

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
April 26, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:06 a.m. on Thursday, April 26, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Carpenter, Assembly District No. 33
Assemblywoman Heidi S. Gansert, Assembly District No. 25

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Lora Nay, Committee Secretary

OTHERS PRESENT:

Catherine Cortez Masto, Attorney General, Office of the Attorney General
Kristin L. Erickson, Nevada District Attorneys Association
David W. Clifton, Chief Deputy District Attorney, Criminal Division,
Washoe County District Attorney

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Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys
R. Ben Graham, Nevada District Attorneys Association
Doug Busselman, Nevada Farm Bureau
Chris MacKenzie, Carson City, Chair, Board of Wildlife Commissioners,
Department of Wildlife
Michael R. Montero, Nevada Cattlemen's Association
Lorraine Bagwell, Correctional Administration Division, Department of
Corrections
Howard Skolnik, Director, Carson City, Department of Corrections
Frederick Schlottmann, Administrator, Offender Management Division,
Carson City, Department of Corrections

CHAIR AMODEI:

We will begin the hearing on Assembly Bill (A.B.) 72.

ASSEMBLY BILL 72 (1st Reprint): Revises provisions governing the crime of luring a child. (BDR 15-956)

ASSEMBLYWOMAN HEIDI S. GANSERT (Assembly District No. 25):

I am honored to join our Attorney General, Catherine Cortez Masto, on legislation we consider a priority. The goal of A.B. 72 is to enable law enforcement to identify and prosecute online sexual predators before they victimize our children. Protecting our children is of utmost importance. In the past, we felt our children were secure because they were with us or we knew where they were. Now, online predators can enter our homes without our knowledge.

With increased use of the Internet by children, a new, hard-to-manage threat has arisen. Approximately one in seven youths receive sexual approaches or solicitations from people they encounter online. Some are benign, but others come from adults who are seeking illegal sexual contact with young teens. Teens may be drawn into relationships where they may be sexually assaulted or exploited. This type of exploitation has become so blatant that Dateline NBC has a new program called *To Catch a Predator* which airs weekly. I was able to watch the show earlier in the season and was astounded. It was awful. There is no shortage of people who are trying to lure our youth.

Assembly Bill 72 will allow Nevada's law enforcement agencies to prosecute offenders using proactive investigations which will give police an opportunity to

capture suspects before a child is victimized. It is critical that we let our officers do their jobs to prevent the assault and exploitation of our children. I urge your passage of this legislation and appreciate your consideration today.

CATHERINE CORTEZ MASTO (Attorney General, Office of the Attorney General):

I am here to testify in support of A.B. 72. Assemblywoman Gansert and I had a similar idea for legislation as a result of the Nevada Supreme Court's decision in *State v. Colosimo*, 122 Nev. Adv. Op. No. 81 (September 14, 2006). As a result, she and I have joined forces today to speak in support of A.B. 72. The bill amends *Nevada Revised Statute* (NRS) 201.560, making it a crime to use technology to lure a child who is less than 16 years of age and at least 5 years younger than the perpetrator. This change provides that this section is violated if the perpetrator believes the victim to be a child regardless of whether the victim is actually a child.

Sexual solicitation of minors through the Internet is an increasing problem. Sexual predators use the Internet, online communication systems and other computer technology to sexually exploit children. Law enforcement agencies can successfully employ online, proactive Internet investigation techniques to catch these offenders. Investigators enter into chat rooms using an undercover identity, usually posing as a 13- or 15-year-old boy or girl. The undercover investigator waits to be contacted by an adult seeking a sexual encounter with a child. The investigator responds to contact initiated by the predator and allows the offender to develop a relationship which usually leads to a face-to-face meeting where the predator intends to have sex with the child or commit other criminal activities, such as the production of child pornography. The predator is typically arrested at the meeting location after being identified.

In the case of *Colosimo*, the Nevada Supreme Court ruled that under the language of the existing statute, in order to commit the offense described, a defendant's intended victim must be less than 16 years of age. That case involved a defendant who corresponded through the Internet with an undercover police detective posing as a 14-year-old girl and then arrived at a prearranged meeting with condoms and lubricant intending to have sex with the girl. He was arrested and charged with violating NRS 201.560. The Court decided that because the actual victim was an adult investigator and not less than 16 years of age, it was legally impossible for the prosecution to prove that element of the crime charge, which is why we are here today.

Assembly Bill 72 provides that the statute is violated if the perpetrator knowingly attempts to contact or communicate with someone the perpetrator believes to be a child less than 16 years of age and/or at least 5 years younger than the perpetrator. Law enforcement will be able to arrest online predators, and prosecutors will be effective in their prosecution of predators who use technology to sexually exploit children.

SENATOR WIENER:

How was the less than 16- and 5-year separation determined?

MS. MASTO:

That was already in the existing statute.

SENATOR WIENER:

Do you know why that particular number of years was selected? Is there any history on that?

MS. MASTO:

I do not have the history.

CHAIR AMODEI:

What is your opinion of the amendment from the Nevada District Attorneys Association ([Exhibit C](#))?

MS. MASTO:

That is a friendly amendment.

KRISTIN L. ERICKSON (Nevada District Attorneys Association):

This friendly amendment attempts to close a loophole that could pose potential problems. It is important we protect our children from Internet predators. This bill will allow the police and prosecutors to successfully prosecute those predators.

DAVID W. CLIFTON (Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney):

With respect to the five-year difference in age between the perpetrator and the alleged victim or purported victim, that language was the wording of the statute at its inception. We were targeting the adults going after children as minors. We

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were not targeting minors or students where one is in high school and the other is in junior high or one in college and the other in high school.

BRETT KANDT (Executive Director, Advisory Council for Prosecuting Attorneys):
I have submitted a memorandum ([Exhibit D](#)), that summarizes some of the comments that have already been made and includes a copy of the *Colosimo* decision. The Advisory Council for Prosecuting Attorneys supports this bill in its entirety, in addition, we support the friendly amendment offered by the Nevada District Attorneys Association.

R. BEN GRAHAM (Nevada District Attorneys Association):
We did address these issues in the other House, but some amendments did not make it into draft to clean up. We urge to amend and do pass.

CHAIR AMODEI:
We will close the hearing on A.B. 72.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS
AMENDED A.B. 72.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CARE, NOLAN AND
WASHINGTON WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:
We will open the hearing on A.B. 227.

ASSEMBLY BILL 227 (1st Reprint): Revises the provisions governing the posting of warnings against trespassing. (BDR 15-702)

DOUG BUSSELMAN (Nevada Farm Bureau):
We worked with Assemblyman John C. Carpenter in addressing issues outlined in A.B. 227 making it easier for landowners in rural Nevada to mark their agricultural private properties to change the intervals in which posts need to be marked for boundary indications of or private land. We worked with sportsmen as well as Nevada cattlemen and came up with a workable solution. We also

worked with law enforcement in the urban areas who were interested in maintaining the 200-foot intervals for those properties located within towns and cities.

SENATOR WIENER:

This bill was amended in the other House. What were the changes?

MR. BUSSELMAN:

Originally, the bill had 1,500-foot intervals and paragraph (b) under subsection 2 dealt with concerns of the urban areas that needed a difference in how they marked lands within more-congested city areas. The last line of the bill was changed where a barbed wire fence still needs to be appropriately marked on the posts. That was done because in many cases in the rural parts of the state, a barbed wire fence could be a divider on federal-managed lands. By marking the posts, the boundary for private lands is known.

CHAIR AMODEI:

I did not realize fluorescent orange paint means no trespassing.

CHRIS MACKENZIE (Carson City, Chair, Board of Wildlife Commissioners, Department of Wildlife):

Thank you to Assemblyman Carpenter for bringing the stakeholders together. We have developed a good compromise to cover the sportsmen's interest, particularly when we run into a barbed wire fence out in the middle of nowhere and do not know if it is Bureau of Land Management, Forest Service or private land.

MICHAEL R. MONTERO (Nevada Cattlemen's Association):

We worked with everyone on the Assembly side and support A.B. 227.

SENATOR MCGINNESS MOVED TO DO PASS A.B. 227.

SENATOR NOLAN SECONDED THE MOTION.

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

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CHAIR AMODEI:
We will go to A.B. 37.

ASSEMBLY BILL 37: Revises provisions relating to the administration of the Department of Corrections. (BDR 16-615)

LORRAINE BAGWELL (Correctional Administration Division, Department of Corrections):

Assembly Bill 37 is legislation that will correct the unclassified pay bill and includes our deputy directors. This will align NRS 209 to match; the other portion of this legislation allows us to pay interest on prisoners' accounts. A Ninth Circuit Court judgment said we shall: we have been, and we would like the statute to appropriately reflect that action.

CHAIR AMODEI:
We will close the hearing on A.B. 37.

SENATOR NOLAN MOVED TO DO PASS A.B. 37.

SENATOR HORSFORD SECONDED THE MOTION.

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

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CHAIR AMODEI:
We will open the hearing on A.B. 38.

ASSEMBLY BILL 38: Revises certain provisions governing the forfeiture of credits earned to reduce the maximum term of imprisonment when a parolee violates a condition of his parole. (BDR 16-617)

HOWARD SKOLNIK (Director, Carson City, Department of Corrections):
Frederick Schlottmann is with me this morning and will introduce the bill.

FREDERICK SCHLOTTMANN (Administrator, Offender Management Division, Carson City, Department of Corrections):

The purpose of Assembly Bill 38 is to clarify what time is at risk when an offender is violated from parole. Section 1 defines the amount of time subject to forfeiture by the parole process for time earned for good behavior, which is ten credits per month. That is only the time that can be taken by the Parole Board. Currently, all credits are subject to forfeiture, including educational credits, work credits and programming credits. This would clarify the language to say the only credits subject to forfeiture in that process are credits for good behavior.

CHAIR AMODEI:

Has the practice been to forfeit all the other credits?

MR. SCHLOTTMANN:

The practice before was to forfeit all the other ones, but the Parole Board also has the ability to restore those credits. They would forfeit all the credits and then restore the programming and education credits in the next action.

CHAIR AMODEI:

Was there any testimony in opposition to this in the Assembly?

MR. SCHLOTTMANN:

No, Mr. Chair.

SENATOR WIENER MOVED TO DO PASS A.B. 38.

SENATOR NOLAN SECONDED THE MOTION.

SENATOR HORSFORD:

If any condition of the parole is violated, what is the discretion based on, the noncompliance?

MR. SCHLOTTMANN:

It is a determination made by the State Board of Parole Commissioners. When an inmate has violated, they must have a hearing. The Board determines if the allegation by the Division of Parole and Probation, Department of Public Safety, is sufficient to violate the offender. If it is not, the offender does not lose time and returns to the community.

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SENATOR HORSFORD:

I requested information on what types of violations occur.

MR. SCHLOTTMANN:

Your request is best directed towards the Division of Parole and Probation, and we can facilitate that for you.

SENATOR HORSFORD:

I would like to know that information.

CHAIR AMODEI:

Is the forfeiture determined by the Parole Board pursuant to their process, procedures and discretion? Do they vote on whether to forfeit good time credits?

MR. SCHLOTTMANN:

Correct.

THE MOTION CARRIED. (SENATOR CARE WAS ABSENT FOR THE VOTE,
SENATOR HORSFORD ABSTAINED FROM THE VOTE.)

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CHAIR AMODEI:

We will open the hearing on A.B. 106.

ASSEMBLY BILL 106 (1st Reprint): Prohibits prisoners in the custody of the Department of Corrections from obtaining or possessing portable telecommunications devices. (BDR 16-616)

MR. SKOLNIK:

Assembly Bill 106 relates to our ability to prohibit telecommunication devices from entering our institutions. This has become an incredible national problem. We had a serious escape resulting in the escapee committing a large number of felonies after he left the Northern Nevada Correctional Center. His escape was directly facilitated by multiple cell phones.

We discovered cell phones in our institutions. The Federal Bureau of Prisons has pulled hundreds of cell phones out of their facilities. The Communications Act of

1934 limits the blocking of radio waves, which means we cannot block the cell phone communication within our institutions. The only way we can safely operate is to eliminate cell phones other than those directly permitted by the director. For example, we allow our physicians to carry their personal digital assistants because they contain all of their medical information. For staff and visitors to routinely have the ability to bring in phones without any kind of punishment jeopardizes the safety and security of our institutions.

SENATOR NOLAN:

I am assuming you look at visitors when they come in and have cell phones clipped on, and you go through purses so you know who has a cell phone. Do you monitor them when they leave to see who has left a cell phone?

MR. SKOLNIK:

We do not allow cell phones in our institutions and are prohibited from entering the facility with such devices. The problem we are faced with is that we have no sanctions. When this bill was presented to the Assembly, we asked for this to be a Class D felony and then traded off the word "intent" for a Class E felony. The word "intent" did not belong because it is hard to prove. We need the ability to sanction people, particularly our employees if they bring in cell phones. A Class E felony conviction would result in their termination. It would be explicit in how we feel about cell phones in our facilities. They are dangerous, especially inside of our institutions. We monitor and record all phone calls. Phone calls are one our best sources of intelligence and information in terms of what is coming in and out of the institution. When we have other kinds of communication devices, we lose that ability.

SENATOR NOLAN:

I thought a cell phone was something you were able to monitor; however, it sounds as though they are getting into the hands of the inmate population. What other contraband and weapons are getting through the system which may be easier to conceal? I am wondering if we should not tighten up the gate.

MR. SKOLNIK:

A great amount of available technology would allow us to be more efficient, but the technology is expensive and we have not invested a tremendous amount of money in the Department of Corrections for technology. We are one of the few departments that does not have cameras in our prisons.

SENATOR HORSFORD:

Do you need a provision requiring you to post a notice or is that something you are able to do without one? My concern is with people not knowing they cannot bring in a cell phone because it is a commonly held device.

MR. SKOLNIK:

We intend to multiple post on cell phones because they become extensions of people. We will post outside the facility as well as a final posting right at the entry point into the institution. People will know they are not allowed to bring in cell phones. We can do that administratively without statutory authority.

SENATOR WASHINGTON:

The bill makes references to computer networks and the word "Internet." Do you monitor the Internet or are computers only located in specific places, like the library or the common area where inmates may have access?

MR. SKOLNIK:

We do not allow inmates to have Internet access. The only Internet accesses existing inside of our institutions are for staff who are limited to an intranet as opposed to an Internet program. Numerous stories include one of the original ones dating back to the late 1970s, early 1980s, where an inmate at a jail in Philadelphia managed to establish a phony bank account over the Internet, transfer funds from other people's accounts and then make bail, withdraw the rest of the money and disappear. That first, really profound experience with corrections the Internet and resulted in very little Internet access around the country.

SENATOR WASHINGTON:

You do not need authorization or legislation.

MR. SKOLNIK:

There is already statutory prohibition on access to certain aspects of the Internet, telecommunications and telemarketing so a lot of that is already in law.

CHAIR AMODEI:

If you furnish or knowingly furnish, it is a Category E felony. If you carry into an institution, it is a misdemeanor. If a prisoner possesses, then it is a Category D felony.

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CHAIR AMODEI:
We will close the hearing on A.B. 106.

SENATOR HORSFORD MOVED TO DO PASS A.B. 106.

SENATOR NOLAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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ASSEMBLYMAN JOHN C. CARPENTER (Assembly District No. 33):
Thank you Mr. Chair and members of the Committee for passing my fencing bill.

CHAIR AMODEI:
We are adjourned at 9:36 a.m.

RESPECTFULLY SUBMITTED:

Lora Nay,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____