. It is not perfect, but we think the legislation will do what this institution would likely identify as the most appropriate path to security: that is, the institution that requires such security must have the ability to ensure that security through the language of the bill. Our administrator, Ron Longtin, has specific provisions and information on what exactly the security breaches may

be. Our request is that you look at this bill as the measure of our court and our ability to ensure that the people who walk through our halls are safe.

**Ronald A. Longtin, District Court Administrator and Clerk of the Court,  
Second Judicial District, Washoe County:**

[Read from prepared statement ([Exhibit C](#)).]

**Chairman Anderson:**

Guns have been around longer than you and I. The events of June 12 happened outside the court. We have existing statutes posted, which states no firearms are allowed in the building without prior permission. Notification does not seem to be a problem. Why is the Second Judicial District having a problem with the firearm issue? In the new building, did the builders not anticipate that the District Attorney's Office might be there? Was that not part of the design plan?

**Jerry Polaha:**

You mentioned the history of Americans with weapons, and we acknowledge that. The expression "going postal" was not around until recently. As Mr. Longtin stated, we have court services that get rid of the people who do not pose an obvious danger by giving them a ROR (released on their own recognizance). We are building a cadre of violent people who cannot get an ROR.

During that June incident, one of the bailiffs responded because he thought the shooter was internal rather than external. When the police arrived, they did not know who the players were, so there was a confrontation. I began in 1999 and for years judges at the old courthouse had a passion to get rid of weapons, but the District Attorney was there. It was agreed that as soon as the District Attorney left, we would have a no gun policy. The other courts requested that same protection. It was only with talking to the District Attorney that we created the Joint Administrative Order.

It is known that the Washoe County building is a public facility, and at the consent of the District Attorney, a sign is posted that states no guns are allowed. His people can bring guns if he says they can, and the law backs him up as stated in the *Nevada Revised Statutes* (NRS) 202.3673. If any employee has a concealed weapon, he can gain entry. That is what we are trying to prevent. We can have the gun locked at the entrance of the courthouse, like at the federal court. When they pass security, we can rest assured that there are no weapons except for the deputies. As the security experts point out, if people do not have the training and ability to handle a weapon, then somebody could easily take it from that person. That presents a danger.

**Chairman Anderson:**

The courthouse has gotten to the point where if I have a choice of going to a meeting there or some place else, then I will go some place else. I am tired of going through security and turning out every pocket. I understand there is concern because of what happens on a daily basis, but the courthouse is not a friendly place. Police officers and district attorneys have a wider range of concern because of what they do on a full-time basis. They may need their firearms beyond the jurisdiction of the courthouse. Should they not be concerned about their personal safety in that distance between the steps of the courthouse and their vehicle?

**Jerry Polaha:**

We are not asking to preclude them from carrying weapons from their cars to the courthouse. Once they come into the building, they will place their weapon into lockboxes. Once they pass and are on the floors, we can rest assured nobody has a weapon except the uniformed deputies who are in our county.

**Assemblyman Horne:**

On the second page of the bill, paragraph 4, you strike a provision allowing judges to carry a weapon, but it allows prosecuting attorneys. Why are we allowing prosecuting attorneys to carry a firearm in the courthouse?

**Jerry Polaha:**

We are approaching this on the basis of what the experts are telling us, which is a building with no guns is safe. There was an expert who came into a Washoe County courtroom. That courtroom has a glass table and the first thing that the expert said was if an individual smashes the table then they can use that as a weapon. We are starting at the top and saying no weapons. If there is a weapon, then we want the chief judge and security to know in case something happens. That is what we are trying to accomplish.

**Assemblyman Horne:**

I received a clarification from Legal. The provision provides that a prosecuting attorney can "carry a concealed firearm while he is on the premises of a public building." However, paragraph 6, subparagraph (b), states: "does not include a courthouse, court facility, or public building partially occupied by a court."

**Jerry Polaha:**

Right now the Order we have in effect is based upon compromise with the district attorney. He has the authority and the power to say where the guns will be and who can have them coming into our buildings. We are saying that a change in the law puts that authority in the courts. That is the basic difference from the existing situation and what this law will do.

**Frances Doherty:**

First of all, subsection 5, paragraph 6, subparagraph (b) did not take into consideration that Chief Judge has the authority to allow an individual to carry a firearm. We want to grant him the ability to have that discretion. Second, every survey we have had or reviewed as well as our own protective force has said that a zero gun policy is what we should follow. Even our current Order is not the maximum security that courthouses should have. Finally, we are a public building. The halls of our court belong to the public, and we respect that. But we are not—as in other institutions of public government—taking children away from families, dividing community estates equally in other institutions, or ordering alimony and divesting individuals of the most precious components of their lives. The volatility of family court is high. I sat in my chambers two feet away from an individual who had a gun with bullets. I did not know until the end of my proceeding. That type of exposure is not what we would all consider as a safe and secure institution of the judiciary. If not for the sake of the judiciary, then for the sake of litigants who should freely enter and be safe in our institution, as we would all expect when our cases come to court.

**Chairman Anderson:**

There is no doubt that the environment in which you work is charged with emotion and becomes a difficult workplace. I have a great deal of admiration for family court judges because of the nature of their daily work.

**Ben Graham, representing Nevada District Attorneys Association:**

Nevada has many divisions that comprise the judicial system for the states 17 counties. It appears that we have a portion of our system that is having issues with other departments. This is an issue that primarily centers on a dispute between the people in Washoe County and our other district attorneys. However, at this stage, judges are not having a problem or an issue with this. We basically urge this Committee to leave the statute alone. Or we can offer an amendment simply to exclude district attorneys, their investigators, and their deputies from the prohibition as long as they are on duty. As the Chairman pointed out, if we really want to protect judges from getting shot through their windows, then we need to prohibit guns in the parking structures near the courthouse.

**Chairman Anderson:**

I have been in most of the courthouses in the State and it seems to me that it is not unusual for the district attorneys' offices to be located inside the courthouse. Does each district attorney's office have its own separate building?

**Ben Graham:**

Most of the facilities still share their space with the courthouse at the Justice Center. A few of the rural counties have the district attorney's office separated from the courthouse, but the vast majority is integrated into the complex itself.

**Chairman Anderson:**

When you moved to the new structure, did you anticipate building a separate facility entrance for the district attorney and staff?

**Richard Gammick, District Attorney, Washoe County, Representing Nevada State District Attorney's Association:**

The first question was asked about the other counties. Out of the 17 counties, 16 are definitely against this bill, and one was indifferent. We spent 35 years in the district court building and never were these issues raised. Whenever there were concerns expressed by either court, we would meet, discuss, and resolve them. This issue did not rise until we made the move into the new building in conjunction with the Reno Municipal Court building.

To help you understand the physical layout, the Mills B. Lane Justice Center is one tower. Out of the 160,000 square feet, the district attorneys occupy about 110,000 square feet of that building. The Reno Municipal Court occupies the rest of that tower. The justice and family courts occupy the other tower. When we moved into the building, we set up a screening system. The planning and the building for this office were in existence for almost 12 years. During the first two years of construction, we invited the other courts to join us, so that all issues can come forward. We set up metal detectors at the front of the building. We also set up an employee entrance that has a turnstile to it, so they can move about without wasting time. You have heard the figures about the number of people who come in and out of the building; it is busy.

All of the employees of the courts and our office are required to have a background check and a Federal Bureau of Investigation (FBI) criminal history record, then they are cleared for security. The metal detectors were put into the building and we thought we were good to go. Once we got into the building, the courts stopped the employees from coming in through the turnstile. I agreed to that. All employees, even those who carried a concealed weapons (CCW) permit, were required to go through the metal detectors. Those who have a CCW permit have to store their weapon in the lockbox.

The courts developed the Administrative Order, which we still feel is in violation of the laws of this State. We have a writ prepared to go to the Supreme Court. For six months, we had many discussions over this issue with the courts and

finally came to a compromise. The courts can go ahead with our Order because I agreed that security is paramount. Where we differ is when they try to take guns away from the district attorney's office. We agreed to have a system where our people—mainly our deputy district attorneys who carry weapons—came in through a separate entrance. That would be through the side door, through the basement to another elevator, which goes to our area.

Also, I would like to make clear that I have agreed with the courts when they stated that the courtroom is yours. If we have a need to carry a gun then we will meet with the presiding judge before we do anything. By the way, deputy district attorneys are defined as law enforcement officers as our office is defined as a law enforcement agency. Our investigators are peace officers who wear plain clothes and have an identifiable emblem because they carry weapons. Peace officers are cops and allowed to carry guns without a CCW. Even if this bill is changed, they are still allowed to bring weapons into all areas of the building. At the time the original Order was written, it banned all guns. That had the unions from the Peace Officers Research Association of Nevada (PORAN) come into the building upset, so it was changed.

I agree with the courts: They have many issues. But we not only deal with them in the courts but also on the streets every day. Are you aware that there is a Prosecutor's Memorial? I was not until I became involved with this. Every prosecutor who has been killed in this country in the line of duty is memorialized there. Everyone on that wall was shot with the exception of one who was blown up with a car bomb. We have a very dangerous job. Chairman Anderson correctly identified one of my biggest concerns when I asked about the guns and what we are supposed to do with them. If we are not allowed to have them in the building or in our offices, we were told that we can lock them up in our cars. Vehicle burglaries are one of the biggest crimes we have in this State. That leaves our deputy district attorneys fully exposed in the parking garages and lots. They do not have secured parking. Not only are they fully exposed, but they are in the same area as the defendants they are prosecuting.

**Chairman Anderson:**

I appreciate the fact that 16 of your colleagues support you in your endeavor. However, it really does not answer the question that I asked, which is in how many of the facilities are the district attorneys currently holding common ground with a courthouse?

**Richard Gammick:**

I do not have a specific number of how many do that. I do have an email here from Russell Smith who is the district attorney in Humboldt County:



My county currently has no security of any kind in the courthouse. I am currently working on the requirements for my deputies to carry in Humboldt County. With the increased threats to the district attorneys' offices, their employees, and the increased incidences to courthouses across the country, we must increase personal protection instead of decreasing it.

That is the feeling of one of the rural courthouses.

**Chairman Anderson:**

It reminds me of a member of the other House, who suggested that every teacher should be armed so we can hold better classroom discipline. To arm everybody who is law abiding in society is almost an unrealistic approach to security. While we all have the right to bear arms, recognize that having a weapon does increase the likelihood that somebody is going to take it away from you. Not everybody has the physical ability to protect themselves. It takes a great deal of courage for police officers to use their weapons against another person, which is more difficult than going out to target practice. This Committee recognizes you are right: the ability and need for a weapon is part of the office you hold and your deputies need that right. I am not sure if everybody in your office would fall into the same category as the chief prosecutors, deputy district attorneys, or law enforcement officials because many of them are not sworn deputies. I am surprised that in designing both centers there was not more consideration to the security and firearms, both for your use and for the security of the building.

**Assemblyman Horne:**

I heard the judges say there are too many guns throughout the courthouse. They want to limit guns, and only the chief judge can determine who will carry one for security. I understand the need for district attorneys to carry, but I do not understand the need to carry inside the courthouse. Defense attorneys have dangerous jobs, as well. I have a friend whose father was a criminal defense attorney and was kidnapped and killed by one of his clients. They are not always happy with our service.

Our current practice and from personal experiences is that not everybody goes through security. We can flash our badges and go through the turnstile. But there are a high number of firearms that can be circulated throughout the building. Is that not a legitimate concern? We are not talking about the guy across the building with a scope, but inside the building. Is it not responsible to have a better handle on guns that are actually inside the building?

**Richard Gammick:**

I do agree with that concept. However, the problem is I am here to talk about deputy district attorneys and prosecutors. We are at risk all the time. To clarify what the Chairman said, the deputy district attorneys are authorized to get a CCW and carry a weapon in defense, if they wish. The staff does not carry weapons on behalf of the office. Under the law, they are allowed to obtain a CCW as a private citizen. We are saying the deputy district attorneys and prosecutors should have weapons to protect themselves.

**Assemblyman Horne:**

When I go to the courthouse or Clark County Detention Center (CCDC), I surrender my firearm before I pass security. I do not have to go through the metal detectors at CCDC, but I do. At the courthouse I also surrender with the hope I am going to be secure on the other side. You said that staff has to go through the metal detectors, but they do not in Clark County. They all have badges and simply go through the turnstile. I am not sure if all those employees who go through the turnstile have a weapon or not.

**Richard Gammick:**

When Judge Weller's shooting occurred, the first report I received was that we had a sniper loose on the fourth floor of our building. That is our main lobby. We do not have internal security, but we have investigators. If they happen to be there, they can handle that call, but otherwise there is no security. That left us with the need to have security to protect our offices, our homes. I spend more time in that office than I spend at home. When we walk our hallways, we see gangs and numerous other threats to our people; therefore, we feel that prosecutors need this extra protection. That is why we came back to the Legislature to formulate this law. We requested specific exceptions for the prosecutors that are found under Section 4, subsection (a). At the time, we were not allowed to carry weapons into public buildings as defined, so we came back to the Assembly Judiciary. We were given the extra exception because we explained that most of our time was spent in public buildings. The Legislature agreed, so it was promulgated. If there is a concern among the defense bar, then that needs to be raised at another time, and we will be happy to discuss that.

**Assemblyman Ohrenschall:**

I was recalling what happened in Atlanta in 2005. The prisoner overpowered the sheriff's deputy and managed to get her gun and kill three people. If the district attorney's staff and investigators are armed in the courthouse, does that not increase the potential that somebody would overpower them, get their gun, and another tragedy would happen? Illinois does not allow guns where

prisoners are handled because of the fear they might get a gun. What did you think about that?

**Richard Gammick:**

When that happened in Georgia, I had concerns. I went to the people who were there and asked what happened. The deputy did exactly what she was supposed to do. She took her gun and locked it up. There were three deputies on duty that day. One was gone shopping and the other was on an errand for a judge, so that left the one female deputy to handle this prisoner alone. He overpowered her, took the key to her locker, and got her weapon. The irony of this was that it was all on video, but nobody was there to watch it. He went into the courtroom, killed the judge, killed other people, and also made the comment that if he had more bullets he would have killed the prosecutor too. Georgia determined that they did not have enough guns in the building for the right people.

We were asked by the judges if our people learn weapons retention. Good question. So I went back and asked. The answer was no. I have five range masters in my office. I had them train all the prosecutors in weapons retention and to certify them. Now every prosecutor who carries a weapon has been trained in weapons retention. Does that guarantee a gun will not be taken? Not more than it does for all the other people in the building who have weapons, but at least they have the training.

**Assemblyman Ohrenschall:**

Does the district attorney's staff have to study or be certified in weapons retention? Or is it only the prosecutors?

**Richard Gammick:**

We have not trained them because the staff does not carry weapons. They have the same rights as any other citizen who has a CCW. The law does say they can carry weapons into the workplace. We have had many discussions about whether we should come to this Committee and ask for an amendment. It does lead to the conclusion that support staff and other citizens can carry weapons into the workplace.

**Assemblyman Ohrenschall:**

Do you know if staff in other counties carries weapons into the courthouse?

**Ben Graham:**

As the Committee is aware, I do not even carry a pocketknife. The only people who carry weapons in our office are the investigators on duty and a limited

number of prosecutors. The other staff has no additional rights other than being a citizen.

**Assemblyman Ohrenschall:**

Do they feel the district attorney and their staff are more likely to be overpowered than bailiffs and sheriff's deputies?

**Ben Graham:**

Keep in mind, we are not talking about in a courtroom. If there is a need to be in a courtroom with a weapon, then that is addressed to the judge prior to the hearing. Our staff goes from the garage through the check-in, up to our offices, and not in the courtroom.

**Assemblyman Segerblom:**

In Washoe County, between the district attorney's office and the courtrooms, there is not a barrier to pass where a weapon would be discovered?

**Richard Gammick:**

Under our agreement there is no physical barrier. If a deputy district attorney has a CCW permit, I have them on a roster. They come through the backdoor, not through the courtrooms or the court area.

**Assemblyman Segerblom:**

If this law were passed, then the chief judge would have a right to examine your list and either approve or disapprove those people?

**Richard Gammick:**

If this law were passed, we would have the judicial tell the executive offices how to operate, but we have not brought that up yet. That is another concern because we are talking about our executive offices.

**Assemblyman Segerblom:**

You have the executive and judicial offices in the same building. Who controls who goes into the judicial office? You think you have an absolute right to carry guns in there, but the judges tell you no because they want to know who is carrying guns in the building, which seems to be reasonable if it is their courtroom.

**Richard Gammick:**

I am sorry for the confusion. I have always agreed with the judges that when it comes to their courtrooms, they have absolute jurisdiction. Before we carry a weapon into their courtrooms, we will meet with the presiding judge and explain the situation. If the judge does not agree, then we will not carry weapons into

their courtroom. This law is aimed at the idea of the judges telling me that I cannot have weapons in our offices.

**Chairman Anderson:**

This goes back to the original statement regarding common ground. The courthouse belongs to the people of the State. The judges use the chamber because that is where it happens to be located. The district attorneys, county clerks, and other executive functions are also located there because the county cannot afford to build five buildings for each one. Oftentimes, jails are moved away because of other kinds of needs. However, if I am to go three blocks away from here, I will see the Carson City Courthouse, the jail, and Sheriff's Office all sitting on the same common ground. If I were standing here six years ago, I would see the County Courthouse across the street from the Capitol. I am concerned about how this is going to operate in all 17 counties.

**Assemblywoman Gerhardt:**

I believe you and some of your staff are carrying weapons with the desire to protect yourselves. My experience at CCDC was that officers removed their weapons before entering because of the concern about weapons being taken away. Our defensive tactics were practiced weekly. How often are you training? What type of training is it and who is giving that training?

**Richard Gammick:**

I am a former police officer, as are some of my prosecutors, and we have had that extensive training. We train our prosecutors on an annual basis. Our weapons are concealed; they are not hanging out in public for everybody to see, so that is what we start with. Secondly, weapons retention has never been done before. How much of that do we have to do? We do not know yet. We plan on doing it on an annual basis. We do not handle prisoners in our normal routine. This is for self-protection.

**Assemblywoman Gerhardt:**

What worries me is that you do not train every day. Officers in plain clothes often carry concealed weapons, but they also remove their weapons before entering CCDC. I would submit that annual training is not sufficient to be proficient. If you are in a situation where somebody takes your gun, or if there is a crisis situation where you draw your weapon, you are now not only defending yourself but also defending others around you in a crowded environment. I am also concerned about the possibility of injuring people.

**Richard Gammick:**

I was asked specifically about weapons retention. When we go into jails or secured environments, we also secure our weapons, so that is not an issue.

We are talking about self-protection out on the street. We also meet all the requirements of the Nevada Sheriffs' and Chiefs' Association. I require my deputy prosecutors and district attorneys to shoot at the range at least twice a year. Not only do they receive range training, but they also receive shoot, no shoot, and tactical scenarios. Our folks are trained to the extent of what the experts, peace officers, and the academies feel they should be trained in.

**Assemblywoman Gerhardt:**

I am not trying to be argumentative, but if you are putting yourself in the position where you are protecting civilians, then I do not think that is sufficient. Officers who carry have the responsibility to protect the citizens, and they practice all the time.

**Richard Gammick:**

I was prosecuting a murder case where a police officer was brutally murdered in Washoe County. An individual saw me on television one night, and he became obsessed with me. For five years, he painted things all over southern Reno and made death threats against me and specific officers. We spent hundreds of hours trying to catch this individual. During this time, he shot into seven occupied structures. He followed me and called to tell me where I had been in the courthouse and when I left my office. He also called my home and harassed my family. When I was elected, I quit carrying guns, but when this started I began to carry again and have ever since. This is why this bill needs to fail and the reason the prosecutors can secure themselves and their loved ones. That is what we are after.

**Ben Graham:**

To keep it in perspective, we have a separate and distinct area that is the district attorneys, the clerk's office, and the justice courts. We are not asking to go into these separate areas carrying firearms. What we are asking is to be protected and secure within our own specific area. If we are going into the courtrooms or out into that area, then we will speak with the judges.

**Chairman Anderson:**

We will place into the record a letter from the National Rifle Association (NRA) ([Exhibit D](#)) that institutes legal action and it shows their opposition to A.B. 191. It is from Carol Herbertson dated March 12. In addition, I have a letter from Michael Lussem ([Exhibit E](#)) of Las Vegas, and he is also in opposition.

**Ron Titus, Director and Court Administrator, Administrative Offices of the Court:**

The Supreme Court asked me to make sure that the Committee understood that they are neutral. NRS 218.247 says that "the court may transmit to the

Legislative Counsel Bureau (LCB) 16 legislative measures on behalf of the Supreme Court and district courts." This was submitted on behalf of the district courts, and the Court has no position on this issue.

**Chairman Anderson:**

We appreciate the Supreme Court utilizing one of their BDRs for the family problem of the Second Judicial District. The building has it posted that you are not allowed to carry—how do you handle firearms that show up?

**Ron Titus:**

Firearms are not allowed within the courtroom. They may carry them through the rotunda area, but not in the courtroom or any of the areas in the building.

**Chairman Anderson:**

How about the library?

**Ron Titus:**

There is a sign posted outside the building saying firearms are not allowed, but we do not screen.

**Chairman Anderson:**

Do people go through a screening process so the courts know whether there are people with concealed weapons?

**Ron Titus:**

The only screening process that we have is before court is in session.

**Chairman Anderson:**

Screening is only done prior to entering the courtroom?

**Ron Titus:**

Yes, that is correct.

**Chairman Anderson:**

Okay, I will now close the hearing on A.B. 191 and open A.B. 230.

**Assembly Bill 230:** Revises certain provisions relating to the jurisdiction of justice courts. (BDR 1-519)

**James Connelley, Administrator, Agriculture Enforcement, Livestock Identification, Department of Agriculture:**

Over the last two years we have requested this bill. This past summer included several cases of smuggling non vaccinated livestock into the State. This

happened over a period of time and the livestock were coming in illegally to Eureka and northern Nye Counties. After this bill was drafted the Nevada State Board of Agriculture, the justice courts and some of the legislatures raised concerns. The concerns had to do with the agencies jurisdiction and what court we wanted to take a case from. Because of the number of concerns, we feel that it would be appropriate to pull this bill from consideration.

**Chairman Anderson:**

I appreciate your concerns with the smuggler, and maybe there was a legitimate reason for giving the Department the same power that we give the Nevada Highway Patrol (NHP). Cattle are not my expertise, but would it not be in the best interest of public to allow the Department inspectors to determine that you may have a particular court with several cases from the same cattle smuggler.

**James Connelley:**

The issues of multiple victims were brought to my attention from my enforcement lieutenant who has a long background in enforcement. Since we have a limited number of people who travel from place to place, it is possible to find several violations in different counties against the same person. These would be misdemeanor violations which would be filed in their respective county jurisdictions. That is why my feeling was that we should institute this bill. After concerns were raised about what we could do about that issue, it became readily apparent that when we do receive several violations in a short period of time, we should institute an investigation at that point. Essentially, the fruits of that investigation outweigh the individual citation that was instrumental in instituting the investigation.

**Gina Session, Senior Deputy Attorney General, Office of the Attorney General:**

The Attorney General's Office brought this bill as a courtesy to our client, the Department of Agriculture. While we do not wish to act in opposition to this position of our client, we will comply with the wishes of the Chairman and the Committee in this matter.

**Chairman Anderson:**

By passing this bill, it would allow the Department to formalize a case scenario that was not possible 20 years ago because we did not have computers. There appears to be a legitimate need for this piece of legislation that will expand the Department's ability so they can place those minor misdemeanor crimes where the more serious one is present for that jurisdiction, so they would have an understanding of the litigating circumstance of the question. If it is all right with the both of you, may we put it on my board and see if there are issues we can work out?



**James Connelley:**

Mr. Carpenter is a neighbor of mine and was the one who brought up some of these concerns. That very statement that you made in support of the bill was brought to my attention as to why we really do not need the bill. We now have computers and communication that will help bring these issues together. In the county where the most serious offenses occur, unless there is a theft involved, they are only misdemeanors.

**Chairman Anderson:**

Okay, I will close the hearing on A.B. 230 and put it back on the board. Let me now open the hearing on A.B. 237. Before we get started, I have two documents that I received and wish to have entered into the record. One is from Lisa Rasmussen of the Nevada Attorneys for Criminal Justice (NACJ) ([Exhibit F](#)). The second is from Lee Rowland who is representing the American Civil Liberties Union (ACLU) ([Exhibit G](#)).

**Assembly Bill 237: Makes various changes to provisions governing the admissibility into evidence of certain statements made by certain young children. (BDR 4-1180)**

**Risa Lang, Committee Counsel:**

This was a bill the Committee requested after the beginning of session. The Nevada Supreme Court heard the case of *Pantano v. State*, [122 Nev. Adv. Op. 63 (2006)], in which they cited the case of *Crawford v. Washington* [124 S. Ct. 1354 (2004)] from the United States Supreme Court, and found that NRS 51.385 was unconstitutional as applied in part. In *Crawford*, the U.S. Supreme Court held that the Sixth Amendment to the *U.S. Constitution*, which guarantees an opportunity to be confronted with witnesses and to cross-examine them, applies to statements which are testimonial in nature. This law allowed for testimonial statements to be admitted in court without cross-examination in certain cases involving young children—the Court felt it would violate *Crawford*.

Subsection 1 authorizes statements made by a child to be admitted at trial when presented by another person; however, subsection 2 provides an exception. It says no testimonial hearsay statement of a child is admissible when presented by another person, unless the defendant has cross-examined a child or the child will testify during the proceeding. In subsection 5 "testimonial statement" is defined to include:

Statement made during a proceeding conducted in preparation for trial; any statements included in a document prepared for or in anticipation for trial; any statements made under circumstances

which would lead an objective person reasonably to believe that the statement would be available for use at trial; or any statement made to a law enforcement officer or other person during a custodial examination.

The definition of "testimonial statement" was taking some of the language from the cases and trying to establish what that was. It was not defined by the U.S. Supreme Court or the Nevada Supreme Court, but we took from their suggestions what it might include.

**Cotter C. Conway, Deputy Public Defender, Washoe County:**

We are in support of A.B. 237 with a few caveats. We support the amendment that was submitted by NACJ, which involves the change of language of subsection 5 (d). In addition, line 29 within subsection 5 states "a statement made in preparation for and with the intent." That "and" should be an "or." That would be consistent with the examples set forth below, which deal both with preparation for trial and where the statement is made with the intent to be used in a trial.

**Chairman Anderson:**

You are referencing page 2, Section 1, subsection 5, line 29 that says, "a statement made in preparation for and with the intent." You maintain that the "and" should be an "or"?

**Cotter Conway:**

You are correct.

**Chairman Anderson:**

Ms. Lang, what is the difference between an "and" and an "or" there?

**Risa Lang:**

The way the bill is currently drafted is if you prepared a statement for trial, but did not intend to use it, then it would not be included. Maybe an "or" would be appropriate since it is intended to encompass anything that, when prepared, would be for trial. If you are preparing for trial, it would be assumed you intend to use it at trial.

**Chairman Anderson:**

Ms. Rasmussen's document references "custodial interrogation" as part of the *Miranda v. Arizona*, [384 U.S. 436 (1966)]. She would like to add "(d) any statements made to a law enforcement officer...acting as an agent." Her concern is to eliminate "custodial examination." Ms. Lang, what would be the effect of that?

**Risa Lang:**

What they are saying is a term of art that is used. As I look at the case, the language that was actually used was "statements made to law enforcement in the course of interrogations." Maybe we could go closer to that language. We were trying to capture that it is a statement made to a police officer in an interrogatory type of setting.

**Cotter Conway:**

This bill is attempting to address statements that are made by a child. *Crawford* specifically refers to a situation where responses to questions posed by law enforcement are considered testimonial. That is clear, and in the document prepared by the NACJ, it cites exactly where in *Crawford* it says that. *Pantano* speaks of two situations: one is where the statements are made to a parent, which would be considered nontestimonial, and the statements made to an officer are considered testimonial. *Pantano* even addressed the reason they allowed the statements from the officer was because the child was available and testified. I think the amendment makes it clear we are talking about any statements made to law enforcement during their investigations. The child is clearly the concern of this legislation. Therefore, it seemed unreasonable to have that language.

**Chairman Anderson:**

Do we err thinking that there are statements made in custodial examinations that might be important to have when determining the case? There are other avenues than just the law enforcement officer statements that can be in place because there could be other court proceedings during a custodial examination.

**Cotter Conway:**

I am concerned about what we mean by custodial interrogation. The first reaction we get from *Miranda* is an accused person who is in custody and being interrogated. I am not sure what is meant by "custodial examinations" when we deal with the subject of this particular legislation, which is dealing with a child under the age of 10 years old who makes various statements. The normal circumstances I have seen and the cases I have handled are where the child is interviewed by a police officer at the child's home, which is less intrusive. Clearly, those statements would be of concern to a defense counsel and could impact the rights under *Crawford*. So, I do not see the custodial status—it may be a definition.

**Chairman Anderson:**

I guess the *Miranda* question is always one that we all like to think about. There are four cases that precede *Miranda* and they all lead up to the elements that are brought into place. We do not have to look at this area, but

we have an opportunity to clarify it. We want to ensure the child is not traumatized in the courtroom in another event. It is difficult the first time to deal with those potential scenarios, so the defendant also has the right to cross-examine the child.

**Assemblyman Conklin:**

I am not comfortable with this bill. Kids will tell a police officer one thing, but may be less inclined to tell the truth under duress or in an environment in which they feel hostile. I am not sure how this bill is going to make an impact, so I need more time to think about it.

**Chairman Anderson:**

Let me remind you that this is a bill the Committee asked for. This is from the Supreme Court's decision of the issues that came before us, and that is the reason why we are struggling with it. We want to make sure the child is not traumatized again and again.

**Ben Graham, representing Nevada District Attorneys Association:**

The *Crawford* decision caught a bunch of us by surprise and had an impact on admissibility of evidence in many areas. One of those areas is when young people make statements, yet are not able to articulate them in court. This is an area that is developing, and it may be premature to engrave it in stone. We agree with the Nevada Supreme Court's decision in 2005, to remove documents from admissibility. After that, the Supreme Court changed their mind and said they were wrong. These affidavits are admissible, and we are going to ask this Committee to reinstate those. From a prosecutorial standpoint this may not benefit our ability to effectively prosecute child abuse cases. We want to comply with the U.S. Supreme Court law, but we feel at this stage the law is not settled enough to put in statute.

**Assemblyman Horne:**

The U.S. Supreme Court made a decision that is set in stone or until they decide on something different. If they were to change their mind, then this statute would become null and void—if it was counter to this Court's decision. *Crawford* is already in stone, and we have to comply with the U.S. Supreme Court's decision.

**Ben Graham:**

There was a recent decision dealing with *Crawford* saying that it is not retroactive. There is developing law in this area. If the Legislature does cast it in stone and the U.S. Supreme Court reverses it, then we still have to live with it until this Body comes back to amend the statute.

**Assemblyman Horne:**

But the statute that we craft is not going to be retroactive either.

**Ben Graham:**

I did not say that. What I am saying is that the law is developing. We urge consideration of this and we will see how the law develops over the next few years. If it becomes clearly settled, then we will work on it in 2009.

**Amy Coffee, Deputy Public Defender, Nevada Attorneys for Criminal Justice, Clark County:**

Some of you may not fully understand how important this is, but the U.S. Supreme Court said that *Crawford* presents a confrontation problem. In certain cases, you do not put an accuser on the stand. Everybody wants to protect children; however, when children make certain accusations, the person accused has the right to confront them. That is based on the Sixth Amendment to the *U.S. Constitution*. That was recognized in the *Crawford* case. The Nevada Supreme Court looked at this statute and said it does not work unless it conforms with the *Crawford* decision. That is the reason for this bill. It does exactly what needs to be done in order to make this statute workable.

The amendment we have proposed has already been touched on in regard to "custodial examination." That is a term of art that applies when an accused suspect is taken into custody and the police try to get a confession. This bill would only apply to the accuser who is under the age of ten years and not the person accused of the crime. It is the person making the allegation, so "custodial interrogations" do not come into play. I cannot think of any scenario of where they would, so that is not a concern. Further, there will not be many changes in this area. In certain situations, you have the right to confront your accusers.

Finally, what I have seen in Clark County before *Crawford* is that in all the cases the State did put the accuser on the stand. It is important and what happens is once the accuser is on the stand, the State can then address other statements the accuser has said before. What was at issue is if the State wants to proceed to trial without putting the accuser on the stand and put in statements that nobody has the right to confront. That is what was problematic and that is what this addresses. I have never had a case in Clark County where they did not put the child on the stand and the child does have to come to court. That process seems to work quite well for the prosecutors.

**Michael Pescetta, representing Nevada Attorneys for Criminal Justice, Las Vegas:**

We would support the proposed change that Mr. Conway suggested, which is at line 29. It changes the "and" to an "or." The issue of "custodial examination" has come up in the language of *Crawford*. In *Crawford*, witnesses whose statements were admitted were originally a suspect in the offense. So she was subjected to a custodial interrogation and that was the hearsay that was admitted. The Chairman's concern about the nature of the "custodial interrogation" and the admissibility of evidence resulting from such an interrogation is proposed in our amendment to subsection (d). It does not limit it to a "custodial examination." It says "any statement made to a law enforcement officer or other person acting as an agent of the state." That would certainly cover any statement that was made in the course of the custodial interrogation. We would also like to propose that amendment. Alternatively, as Ms. Lang suggested, if the subsection read "at any statements made to a law enforcement officer or other person during an interrogation," this would also satisfy our concerns.

**Assemblyman Segerblom:**

Could interrogation by anybody be appropriate, or does it have to be by a government agent?

**Michael Pescetta:**

I think it has to be an agent of the government under the statutory language. If it is a statement made to a parent, for instance, that is the situation the Nevada Supreme Court was addressing in part in the *Pantano* case. That is not likely to be testimonial found under any test that either the Nevada Supreme Court or the U.S. Supreme Court have adopted.

**Jason Frierson, Deputy Public Defender, Las Vegas:**

Ditto.

**Chairman Anderson:**

Please have Mr. Frierson on the record.

I will bring A.B. 237 back to the Committee. Mr. Conklin had asked for more time to study it. It appears we have two suggested amendments. One would be on page 2 of Section 1, subsection 5, line 29, "as used in this section 'testimonial statement' means a statement made in preparation for or with the intent or knowledge that the statement." I presume the bill drafter will make suggested language, so that it does not sound redundant.

Subsection 5 (d) of the bill states "any statement made to a law enforcement officer or other person during an interrogation." Rather than the term of "custodial examination," NACJ would like to use "acting as an agent of the state." We need some clarification as to what the difference would be. Mr. Graham advises that we do not need it, and it is too early to make a decision. He would like to wait for the further sanding of the stone by the U.S. Supreme Court and the Nevada Supreme Court.

I will now close the hearing on A.B. 237.

Meeting adjourned [at 10:30 a.m.].

RESPECTFULLY SUBMITTED:

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Doreen Avila  
Committee Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** March 13, 2007

**Time of Meeting:** 8:10 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 191	C	Ronald A. Longtin, District Court Administrator and Clerk of the Court, Second Judicial District, Washoe County, Nevada	Written testimony
A.B. 191	D	Carolyn L. Herbertson, Nevada State Liaison, National Rifle Association of America, Sacramento, California	Written statement
A.B. 191	E	Michael Lussem, Legislative Advocate, Clark County Shooting Park Advisory Committee, Nevada	Written statement
A.B. 237	F	Lisa Rasmussen, President, Nevada Attorney's for Criminal Justice, Las Vegas	Written statement
A.B. 237	G	Lee Berkley Rowland, Staff Attorney, American Civil Liberties Union, Las Vegas, Nevada	Written statement