

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
March 20, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:12 a.m. on Tuesday, March 20, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Dennis Nolan (Excused)

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Arnie Adamsen
Douglas C. Crawford
Sheila Jones
Collette Putnam
Brad Taylor
Beatrice Dyess
Alfreda Irungaray

Senate Committee on Judiciary
March 20, 2007
Page 2

Patricia Frontera
Carol Taulker
Ann Price McCarthy, Nevada Trial Lawyers Association
Trudie Kibala
Paul Kibala
Victoria Ward
Carlos Ledon
Caryn Sternlicht, Washoe Legal Services
Julianna Ormsby, Nevada Women's Lobby
Pamela G. Roberts, Nevada Women's Lobby
Jan Gilbert, Progressive Leadership Alliance of Nevada
Keith Mull
Robin L. Sweet, Deputy Director, Planning and Analysis and Court Services,
Office of Court Administrator, Nevada Supreme Court
P. K. O'Neill, Chief, Records and Technology Division, Central Repository for
Nevada Records of Criminal History, Department of Public Safety

CHAIR AMODEL:

We will open with the continuation on the hearing for Senate Bill (S.B.) 204.

SENATE BILL 204: Revises provisions governing the granting of the right to visit
a child to grandparents and great-grandparents of the child. (BDR 11-806)

ARNIE ADAMSEN:

I support S.B. 204 with the caveat the bill be strengthened. For millions of children across the United States, there is not enough foster care. As a grandparent, I feel it is in the State's interest to consider custodial care under the standard of the best interest of the child. The law needs to include custodial care with rights and privileges nonfunctional parents currently enjoy. Grandparents are an asset to be treasured and given due consideration by the State of Nevada.

DOUGLAS C. CRAWFORD:

I am a family law attorney in Las Vegas and an advocate of natural parental rights. Recent societal changes mandate the law be changed to include custodial rights as well as visitation rights.

A gap exists in the custody statute as written. *Nevada Revised Statute* (NRS) 125.480 sets forth preferences for child custody. Notably absent are

grandparents who should be included for situations arising when the natural mother and father are unable to care for natural children. Grandparents are stepping into this role and providing care. I had cases where grandparents cared for grandchildren for years. If a natural parent steps back into the picture, they are given preference.

We need to amend NRS 125.480 by adding a paragraph stating grandparents who have been caring for children be given a statutory preference. This preference could be rebutted by evidence if the natural parent can show it is in the child's best interest to be with them.

SENATOR CARE:

Are you proposing an amendment to the bill? You are not necessarily testifying that a grandparent who has been denied visits may petition the court for visitation, is that correct?

MR. CRAWFORD:

Although I support that provision, I also support an amendment that strengthens S.B. 204 by adding provisions giving grandparents who care for children a preference for primary physical custody.

SHEILA JONES:

I am a grandparent. Eight months ago I lost my daughter to a tragic accident; and upon that happening, my eyes have been enlightened. I have provided you with documentation and my testimony on S.B. 204 ([Exhibit C](#)).

COLLETTE PUTNAM:

I am a private investigator. I have been involved with grandparents of missing children. Grandparents have responsibility and accountability with no authority. They cannot get treatment for grandchildren because they do not have consents giving them permission.

I am also a grandparent with a missing grandchild. Arizona did not file the proper paperwork. Daniel was being fed four ounces of formula once a day. Due to our involvement, Child Protective Services (CPS) took custody of Daniel. The parents picked him up from the foster care shelter and nobody knows his whereabouts. My husband and I went through foster care kinship training and modified our home. All the state can say is, "I am really sorry. I am sure he will

be back.” There were no rights for me as a grandparent. This bill needs to be strengthened for grandparents providing custodial care.

BRAD TAYLOR:

The language in S.B. 204 should not be changed. Intact families need protection. The requested changes open the door for additional requests in further legislative sessions. Intact families remain the final decision makers and retain the right to make decisions in the best interest of their children. Passing this bill can create an enormous financial burden on parents.

In 2001, I faced a situation with a child from a previous marriage. It cost me \$10,000 to begin representation for my wife and I. Serious consideration should be taken before S.B. 204 is passed, and its language should not be changed.

BEATRICE DYESS:

I am a grandparent. For 20 years, I have been frustrated with my daughter's children in and out of my home, trying to provide for them on a single parent's income and not getting assistance from the state, the welfare system or any agencies due to the custody issue. Recently, I got temporary guardianship of my 15-year-old granddaughter. I proceeded with that process as a result of not getting financial aid or food stamps. It causes children to go back out on the street, live in cars, motels and harm's way. They end up on drugs, repeating the same offense, going through the same dilemmas as their parents. There needs to be stricter laws. Even now, I am involved in a situation with my youngest son. His child was taken out of state. He was left in the custody of the daughter's mother. Some years ago, I tried to pursue visitation rights which have been consistently denied by the other grandmother. She has removed him out of state to prevent my son, my other children and me from seeing my grandson.

There has been no assistance. I cannot afford an attorney. I do not have money to contact the legal system to pay money to hire an investigator to find that child. Everyone is hurt as a result. The child is not able to bond. He knows one side of the family. Whatever you do, strengthen rights of grandparents to visit grandchildren. I am not seeking custody from the other grandparent. I have a right, and my other children and family members have a right, to visit that child. I do not have a criminal record. We live an upright life, are citizens of this state and to be denied that is a great injustice. I am all for whatever can be done to increase the rights of grandparents.

ALFREDA IRUNGARAY:

I have a two-year-old grandson who has lived with me since he was born because his mother was on drugs and his father is in jail. When we go to court, the judges keep giving the parents more chances, but they are still on drugs. I do not have any rights as a grandparent. The system should change to give grandparents rights so our grandchildren will have better lives.

PATRICIA FRONTERA:

Grandparents should have more control. I have raised my grandson for seven years, even though my daughter lives with me. I am not recognized as a legal guardian so I cannot take my grandson to medical appointments and make decisions for his care without contacting his mother. Grandparents should have as much rights as the parents, especially when they are living together. My daughter threatens to take him and live in the car if I do not like her rules.

CAROL TAULKER:

Two great-grandsons live with me because their parents are on drugs. I went through CPS and established kinship, retired early and was receiving compensation for their care. After being on the street for two years, my granddaughter decided to straighten out her life. Though I had no say, two judges granted her house arrest at my home so she could bond with her sons. Welfare immediately reduced benefits. We have been working to reestablish benefits, which has been difficult. My granddaughter got a minimum wage, part-time job and attends drug meetings every week, but she is getting discouraged because she has to pay for child support and her house arrest. Something has to be done to help grandparents take care of their grandchildren.

CHAIR AMODEI:

The Committee has received a letter from Frances Doherty, District Judge, Department 12, Second Judicial District, dated March 20 ([Exhibit D](#)). We also have letters from John Goodwill ([Exhibit E](#)), Trudie Kibala ([Exhibit F](#)), Victoria Ward ([Exhibit G](#)), Frank Kibala ([Exhibit H](#)), Paul Kibala ([Exhibit I](#)) and Carlos Ledon ([Exhibit J](#)). Those letters shall be made part of the record for this legislative day for this hearing.

ANN PRICE MCCARTHY (Nevada Trial Lawyers Association):

I am a sole practitioner in Carson City. I practice primarily in the area of family law and am sensitive to the issues presented by grandparents caring for their grandchildren. I respectfully disagree with Mr. Crawford. Grandparents are

protected under NRS 125.480, subsection 3, paragraph (c). Grandparents and great-grandparents are within the third degree of consanguinity. When parents are unfit to care for their children, grandparents are next in line.

Most of the testimony heard this morning did not address the provisions of S.B. 204. This bill's proposals are unconstitutional; *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054 (2000), a U.S. Supreme Court case, is still the law. Nevada made sure our laws are constitutional by modifying NRS 125C.050 to fit within the guidelines of that case. There has been no constitutional challenge.

Intact families have a constitutional right to decide with whom and under what circumstances their children will associate. If you were to change that, you would increase the burden on the courts exponentially. You would increase the financial burden on intact families who are already struggling to an extent where they could not afford to go to court.

Not only would you increase the caseload and overburden district courts, but every case decided under an unconstitutional law would be appealed to the Nevada Supreme Court which is struggling with its caseload. Other states are now struggling to pass provisions allowing grandparent visitation for intact families no matter what the objection.

Grandparents have rights to custody when parents are unfit. There is an efficient way for grandparents to have temporary guardianship without an attorney. It is a simple form called a temporary guardianship. Parents can sign and revoke it at any time without court approval. It does not cost anything.

Grandparents seeking custody of their grandchildren or who want to talk about visitation are in my office many times a month. It is within the statute as written because the family is not intact; they already have the right to visitation.

SENATOR CARE:

A grandparent would simply have to be denied visitation, not unreasonably denied visitation, just denied visitation. Do you read it that way?

Ms. MCCARTHY:

Yes, I did read the language that way.

SENATOR CARE:

A grandparent denied visitation has a burden because there is a rebuttable presumption. The standard is to demonstrate by clear and convincing evidence that it is in the best interest of the child to grant visitation for this grandparent. How does a grandparent meet that burden under existing law? How would a court apply that standard assuming this bill would pass?

Ms. MCCARTHY:

The standard is supposed to be tough. In Washington State, the grandparents of a child had their son living with them who had custody of his daughter. The son died. The grandparents raised the child and had been in loco parentis while the son was living with them. The mother took custody of the child and denied visitation to the grandparents. This case went to the U.S. Supreme Court which said parents, even single parents, get to decide with whom their child should associate. If the child has a provable relationship with grandparents, then visitation should be allowed because it is in the best interest of the child. Grandparents have to show the child is going to be harmed if their established relationship is not allowed to continue.

Grandparents and extended families are vital, especially in this day and age. Are we going to change our law to have an intact family affected when they have made a joint decision to allow or not allow visitation? I say no, we cannot legislate how families get along.

TRUDIE KIBALA:

I oppose S.B. 204 and you have my statement as [Exhibit F](#). My brother, John Goodwill, submitted a similar statement as [Exhibit E](#).

PAUL KIBALA:

You have received my written testimony as [Exhibit I](#). My father, Frank Kibala, has also submitted a letter on our behalf, [Exhibit H](#).

If this law is passed, my life will be irreparably damaged. You are making decisions affecting loving parents by assuming we do not know what is in the

best interest of our children. This bill is supported by my in-laws with whom we have a family dispute. We feel our nuclear family is being attacked. Nobody in their right mind would deny visitation unless there was a reason.

VICTORIA WARD:

You have my written statement, [Exhibit G](#). I have a handwritten letter from my mother, Olive Pursel, ([Exhibit K](#)) which I will read into the record.

CARLOS LEDON:

You have my statement, [Exhibit J](#), opposing S.B. 204. The circumstances explained in the bill opens the door for allowing ill-intentioned grandparents to force their ways, preferences and ideals on a family trying to do their best raising their children. Grandparents' rights should be protected, but the primary focus should be the best interest of the children, and competent parents should be the decision makers.

CARYN STERNLICHT (Washoe Legal Services):

I am an attorney at Washoe Legal Services and was a family law practitioner for 12 years. I represented many grandparents to establish guardianships or in custody proceedings. I was the attorney who argued *Locklin v. Duka*, 112 Nev. 1489, 929 P.2d, 930 (1996), before the Nevada Supreme Court, a case dealing with the parental preference doctrine.

There is a crisis in the system. The remedy is not S.B. 204. The remedy may be more funds made available for non-needy and needy caretakers in the guardianship system, medical benefits, etc. This is not a bill dealing with custody. This is a proposal dealing with visitation only. Visitation does not equal custody, and they legally are not the same.

One thing made clear in *Granville* and *Locklin* is a constitutional right exists to parent your children. The Nevada Supreme Court said there is a parental preference used in the guardianship statute. Grandparents are legally third parties. When children are removed from the home, social services is mandated to find a placement within the third degree of blood prior to doing a foster placement.

Family members who testified expressed in an emotional level what is a legal issue. Parents, in an intact family, have an absolute right to make decisions they

believe are in the best interest of their children. Notwithstanding the fact it would be more desirable for grandparents to have a relationship is not the legal issue. Desirability is not the issue. When there is an intact family unit and there is communication, this is a nonissue that only comes up when there is dysfunction in the family.

JULIANNA ORMSBY (Nevada Women's Lobby)

I will read my written testimony in opposition to S.B. 204 ([Exhibit L](#)).

PAMELA G. ROBERTS (Nevada Women's Lobby):

Nevada Women's Lobby is opposed to S.B. 204. It will not improve the child welfare system. It will not solve ongoing problems between parents and grandparents. If S.B. 204 passes, the debate between the Freda and Kibala families will be replayed in courtrooms throughout Nevada.

JAN GILBERT (Progressive Leadership Alliance of Nevada):

I ask you to defeat S.B. 204 in the best interest of families and children.

KEITH MULL:

I will read my written testimony ([Exhibit M](#)) in opposition to S.B. 204.

CHAIR AMODEI:

We will close the hearing on S.B. 204. We will open the hearing on S.B. 202.

SENATE BILL 202: Makes various changes relating to domestic relations.
(BDR 11-215)

SENATOR WASHINGTON:

Senate Bill 202 deals with family court issues concerning alimony. In *Buchanan v. Buchanan*, 90 Nev. 209, (1974), mitigating circumstances that should be considered in determining alimony to either party are in section 1, subsection 8, paragraphs (a) through (k).

We can never eliminate the emotional aspect of a divorce, settlement or alimony; this attempts to deal with the emotions of parties.

The second part of S.B. 202 requires the Court Administrator to file a report with the Director of the Legislative Counsel Bureau regarding the number of

temporary protection orders (TPO) and extended orders for protection against domestic violence issued by the clerks of courts.

Senate Bill 202 is an attempt to mitigate emotions and give judges more tools.

ROBIN L. SWEET (Deputy Director, Planning and Analysis and Court Services,
Office of Court Administrator, Nevada Supreme Court)

Senate Bill 202 is similar to Assembly Bill (A.B.) 52 for requirements on reporting TPO information.

[ASSEMBLY BILL 52](#): Makes various changes relating to domestic relations. (BDR 11-421).

We have worked with P. K. O'Neill and the Central Repository for Nevada Records of Criminal History for an amendment to A.B. 52 and offer it to this Committee. It proposes similar reporting requirements but is directed out of the Criminal History Repository which maintains most of that information.

P. K. O'NEILL (Chief, Records and Technology Division, Central Repository for Nevada Records of Criminal History, Department of Public Safety):

There are similarities between the two bills, and we can come to an agreement on who reports. We capture most of the domestic violence information already.

MS. MCCARTHY:

On behalf of the Nevada Trial Lawyers Association, the family law lawyers are not in opposition to this bill. We have been dealing with the *Buchanan* and *Sprenger v. Sprenger*, 110 Nev. 855, (1994), factors for years. We would love to have this Committee frame the argument in terms of whether we are a need-based alimony state or a lifestyle-based alimony state. Judges are left with discretion.

MR. O'NEILL:

Amendments can improve the overall system. We capture most of this information and include it in our Uniform Crime Reporting Program book that comes out July 1 each year.

SENATOR CARE:

You made reference to the court's discretion. In the proposed section 8 where there is a listing of the factors, the first five come from *Buchanan* and the others come from subsequent case law. Under existing case law, the court "shall" consider these factors listed, not "may"?

Ms. MCCARTHY:

The Nevada Supreme Court made it clear they are not taking away court discretion, and the courts can consider anything they want, but these factors ought to be considered. It is pretty much "shall," but it does not mean the court has to decide on those factors and not look at other considerations.

SENATOR CARE:

Do the courts have to give weight to one factor more than another? Are the ten factors on the list given equal weight or, in some cases, is one factor given much more than another? Would that be in the court's discretion? The judge "shall" consider, but how they are considered is left to the judge.

Ms. MCCARTHY:

In a previous Legislative Session, many organizations came and asked you to put a formula in place with these factors, which still left discretion with the court. We debated endlessly in committee about which factors are more important than others and how we could come up with a mathematical calculation that weighs them appropriately. It was defeated. The same factors in place at the Nevada Supreme Court were not given weight by the court. Whether any one district court judge in this state chooses to weight one more than the other is part of who they are as a judge and what they bring to the bench.

Ms. STERNLICHT:

I support everything Ms. Price McCarthy said. Codifying those factors in *Buchanan* and *Sprenger* will be an important first step.

Senate Committee on Judiciary
March 20, 2007
Page 12

CHAIR AMODEI:

We will close the hearing on S.B. 202. We are adjourned at 10:50 a.m.

RESPECTFULLY SUBMITTED:

Lora Nay,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____