

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

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

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:34 a.m. on Monday, February 26, 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
Gale Maynard, Committee Secretary

OTHERS PRESENT:

Frank W. Daykin, National Conference of Commissioners on Uniform State Laws
Sabra Smith-Newby, Clark County
Patrick G. Foley, Chief Deputy Treasurer, Office of the State Treasurer
Raymond J. Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department
Timothy Kuzanek, Lieutenant, Washoe County Sheriff's Office
Jason M. Frierson, Office of the Public Defender, Clark County
Kristin L. Erickson, Chief Deputy, Washoe County District Attorney's Office;
Nevada District Attorneys Association
Joseph Turco, American Civil Liberties Union of Nevada

CHAIR AMODEI:

We call this meeting of the Senate Committee on Judiciary to order and start with Senate Bill (S.B.) 103.

SENATE BILL 103: Adopts the Uniform Unclaimed Property Act. (BDR 10-718)

SENATOR TERRY CARE (Clark County Senatorial District No. 7):

Frank W. Daykin, former Director of the Legislative Counsel Bureau, is with me today. The bill presented before the Committee has amendments to the Uniform Unclaimed Property Act. Nevada is one of a few states that adopted the earlier version of this Act. These amendments were brought about by the conference of 1995 and will replace much of the existing law.

Unclaimed properties are tangible and intangible and may include cash, items in a safe deposit box, refunds, stocks or payments due under an annuity. No one may know where the owner is. What this bill does, and the prior Act did, was, following a period of abandonment and with evidence of intent to relinquish title to the property, the holder would be required, after the period of abandonment, to transfer the property to the state as custodian. The state takes the property and maintains a fund to pay owners if they reclaim the property within a certain time. There is a claims procedure within this Act as well.

An update is needed to address jurisdictional issues where a holder may be in one state and the owner is living in another. This clarifies that situation.

The amendments are intended to conform to case law regarding unclaimed property. It revises time periods for specific property.

FRANK W. DAYKIN (National Conference of Commissioners on Uniform State Laws):

Senator Care expressed clearly the purpose of this bill as does the Legislative Counsel's Digest.

SENATOR CARE:

I worked with the Office of the State Treasurer on this bill and offered some amendments. The National Conference of Commissioners on Uniform State Laws agreed with 95 percent of the amendments and needs to prepare some language. The bankers may speak on this bill today. The bill contains dormancy charges the custodian may charge.

This bill needs a two-thirds majority vote due to three sections in the bill and may require a fiscal note. It may be because additional monies coming to the state are not from fees or taxes but from unclaimed property.

MR. DAYKIN:

Senator Care is correct in his understanding of the bill, but the difference in this could result in a dollar or two less to the state. Therefore, as a matter of caution, the fiscal note is in.

CHAIR AMODEI:

My intention in dealing with bills coming before this Committee is to get the policy correct. If there are financial considerations, the Governor's statement will not be a reason to short stop legislation due to a fee or fiscal note. We are not going to process or not process a bill based on the Governor's statement of "no new taxes."

SABRA SMITH-NEWBY (Clark County):

Clark County is neutral on S.B. 103, but we did want to clarify one aspect dealing with the Clark County Department of Aviation. Each year, thousands of items are left unclaimed and kept at our various airports for some time. Those items are not necessarily under this Act and we will not have to send them to the state for disposal.

SENATOR CARE:

In section 5, property means tangible property as described in that section.

CHAIR AMODEI:

What are you doing with the property?

MS. SMITH-NEWBY:

These items are kept in lost and found for a period of time. There is a contact number at the airport if someone would like to claim property.

CHAIR AMODEI:

Items of value, are they auctioned off?

MS. SMITH-NEWBY:

I am not sure what happens to those items. There was an article in the paper to that effect.

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PATRICK G. FOLEY (Chief Deputy Treasurer, Office of the State Treasurer):
With me today is Jim Burke, Deputy of Unclaimed Property, Office of the State Treasurer. We have been working with Senator Care regarding the issues ([Exhibit C](#), original is on file in the Research Library). We support this bill.

CHAIR AMODEI:
Senator Care, you mentioned working on language for S.B. 103.

SENATOR CARE:
Yes. The Treasurer's Office submitted proposed amendments.

CHAIR AMODEI:
If there are no further comments, we will close the hearing on S.B. 103 and open hearing on Senate Bill 93.

SENATE BILL 93: Revises the provisions governing the crime of grand larceny of a motor vehicle and an offense involving a stolen vehicle. (BDR 15-697)

RAYMOND J. FLYNN (Assistant Sheriff, Las Vegas Metropolitan Police Department):
Senate Bill 93 targets repeat offenders of auto theft, specifically professional auto thieves having previous convictions for this crime or related offenses. Nevada has seen an increase in auto thefts. Thefts have put Clark County in the No. 3 position in the nation. Increases from 2002 through 2003 rose 21 percent; 2003 to 2004 increased 8 percent and 2004 through 2005 to 22 percent.

Several factors may account for the increase, but persons with multiple auto-theft convictions receive probation or suspended sentences under the current law. For example, from June through December 2005, 160 people tracked were arrested for auto-theft related crimes. All had two or more arrests related to auto theft. Of the 160 persons arrested, 25 had convictions for auto theft and 20 for other related offenses.

After receiving multiple convictions, these offenders return to the community. Their crimes result in increased rates for insurers, monetary losses for victims and police hours.

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

We support this bill. In the unincorporated portion of Washoe County, we have not seen dramatic increases as experienced in southern portions of Nevada. It is a problem, and repeat offenders are of concern.

CHAIR AMODEI:

When an offender repeats, do they receive incarceration? There is a fiscal note and I want to get a handle on how many will be imprisoned if this legislation is passed.

MR. FLYNN:

Those that would be imprisoned would come from the 160 we track each year.

CHAIR AMODEI:

Is it possible to coordinate with a representative from the Division of Parole and Probation, Department of Public Safety to get input?

MR. FLYNN:

Yes.

JASON M. FRIERSON (Office of the Public Defender, Clark County):

We are in opposition to S.B. 93 and understand the difficulty dealing with auto thefts, particularly in Clark County. However, this bill proposes to take discretion out of the hands of judges. The courts send repeat offenders to prison; this is not a clear-cut issue. There are circumstances the district attorney and the State deal with after an arrest. There are difficulties with witnesses and victims and proving an individual stole a vehicle as opposed to possession. Allowing courts discretion to deal with those cases is what we do under the current statute. Often, the vehicle-theft issue is related to drugs, particularly methamphetamines.

Often, a vehicle is given to a drug dealer or "a crack rental" for drugs. In those cases, courts need discretion to deal with the situation. There are a number of cases where the defendant did not steal a vehicle; they may be mentally ill or homeless and enter what they consider an abandoned vehicle. The vehicle may have been reported stolen and they are arrested for possession of a stolen vehicle. These are not individuals we want taking prison space; it is in these circumstances that we need to allow courts discretion.

There are individuals who need to be dealt with severely. The homeless and mentally ill are not necessarily dangerous. When they are, the courts consider circumstances and resolve the matter in a way that does not add to prison population.

CHAIR AMODEI:

Do you have any suggested language? Are there other things to consider? You will not be released on probation or granted suspension of your sentence unless special findings are made. I do not know if that is in any of the criminal statutes. It will be fine to carve something out that was not described in the bill. If there is an appetite to find language which expresses special circumstances, I am not opposed. How does the Committee feel?

SENATOR MCGINNESS:

Are there circumstances where burglars offend on a regular basis? Are there certain crimes people repeat over again?

MR. FLYNN:

Our auto-theft detectives report repeat offending occurs in this situation. We do not know if people view stealing vehicles as less serious than breaking into homes; we have not been approached by our detectives to strengthen the burglary statutes for repeat burglary offenders. Last year, there were nearly 20,000 cars stolen. We know this bill is not targeting joy riding by young adults or the homeless issue. This bill specifically deals with professional auto thieves who take advantage of the system.

CHAIR AMODEI:

Did you say Las Vegas ranks third in the nation for auto theft?

MR. FLYNN:

No. The State of Nevada is ranked third in the nation for auto theft.

KRISTIN L. ERICKSON (Chief Deputy, Washoe County District Attorney's Office;
Nevada District Attorneys Association):

The Nevada District Attorneys Association recognizes this growing problem and supports this bill. In response to questions about burglary with enhancement, there is no probation on a second-offense burglary conviction. The district attorney renders discretion in charging a prior burglary. There are times we

cannot get the prior conviction for a burglary and it goes down as a first-time conviction.

There is discretion to charge a person with grand larceny of a motor vehicle or to charge an unlawful taking of a motor vehicle, which is a gross misdemeanor, or dismissal.

SENATOR NOLAN:

Do drug-related, repeat offenders become more violent when stealing cars? Are there situations where they are getting cars on the street or does it turn into carjacking?

MR. FLYNN:

If the offense is carjacking, it will go as robbery.

SENATOR CARE:

Are there other jurisdictions that have a statute similar to what we are asked to adopt? Does a first-time offender do jail time? It seems that if the first offender did time, they might use caution. Have many been granted probation where it is not a concern? In section 1 of this bill is grand larceny; section 2 says conviction of an offense involving a stolen vehicle. In both sections for a second offense, it says "or another crime involving the theft of a motor vehicle." Does this include chop shops, altering a stolen car or unlawful transfer of a stolen car? In other words, it does not have to be two acts of grand larceny. It can be grand larceny in the first case and the second case can be any offense related to possession of a stolen vehicle. Is my reading of the bill correct?

MR. FLYNN:

I am sure there are cases, but we are unaware through the last year of research of anyone convicted of grand theft auto receiving prison time. This language would allow us to go after chop shops for possession of a stolen vehicle.

MR. FRIERSON:

I am unaware of any other state that would automatically send stolen vehicle offenders to prison. There are statistics of cases referred to the district attorney and how many of those are processed. Clients have received prison time for first offenses. Receiving prison time for a first offense depends on whether there are other felony convictions. If a defendant has a felony conviction for battery with substantial bodily harm, and three years later they are picked up for

grand larceny auto, they are more likely to receive time. This is across-the-board in most felony cases. I am concerned our statistics are skewed because Clark County prosecutes a greater percentage of cases referred from the Las Vegas Metropolitan Police Department. While it is a growing problem, I do not know if the numbers for Nevada take into account the higher prosecution rate of cases sent to the district attorney's office.

Senator Care raised a question about offenses relating to vehicle theft. You can have a prior conviction for grand larceny or possession of a stolen vehicle and because of the difficulty of proof, it is resolved. Sometimes clients have prior records, and we do not want to expose them to a worse outcome, therefore cases are resolved. If there is a possession of stolen vehicle larceny case and it is resolved with a lesser charge, it could count against the client. We do not condone stealing, but we want to focus efforts in filling prison space with people who are an actual danger to the community. Currently, the courts are able to exercise discretion.

CHAIR AMODEI:

Ms. Eissmann, will you contact Parole and Probation to acquire more information on this subject? We also need input from insurance agencies on the effects rates have based on stolen vehicles.

JOSEPH TURCO (American Civil Liberties Union of Nevada):

This bill promotes another reason to imprison people. This is a non-violent and non-intent crime causing overcrowding in prisons; therefore, we are opposed to this bill. We can either take dangerous criminals off the streets or continue a growing trend and enhance jail time for auto theft. The American Civil Liberties Union would like to be involved in the developing process of this bill.

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CHAIR AMODEI:

We close the hearing on S.B. 93. Seeing no other business to come before the Committee, we are adjourned at 10:10 a.m.

RESPECTFULLY SUBMITTED:

Gale Maynard,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____