

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
February 12, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:43 a.m. on Monday, February 12, 2007, 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 Mark E. Amodei, Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington, Vice Chair (Excused)

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Gale Maynard, Committee Secretary

OTHERS PRESENT:

Timothy Kuzanek, Lieutenant, Washoe County Sheriff's Department
Todd Vinger, Chief Deputy, Washoe County Sheriff's Department
Raymond J. Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Joseph A. Turco, American Civil Liberties Union of Nevada
Carol Sala, Administrator, Aging Services Division, Department of Health and Human Services
Barry Gold, American Association of Retired Persons Nevada

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Julie Butler, Program Officer, Records and Technology Division, Department of
Public Safety
Kay Panelli, Elder Rights Unit Manager, Aging Services Division, Department of
Health and Human Services

CHAIR AMODEI:

I call this meeting of the Senate Judiciary Committee to order and will open the
hearing on Senate Bill (S.B.) 30.

SENATE BILL 30: Revises the provisions governing the early release of prisoners
from county or city jails to relieve overcrowding. (BDR 16-362)

TIMOTHY KUZANEK (Lieutenant, Washoe County Sheriff's Department):

We have given you a handout (Exhibit C, original is on file in the Research
Library) which supports proposed changes for *Nevada Revised Statute*
(NRS) 211.240. This statute allows a sheriff of a county jail or an officer in
charge of a city jail to make application to the chief judge for early release of
prisoners when their number exceeds the beds available under certain
circumstances.

We would like to amend the statute from "number of beds available" to
"operational capacity." Operational capacity would mean the number of inmates
a facility can safely house while meeting their needs.

Generally, operational capacity is determined by the original design capacity of
the facility, such as the number of cells with extra bunks added, the number of
inmates, their classification and status, and staffing levels.

Once operational capacity is exceeded, we have a safety issue for our
personnel. We are looking for the statutes to complement our procedures to
enable us to move forward.

TODD VINGER: (Chief Deputy, Washoe County Sheriff's Department):

This amendment will not only help with the safety of inmates, it will serve the
staff as well. When capacity is exceeded, you are forced to place people with
others of higher risk in order to maintain bed space.

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SENATOR MCGINNESS:

Is the term "operational capacity" a recognized phrase? If I went to Ohio, would someone know what I was talking about or use it in the same definition as you?

LT. KUZANEK:

The terminology is defined by the executive administrator of each facility. It is used on a national scale; other facilities may base it on criteria such as inmate population or gang-related issues.

SENATOR MCGINNESS:

Are you saying the definition may be different from Washoe County jail to Las Vegas Metropolitan Police Department (Metro)?

MR. VINGER:

Every demographic area has a different style of operational capacity based on the neighborhood, city or county. It also varies based on staff or direct supervision, remote or linear operation of a facility.

SENATOR MCGINNESS:

Your answer is yes?

MR. VINGER:

Yes.

SENATOR WIENER:

When I see the change in language from number of beds available, I would like to ensure every inmate has a bed. In some cases due to overcrowding, inmates sleep on the floor. Does this model deviate from this?

LT. KUZANEK:

There may be times where we placed inmates on cots or the floor. The way the statute is presently written, we may have beds available in the female unit but cannot house males coming into the intake unit.

SENATOR WIENER:

For all practical purposes, you do not have beds available.

LT. KUZANEK:

This is why we would like to change the wording of the statute.

SENATOR WIENER:

At different levels of jurisdiction, we have had the federal government concerned about this issue. When the federal government steps in, is it usually due to overcrowding and not enough beds? Are we following federal standards?

MR. VINGER:

I am not aware of a federal standard.

SENATOR WIENER:

When the federal government intervenes and challenges the operation of a facility due to overcrowding, what measure is used?

MR. VINGER:

Most federal standards agree with the capacity of a facility and take into consideration design, management and staffing. All these elements are taken into consideration to determine how many beds are available.

SENATOR WIENER:

Taking your amendment into consideration, is overcrowding an issue with the federal government? Based on your testimony, this decision will be established by the facility.

MR. VINGER:

Certain factors are not used every time the capacity of a facility is determined.

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SENATOR WIENER:

Did I understand you to say it would be an administrative decision to determine facility capacity?

MR. VINGER:

Yes.

SENATOR WIENER:

Based on this amendment and federal intervention, will we have more difficulty meeting federal standards or less?

RAYMOND J. FLYNN: (Assistant Sheriff, Las Vegas Metropolitan Police Department):

In the Clark County Detention Center (CCDC), we look at two factors: design capacity and operational capacity. The design capacity of this facility is 2,857 inmates, but our operational capacity is 3,416.

I am unaware of any federal standards. But when they do come in, they look at the operational standards set by the American Correctional Association (ACA). These standards are established for number of inmates per toilet facility, inmates per shower, square footage and the ability to access programs.

In terms of beds, at CCDC there are beds for everyone except 250 inmates, and those inmates are sleeping on army cots, not on the floor.

SENATOR HORSFORD:

I want to know why language in the operational capacity and criteria is not included in the language of the bill.

LT. KUZANEK:

I do not know.

SENATOR CARE:

This bill makes a distinction between empty beds available in a jail versus operational beds. I do not know the formula for number of beds per square feet, but this amendment affords some latitude.

For instance, you arrest 10 members belonging to different gangs and have 10 to 15 beds available to separate the members. Is this what you are after in the language?

MR. FLYNN:

Yes. It will allow us to manage the facility and move inmates around in order to meet ACA standards. The concern Clark County would have in terms of this bill is: Does a cot classify as a bed?

SENATOR CARE:

Are you aware of pending litigation in Clark County or Washoe County about the number of available beds in a jail? Will this amended language impact any litigation?

MR. FLYNN:

We are unaware of any pending litigation, although it could happen at any moment as we are at capacity.

SENATOR CARE:

The basis for a complaint that leads to a grievance is primarily not enough beds.

MR. FLYNN:

The complaint is usually inhumane treatment of prisoners which may stem from overcrowding or violence in the facility.

SENATOR CARE:

Are overcrowding and not enough beds the same thing?

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MR. FLYNN:
It could be, yes.

SENATOR CARE:
If there is no pending litigation, can you give some idea of the consequences if the Legislature were not to enact this bill?

MR. VINGER:
The purpose of this legislation is to reduce litigation and consent decrees in the future. Senator Wiener mentioned people sleeping on floors or cots. We call them boats or temporary beds. The *Nevada Administrative Code* (NAC) is specific about what is temporary or permanent. Temporary should be just that, temporary.

These are conditions that create the perception of inhumane treatment. This is what we want to prevent. By changing the language, we can move people out of the jail and have a safe environment for inmates and staff before exceeding the operational capacity of a facility.

SENATOR WIENER:
Senator Horsford made mention of the information you provided in [Exhibit C](#). On the first page, one of the points says "Generally, 'Operational Capacity' is determined by analyzing" followed by a list of items.

Is it possible you can work with drafters to amend and include this language rather than a vague concept?

You also mentioned ACA standards. Maybe we could work towards amending and including some of these standards in the bill. This may reduce consent decrees if standards are met.

MR. VINGER:

Not all facilities in Nevada are ACA certified due to size. However, non-ACA certified facilities fit into the NAC.

SENATOR WIENER:

I would like to see a standard and the definition of operational capacity written into the bill.

SENATOR CARE:

Some people who are arrested may be in jail for a few months awaiting trial; some appear before a judge the following morning. Is there a bid for the beds? Does the duration of incarceration matter?

MR. FLYNN:

Some people may never get a bed. Those arrested for driving under the influence or domestic violence are placed in a booking or holding cell for up to 12 hours where there are no beds. It would not matter if the jail was full. The goal is to get everyone off the floor within 24 hours and placed on a bed. Sometimes a person may be in a holding cell longer than 24 hours.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):

We support this bill and would like those working on the language and standards to keep in mind there are small facilities, such as Eureka, Carlin and Wells, that may not meet standards; making a safe environment is a priority.

SENATOR WIENER:

We should have this as part of the language being drafted. Is it possible Mr. Adams can work with the drafters?

CHAIR AMODEI:

The idea is acceptable.

JOSEPH A. TURCO (American Civil Liberties Union of Nevada):

The American Civil Liberties Union approves this proposal with one exception, occupational capacity. I heard it defined by the executive director of the Nevada Sheriffs' and Chiefs' Association as design capacity and a floating definition. It should mirror the original building design to keep it in line with the Constitution. Early release of a prisoner by a judge is normal, and this plays a role in the system and prison population. The prisoners eligible for early release are:

presentence or persons who could not make bail; post sentence or misdemeanor; and those serving three-month sentences.

CHAIR AMODEI:

We will close the hearing on S.B. 30 and have Brad Wilkinson meet with those interested in working on an amendment. My intent is to have a work session to review the progress. We will now open the hearing on Senate Bill 31.

SENATE BILL 31: Makes various changes to provisions governing records of criminal history. (BDR 14-595)

CAROL SALA (Administrator, Aging Services Division, Department of Health and Human Services):

With me is Kay Panelli, Manager of the Elder Rights Unit, and we support S.B. 31. Please see written testimony ([Exhibit D](#)).

SENATOR NOLAN:

Chapter 179A of NRS defines how much and what type of criminal record information may be disseminated. Your Division should be allowed to receive this information. The law enforcement agency you approach determines how much information you receive. Even if fingerprints are submitted, you may not get a complete history.

You want a complete background of a person; in order to obtain this information, you might have to submit data to the Federal Bureau of Investigation (FBI).

Ms. SALA:

We realize the sensitivity of the National Crime Information Center (NCIC). Our intent is not to acquire all of the information for an individual. I spoke with Mark Kemberling of the Office of the Attorney General, Medicaid Fraud Control Unit in Las Vegas. There is concern in obtaining too much access. We will work to make the language more clear and only access information we need.

Our intent is for our workers to know what they are walking into before entering a home. This will allow them to decide whether to take a law enforcement officer.

SENATOR CARE:

Section 1, subsection 7 of S.B. 31 lists persons entitled to this information. If the Aging Services Division wants to be added to the bill, it has my support. Page 4, paragraph (l) allows a reporter to have this information. This tells me you could go to any reporter and ask them to get this information on your behalf.

If a reporter can have this information, it is public information. The press is a member of the public.

CHAIR AMODEI:

In terms of Senator Nolan's concern, you need to know a suspect has a criminal background and a current address. On page 5, lines 18 through 19 of the bill, what do you mean on line 19 "assist in the investigation"?

MS. SALA:

I would need to confer with others, as the language was drafted after the bill. There was no issue in section 1 for including the Aging Services Division. There is concern with the language in section 2 pertaining to NCIC.

Our intent is to find out if someone has a history of domestic abuse, drug-related or weapons charges. These are the main things our workers are facing. I will provide amended language for line 19, page 5.

SENATOR WIENER:

You also wanted the Committee to delete "or a vulnerable person" on page 5, line 11.

MS. SALA:

This is correct. Last session, there was a bill dealing with the elder abuse law. A proposal to put "vulnerable person" into the language allowed the Division to investigate elder abuse. It was later determined the Division was not the responsible party to investigate persons under 60 years of age. Therefore, the vulnerable person language was removed.

Including it into S.B. 31 makes unclear which entity is responsible for a population or age group. To clarify things, my proposed amendment is to remove the vulnerable person language. This will prevent confusion when referring to the statute giving us authority to investigate elder abuse.

CHAIR AMODEI:

What is the purpose of removing "vulnerable persons" from section 2, subsection 2, line 11?

MS. SALA:

Removing "vulnerable persons" will keep the language cleaner.

BARRY GOLD (American Association of Retired Persons Nevada):

We support S.B. 31. Please see written testimony ([Exhibit E](#)).

JULIE BUTLER (Program Officer, Records and Technology Division, Department of Public Safety):

We want to clarify any requests for information will only be Nevada records of criminal history. Since the Aging Services Division is not a law enforcement entity, if an allegation of abuse is from Utah, they will not get full details.

SENATOR NOLAN:

There are many new people moving to Nevada. Are fingerprints the only way to help these agencies get information about suspected people? Is there another way of accessing a larger database? There may not be a criminal history of them in this state. How can we help under these circumstances?

MS. BUTLER:

We would have to look into this. Federal requirements are specific on who has access to criminal histories. There are also rules on who may receive information for civil purposes. If there is a conviction in another state, only another law enforcement agency may see that information. Since the Aging Services Division is not a law enforcement agency, I am not sure how it would operate. We are willing to work with the Division on this issue.

SENATOR CARE:

Are there federal mandates about who can receive information in the Central Repository for Nevada Records of Criminal History?

MS. BUTLER:

Yes. The FBI and an advisory board set standards for access for noncriminal justice purposes.

SENATOR CARE:

Does the FBI or federal government accept the press receiving this information? This is what our statute is saying.

MS. BUTLER:

The press does not get the full criminal sheet on an individual, only aggregated data.

SENATOR CARE:

Does the statute read the Aging Services Division would receive more information than the press once a request is made through the Repository?

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MS. BUTLER:

They would only receive Nevada records. In reference to more information than the press, I do not know.

SENATOR CARE:

In other words, are there degrees of disclosure?

MS. BUTLER:

I do not know.

SENATOR NOLAN:

Chapter 179A of NRS has a number of ways information can be obtained from criminal justice agencies. The Criminal Repository is a central warehouse of records received within our state and regionally. The regional system is known as the Western Identification Network, Incorporated (WIN). How many states are members of WIN?

MS. BUTLER:

Nine states are currently involved in the program and a few federal agencies.

SENATOR NOLAN:

Senate Bill 31 would allow the Division to make an inquiry through a criminal justice agency or local law enforcement. You are saying the Division cannot come to the Repository to get criminal information. They must go through local law enforcement for Nevada criminal history. Is this correct?

MS. BUTLER:

Yes.

SENATOR NOLAN:

A Little League team could submit fingerprints, name, social security number and date of birth to the Repository, and given enough time, the Repository could bring up a full FBI report on a team member.

MS. BUTLER:

There are two processes. For a Little League team, there is a background check of volunteers. Nevada statute allows volunteer agencies to submit fingerprint cards for a state and federal background check. When fingerprints are run, only a recommendation whether to hire is required. The requesting agency does not get disclosure of the individual.

The other process is a civil name check. This is a process where a business pays to run their employees through a name-based criminal background check. As it is name-based and not a unique identifier, there may be duplications.

SENATOR NOLAN:

I agree with Senator Care. This information should be provided to the Aging Services Division. The statutes need to change so these agencies get full and complete history on someone they are investigating, not just Nevada records.

CHAIR AMODEI:

When the Division is investigating a report of abuse, neglect or exploitation, does this become a criminal investigation? We have criminal statutes to protect against abuse. Is this correct?

MS. SALA:

That is correct. Neglect, abuse, isolation and exploitation are crimes.

CHAIR AMODEI:

What are the penalties?

MS. SALA:

It depends on what is found.

CHAIR AMODEI:

What is the range of penalty?

Ms. SALA:
Leaving a senior unattended and—

CHAIR AMODEI:
But if I break these rules, what is the range of penalty? Is it a misdemeanor petty offense to—?

Ms. SALA:
It can range from misdemeanor to a felony. It has to be very serious to have a district attorney pursue the crime. If it is a serious case of exploitation, depending on the jurisdiction, we may get a district attorney to pursue.

CHAIR AMODEI:
Your agency is the initial investigating agency?

Ms. SALA:
Yes.

CHAIR AMODEI:
On page 5, line 11 of S.B. 31, are there objections to striking the words "or a vulnerable person"?

What is the feeling on striking paragraph (c) on page 5, line 18? Do you have any objections, Ms. Sala?

Ms. SALA:
No objections.

CHAIR AMODEI:
Is there any discussion to these changes?

SENATOR CARE:

A pending criminal investigation is not a public document. Does the Division believe they should be entitled to this information, let us say from Metro?

Ms. SALA:

Our relationship with Metro is different from the rest of the state because of their abuse unit. When an investigation is started by our agency and it is serious or criminal, we work with local law enforcement and step aside. The initial investigation is our main concern.

KAY PANELLI (Elder Rights Unit Manager, Aging Services Division, Department of Health and Human Services):

Records of criminal history only show guilty convictions. Law enforcement may have been to a residence several times, but the issue has not gone to court. We would ask an officer to come with us or inquire if there had been disturbances at a residence as a safety issue.

CHAIR AMODEI:

If we pass this with the amendments, the criminal information obtained would be Nevada only.

Ms. BUTLER:

Yes.

CHAIR AMODEI:

If non-Nevada information comes back, we may want to include responsibility by the Repository the information cannot be released, but law enforcement assistance is recommended.

Ms. BUTLER:

No, because they are not a law enforcement agency; we cannot give them full disclosure.

CHAIR AMODEI:

How do you feel about informing them they may want to take a law enforcement person along for their safety?

MS. BUTLER:

We would not be opposed to working with the agency to come up with a solution.

SENATOR NOLAN:

Page 5, line 17, paragraph (b) says the "current address of the suspect." By including this language, we are entitling your Division to information others are not given. This may cause the media and other organizations to request information about a suspect who may not have committed a crime.

CHAIR AMODEI:

Is having the address important as it relates to safety?

MS. PANELLI:

Yes. Sometimes the information we get is not accurate, and the suspect may be living with the victims. It would be helpful to know if the suspect's address was the same as the victim's.

CHAIR AMODEI:

Could we amend paragraph (b) to read "information available that indicates whether or not the subject is living with the victim," as opposed to "current address"?

MS. SALA:

That change will be fine.

SENATOR CARE:

Reviewing your proposed language, Mr. Chair, I was thinking "living in proximity of" as opposed to "the same address."

CHAIR AMODEI:

We have not discussed language that would allow the Repository to advise the Division that law enforcement is recommended on the visit.

MS. BUTLER:

The Repository is not opposed to the proposal; it needs to be reviewed due to federal requirements regarding the release of information. I would rather it be procedural rather than implementing it into the statute.

SENATOR CARE:

We could have a statute that simply says "We will release the information consistent with federal law," and the request will be construed broadly.

CHAIR AMODEI:

It sounds good, but if a conviction comes up in Utah, that information cannot be disclosed to the Division and brings us to the heart of why we are here. We need some way to let the Division know law enforcement needs to be involved without releasing information against federal law.

MS. SALA:

Utilizing the help of local authorities through memorandums of understanding, information could be given so we are not breaking federal rules and still acquire information we need about a potentially dangerous situation.

To clarify, I did not see the Division going through the Repository, but through local authorities to ascertain if a suspect is dangerous. If S.B. 31 says we are going through the Nevada Repository, we are willing to work with Ms. Butler; our preference is to go to local authorities.

SENATOR NOLAN:

We are in a good place with amendments for this bill. There are ways of acquiring information if there was a conviction in another state. Law enforcement agencies will cooperate if you have a bona fide cause and reason.

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CHAIR AMODEI:

Mr. Wilkinson, can you tell the Committee where we are in language and amendments.

BRAD WILKINSON (Chief Deputy Legislative Counsel):

On page 5, line 11, delete reference to "vulnerable persons"; on line 17, page 5, replace paragraph (b), subsection 2 with "whether or not the suspect resides with or near the older person"; and delete lines 18 and 19 on page 5, paragraph (c), subsection 2.

CHAIR AMODEI:

What is the pleasure of the Committee?

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 31.

SENATOR NOLAN SECONDED THE MOTION.

CHAIR AMODEI:

Is there any discussion on the motion?

SENATOR CARE:

By statute, we are saying a reporter can have this information. I am under the belief that anyone can have this information. I see a challenge of the statute, perhaps by the public.

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CHAIR AMODEI:

On the advice of Senator Nolan, we are in a position to help the social workers.

THE MOTION CARRIED. (SENATOR WASHINGTON WAS ABSENT FOR
THE VOTE.)

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The Committee on Senate Judiciary is adjourned at 10:50 a.m.

RESPECTFULLY SUBMITTED:

Gale Maynard,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____