

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session  
February 27, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:02 a.m. on Tuesday, February 27, 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 Maurice E. Washington, Vice Chair  
Senator Mike McGinness  
Senator Dennis Nolan  
Senator Valerie Wiener  
Senator Terry Care  
Senator Steven A. Horsford

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Cotter C. Conway, Washoe County Public Defender

CHAIR AMODEI:

We will begin with the introduction of Bill Draft Request (BDR) 2-963 as requested by this Committee.

**BILL DRAFT REQUEST 2-963:** Enacts the Uniform Foreign-Country Money Judgments Recognition Act. (Later introduced as [Senate Bill 177.](#))

SENATOR MCGINNESS MOVED TO INTRODUCE BDR 2-963.

SENATOR WIENER SECONDED THE MOTION.

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

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CHAIR AMODEI:

Supporting the introduction of this BDR does not obligate a member to support the bill in Committee or on the Senate Floor.

We will begin discussion on Senate Bill (S.B.) 31.

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

BRAD WILKINSON (Chief Deputy Legislative Counsel):

Senate Bill 31 was discussed at the work session on February 12. Since then, the Aging Services Division, Department of Health and Human Services, requested this Committee reconsider one minor aspect of this bill. I have prepared a mock-up showing the amendments to S.B. 31 ([Exhibit C](#)). Page 4 includes the two changes voted for by the Committee. Line 29 of page 4 is a technical correction deleting reference to "vulnerable person." On lines 34 and 35, the reference "the current address of the suspect" was changed to "Whether or not the suspect resides with or near the older person." On lines 36 and 37, the Committee voted to delete reference to "Any other information relating to the suspect that will assist in the investigation."

I have been working with the Aging Services Division and law enforcement about a more restrictive provision allowing them to get information they want from law enforcement. This proposal is found on lines 37 through 40 and refers to "A summary of any events, incidents or arrests which have occurred at the residence of the suspect or the older person within the past 90 days and which involve physical violence or concerns related to public safety or the health or safety of the older person." The Aging Services Division would have access to incident reports filed by law enforcement during the past 90 days.

CHAIR AMODEI:

The Committee has time to review the new language in section 2, subsection 2 and paragraph (c).

We will now look at S.B. 14.

**SENATE BILL 14**: Provides that a minor who possesses tobacco products or falsely represents his age to obtain tobacco products is subject to the jurisdiction of the juvenile court as a child in need of supervision. (BDR 5-76)

LINDA J. EISSMANN (Committee Policy Analyst):

Your work session binder ([Exhibit D](#), original is on file in the Research Library) has a summary of S.B. 14, the bill from Senator McGinness concerning youth access to tobacco and tobacco possession that puts the juvenile offender who possesses tobacco under the juvenile court system. There was no opposition to the bill per se as everybody agreed youth should not have tobacco in their possession, but there was disagreement in what to do about it and whether it was appropriate to put juveniles under the juvenile court system for that offense.

My memorandum with attachments, pages 14 through 29 of [Exhibit D](#), contain information on youth access laws for tobacco products in other states. Forty-six states have some form of possession, use and purchase (PUP) laws. While some outlaw possession, others use a variation of all three. A summary of strategies other states have enacted are fines, citations, community service, cessation classes, loss of a driver's license, simple seizure, confiscation of tobacco products and other things. States that put juveniles under the juvenile court system are Montana and, potentially, Delaware. My memo also contains a detailed breakdown of the different state PUP laws. Page 30 is a conceptual amendment to S.B. 14.

SENATOR MCGINNESS:

Nevada is behind other states in enacting PUP laws. Page 15 shows 35 states prohibit the outright purchase of tobacco, 36 states prohibit minors from possession, 26 states order minors who are guilty to perform community service or pay a fine and 9 states suspend drivers' licenses. Pages 18 through 29 delineate how 45 states have dealt with this problem.

To eliminate adding to the juvenile probation caseload, we have changed our proposal to consider issuing a citation as an attention getter much like a traffic ticket. We propose a fine of \$10 for the first offense, \$20 for the second, \$30 for the third and at the fourth offense, the child becomes adjudicated as

a youth in need of supervision and subject to the supervision of juvenile courts that have discretion in deciding consequences. A court may have the child participate in a tobacco cessation program, if available, or community service. Upon completion of a program, the court record can be sealed.

Page 31 lists a number of available programs. There are not many statewide, but one telephone-based nicotine dependence treatment called Nevada Tobacco Users' Helpline gives me comfort that even in rural Nevada, help is available. Help is available in northern Nevada—mainly in the Reno, Sparks and Carson areas—and in southern Nevada.

CHAIR AMODEI:

For a second offense in Oregon, you lose your driver's license for a year. California starts with a \$75 fine and community service. The \$10, \$20 and \$30 fines are a bargain. The conceptual amendment has little or no impact concerning the resources for juvenile probation.

SENATOR MCGINNESS:

Involvement begins on the fourth offense. Hopefully, the behavior will stop after the second or third offense before going into juvenile court.

CHAIR AMODEI:

Since no one is here from juvenile probation, I guess everything is fine with them.

SENATOR HORSFORD:

Logistically, how would the person be cited? Are records maintained by law enforcement officials who issue citations and know whether it is the second or third offense?

CHAIR AMODEI:

No one from the industry is here to answer your question. The proposed amendment will be drafted and brought to our next work session. We will invite the people who enthusiastically appeared at the first hearing and did not show up for the work session, which is a problem when they take up a major portion of the record with concerns about a bill and do not show up for the work session.

COTTER C. CONWAY (Washoe County Public Defender):

I do not work in the juvenile system and want the opportunity to investigate the impact this will have. One person in my office was concerned about how a citation would be handled. I am here and interested in this bill.

CHAIR AMODEI:

The challenge is what do we do that is responsible, and the resources and the premises.

MR. CONWAY:

I agree something needs to be done. I sent an e-mail to Ms. Eissmann concerning programs and looking at options of sending children through available cessation programs that seem to be only done on a voluntary basis. I am looking for an alternative. I do not want an excessive impact on the juvenile system.

CHAIR AMODEI:

We will now consider 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)

MS. EISSMANN:

Senate Bill 30 on behalf of Washoe County has to do with jail overcrowding and allows the sheriff or another officer in charge of a jail to seek authority to release prisoners when the number of prisoners exceeds the jail's operational capacity. I have summarized this testimony on page 4 in [Exhibit D](#). The Nevada Sheriffs' and Chiefs' Association subsequently prepared an amendment found on pages 33 and 34. The amendment offers a definition, and there are two references. The first definition refers to *Nevada Administrative Code* (NAC) chapter 211 as does the second that gives more specific information about NAC 211 referrals. It is not a different definition, it is just more detailed.

CHAIR AMODEI:

Mr. Wilkinson, when a statute refers to the NAC, how does that work in terms of code changes?

MR. WILKINSON:

We do not typically refer to chapters of the NAC in statute. That language would need to be massaged to perhaps refer to regulations adopted pursuant to this statute which gives authority to adopt those regulations.

CHAIR AMODEI:

If the Committee is comfortable with the definition of operational capacity, what happens if that changes by regulation or have we indirectly adopted future changes in the definition by using that mechanism?

MR. WILKINSON:

The scenario you described is accurate. It would change the meaning of the statute as the regulations change.

CHAIR AMODEI:

Do changes to the NAC go through the regular regulatory change through the Legislative Counsel Bureau?

MR. WILKINSON:

Yes.

SENATOR HORSFORD:

*Nevada Revised Statute* (NRS) 211.240 has a whole section on early release of prisoners. Is it because they do not want to go through the judicial review to get the chief judge to declare an overcrowding problem in order to release the offenders before they act?

MR. WILKINSON:

They would still be required to get approval from the chief judge.

SENATOR WIENER:

Are we establishing a new way of doing business if we do statutory work around a fluctuating regulation? Do not regulations usually respond to statute?

MR. WILKINSON:

Usually, that is an accurate statement. It is not unusual to incorporate a reference into statute to do something in compliance with a standard establishing regulation. Though not unprecedented, it is unusual.

CHAIR AMODEI:

Are you ratifying future regulatory changes without knowing what they are?

SENATOR WIENER:

There has been a movement in the interims of honoring and respecting legislative intent. I do not know what legislative intent we are establishing by taking this step. I do not know what we are setting in a record as an intent when we back into a regulation and say "whatever changes, we are with you." We are going in the wrong order.

SENATOR CARE:

In the past, we have cited or incorporated federal regulations as they read on a certain date. If the regulation alters, the statute does not.

CHAIR AMODEI:

Is the major concern the lack of definition? If we change the amendment to say definition with regard to NAC 211 as of x date, is that definition one you are comfortable with for purposes of definition?

SENATOR WIENER:

If we do as Senator Care suggested, in referencing a definition in the NAC as of a certain date, what is the difference between that and putting it in statute?

CHAIR AMODEI:

Nothing, you are just incorporating it by reference. If the definition needs to change, you go back the next session, amend the definition and change the date. You or our successor has the chance to look at what it was and what it became in that context.

SENATOR WIENER:

If it is referenced by day, even if they change it, it is still that day. It is not as if it requires ongoing statutory changes every time they change the regulations. It maintains the reference to the original date, and we stick with that no matter what the changes.

CHAIR AMODEI:

For statutory purposes, you adopt the regulation as it reads on the day the Governor signs the bill.

SENATOR MCGINNESS:

If you look at the first amendment, Legal Division will probably fix the wording. It says "while complying with Nevada Administrative Code Chapter 211." The second definition talks about analyzing the requirements of NAC and leaves more flexibility, but the first amendment is much cleaner in defining the "operational capacity" because the administrative codes change.

CHAIR AMODEI:

Let us try to have something for the next work session that does not leave us in the situation of adopting the regulation.

Senate Bill 33 concerns access to gated communities for officers of the Division of Parole and Probation, Department of Public Safety. The Howard Hughes Corporation, Incorporated and Community Association Management Executive Officers, Incorporated (CAMEO) testified and offered amendments. I am concerned because when Parole and Probation tried to contact these two entities, their calls were not returned.

**SENATE BILL 33**: Requires the manager of a gated community to provide to parole and probation officers the code or device which allows entry to the community. (BDR 16-560)

MS. EISSMANN:

I have provided a summary of the testimony on S.B. 33 on page 5 in Exhibit D. No testimony was offered in opposition, but amendments were proposed by the Howard Hughes Corporation and CAMEO on pages 41 through 43.

CHAIR AMODEI:

There are several issues. Should Parole and Probation have operational access to gated communities to perform their supervisory duties? If that is appropriate, what is the most efficient way to provide them access? Does the supervised person provide access codes or the community provide one or two of these devices for their gates to Parole and Probation? Should Parole and Probation figure out how to get access when they need it from a centralized spot? No one thinks Parole and Probation ought to get 120 of these devices for every gated community in Clark County, for example.



SENATOR HORSFORD:

I like the amendments from The Howard Hughes Corporation. The burden should be on the parolee, not the communities. I disclosed that I am the president of a homeowners association (HOA), and there is a lot we have to do already. I desire putting the burden on associations to supply this information compared to the parolee having the responsibility.

CHAIR AMODEI:

I agree with placing the responsibility in the person who is being supervised. The Committee had concerns about privacy and involvement in NRS 116. If you live there, you have the code; you do not have to request the code to get in your own neighborhood, do you? As a backup, each community should provide one device to Parole and Probation and let them figure out how to get it into the right hands. The association only provides a device.

SENATOR CARE:

The amendment is conceptual only. Clearly, they should have access. To the extent possible, I would leave out the HOA altogether. It is no different than grandmother coming to visit me. I give her the code to the gate, and she comes in. You put the burden on the parolee. If that requires some expense, it is his or her choice to live in the gated community. Maybe the HOA wants to know Parole and Probation has access to the gates because it has a device, but beyond that, I cannot see involving the association.

SENATOR MCGINNESS:

I am looking at a situation where the parolee works at a gated community. How does this person get the HOA to respond to him any more than they respond to Parole and Probation or law enforcement? No parolee is ever going to work in a gated community because who wants to pass out codes to a parolee? There has to be give and take on both sides.

CHAIR AMODEI:

Roll this to the next work session.

SENATOR WIENER:

Will we entertain what we have discussed both in the hearing and in work session about the burden on the parolee?

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CHAIR AMODEI:

I appreciate that Captain Mark Woods from the Division of Parole and Probation is here. The Committee wants to give you operational access to operate as you see fit.

Senate Bill 35 is admissibility of certain affidavits and declarations of certain proceedings.

SENATE BILL 35: Revises certain provisions relating to the admissibility of certain affidavits and declarations in certain proceedings. (BDR 4-507)

MS. EISSMANN:

I have a summary of the testimony and information on S.B. 35 on pages 6 and 7 of Exhibit D. Following the hearing, amendments were presented, and those are found on pages 44 through 47.

SENATOR CARE:

Was the problem the scope of the affidavit and whether the affiant had exceeded what the statute required?

MR. WILKINSON:

I have to review that case, but that was the U.S. Supreme Court's initial interpretation of *Crawford v. Washington*, 541 U.S. 36 (2004). They believed it violated Sixth Amendment rights. I do not know to what extent they focused on the scope.

SENATOR CARE:

When I read the American Civil Liberties Union of Nevada's proposed amendment on page 46, it says "in lieu of the direct testimony of the affiant if the prosecution meets its burden of establishing that: (a) there is no bona fide dispute as to the facts sought to be admitted in the affidavit ... ." Who decides "no bona fide dispute"—the parties or the court?

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 35 WITH THE AMENDMENTS PROPOSED BY THE NEVADA  
DISTRICT ATTORNEYS ASSOCIATION.

SENATOR MCGINNESS SECONDED THE MOTION.

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

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CHAIR AMODEI:

Senate Bill 15 deals with enabling global commissions and city councils to send zoning enforcement people to Peace Officers' Standards and Training (P.O.S.T.) for P.O.S.T. certification. I want to call it up in work session to see if anybody on the Committee has any thoughts regarding it.

SENATE BILL 15: Provides that certain governmental employees who enforce local ordinances may be designated as peace officers. (BDR 23-254)

CHAIR AMODEI:

Hearing none, we will skip over it.

Senate Bill 36 concerns county commissioners' longevity pay compensation to justices of the peace.

SENATE BILL 36: Authorizes the board of county commissioners to include longevity pay in the compensation of justices of the peace. (BDR 1-269)

MS. EISSMANN:

A couple of amendments were submitted. One from Judge William G. Rogers, Dayton Township Justice Court, Lyon County, suggested changing "may" to "shall" on page 2, line 18; Sabra Smith-Newby from Clark County also suggested an amendment which you will find on page 48 of Exhibit D. There was no opposition to the bill.

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS S.B. 36 WITH THE PROPOSED AMENDMENT FROM CLARK COUNTY.

SENATOR NOLAN SECONDED THE MOTION.

THE MOTION FAILED. (SENATORS CARE AND HORSFORD VOTED NO. SENATOR WASHINGTON WAS ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

We will open the hearing on S.B. 37.

**SENATE BILL 37**: Makes various changes to provisions governing the testimony and evidence of a witness who is granted immunity in a criminal proceeding. (BDR 14-278)

Ms. EISSMANN:

This bill covering testimony about transactional immunity and use immunity is summarized in the work session document, [Exhibit D](#).

CHAIR AMODEI:

Plan on bringing S.B. 37 up in the next work session.

SENATOR NOLAN:

The only proponent for S.B. 37 was Gary Woodbury, the district attorney from Elko County. It was an issue pertaining to one particular case with testimony in regard to use or transactional immunity on the books for 40 years. The rest of the testimony said the bill would be more problematic than helpful; I do not see the purpose in carrying this bill over and stacking up another work session.

CHAIR AMODEI:

We will roll it to the next time and go to S.B. 66.

**SENATE BILL 66**: Increases the amount of damages that may be awarded in certain tort actions brought against a governmental entity or its officers or employees. (BDR 3-120)

SENATOR CARE:

The thrust of my presentation was the \$50,000 figure around for 28 years and it was time, as a matter of equity, to raise it. If the figure was adjusted for inflation, it would be about \$138,000. I came up with \$100,000. The reality is if the Legislature enacts S.B. 66 and the Governor signs it for effectivity in October of this year, the figure will probably not change for a number of years.

I had a number of people come to discuss possible amendments ([Exhibit D](#)). In the end, I decided it ought to be an up or down vote on the \$50,000 as opposed to \$100,000.

SENATOR NOLAN:

We all understand the tightrope we walk on this particular issue. In fairness, an individual should have the opportunity to recover a more equitable amount than what we are looking at here. On the other hand, with our statutes the way they are and the ability to stack different policies, it has the potential of creating a significant hardship on municipalities.

My proposed amendment creates a dual standard in the statutes wherein individuals have the opportunity to increase the limit to \$100,000 on non-stacking events and \$50,000 on stackable events. I thought that was a step in the right direction, but if the sponsor is not willing to accept that amendment, I will reconsider how I am going to vote.

SENATOR MCGINNESS:

I appreciate Senator Care's sponsorship of this bill. The inflation and amount he has brought forward is probably not excessive. Some of the counties I represent are truly on the edge. Even a single action without stacking would probably cause significant economic harm and financial hardship. Unfortunately, I have to oppose this bill.

SENATOR CARE MOVED TO DO PASS S.B. 66.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS MCGINNESS AND WASHINGTON VOTED NO.)

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CHAIR AMODEI:

Senate Bill 70 is next.

**SENATE BILL 70**: Enacts the Uniform Prudent Management of Institutional Funds Act. (BDR 13-970)

SENATOR CARE:

There was no opposition to this act ([Exhibit D](#)).

SENATOR CARE MOVED TO DO PASS S.B. 70.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR AMODEI:  
Senate Bill 72 is next.

**SENATE BILL 72**: Adopts the Uniform Limited Partnership Act (2001) and provides for its applicability on a voluntary basis. (BDR 7-720)

SENATOR CARE:

This is the 2001 version of the Uniform Limited Partnership Act (ULPA). Concerns were raised by Pat Cashill of the Nevada Trial Lawyers Association (NTLA) with sections 66 and 69. I have spoken with Mr. Cashill. Section 66 corresponds with section 303 of the ULPA. He had concerns about general partners or any partner being held liable in case of misconduct and maybe debts for the obligations of the partnership. I will read the drafter's comments on section 66 into the record:

The shield established by this section protects only against liability for the limited partnership's obligations and only to the extent that the limited partner is claimed to be liable on account of being a limited partner. Thus, a person that is both a general and limited partner will be liable as a general partner for the limited partnership's obligations. Moreover, this section does not prevent a limited partner from being liable as a result of the limited partner's own conduct and is therefore inapplicable when a third party asserts that a limited partner's own wrongful conduct has injured the third party.

I read those comments to help set a record for purposes of legislative intent.

I pointed out to Mr. Cashill that section 69 is almost word-for-word as NRS 88.435, subsections 1 and 2. Senate Bill 72 adds another subsection which attempts to comply in good faith with subsection 1.

I have promised Mr. Cashill—who along with NTLA would like to see that subsection of section 69 deleted—I do not want to do that today. I will put this on the record: I cannot say I am agreeable to that. I have to call the home office in Chicago of the National Conference of Commissioners on Uniform State Laws and find out if they are agreeable. I will move to do pass with the understanding I am working with Mr. Cashill about a possible floor amendment related to section 69, subsection 3.

CHAIR AMODEI:

We have received a letter with yesterday's date ([Exhibit E](#)) from Scott W. Anderson in Secretary of State Ross Miller's office with proposed amendments. Have you had a chance to read it?

SENATOR CARE:

I have, and I have no objection to those amendments. They conform with much of the practices of the Office of the Secretary of State.

CHAIR AMODEI:

Do you want to continue exploring Mr. Cashill's concerns and inform the Committee if those discussions necessitate bringing a floor amendment?

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 72 WITH THE AMENDMENTS SUBMITTED BY THE SECRETARY OF STATE'S OFFICE.

SENATOR MCGINNESS SECONDED THE MOTION.

MR. WILKINSON:

Robert Kim of the Business Law Section of the State Bar of Nevada proposed an amendment to clarify the applicability of the new act versus the old act ([Exhibit D](#)). We are trying to arrive at the proper language for a technical amendment stating applicability to new acts, old acts, new limited partnerships and existing partnerships.

SENATOR CARE:

I can handle the technical amendment on the Senate Floor.

CHAIR AMODEI:

Mr. Kim is a member of Kummer Kaempfer Bonner Renshaw and Ferrario, a firm I am employed by which does business with Senator Wiener. We both did disclosures at the hearing on S.B. 72, and I want these disclosures incorporated in the minutes of this work session. We both disclosed Mr. Kim's involvement as a member of the Business Law Section; no commitment in a private capacity applied to either member of this Committee, and neither member had a pecuniary interest in passage or failure of S.B. 72 by virtue of that employment or business relationship.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR AMODEI:

The meeting is adjourned at 10:09 a. m.

RESPECTFULLY SUBMITTED:

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Lora Nay,  
Committee Secretary

APPROVED BY:

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Senator Mark E. Amodei, Chair

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