

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
March 22, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:26 a.m. on Thursday, March 22, 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

CHAIR AMODEI:

We call this meeting of the Senate Judiciary Committee to order. The first bill in the work session is Senate Bill (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):

Written proposed amendments are on page 1b of the Work Session, Senate Judiciary, March 22, 2007 handout ([Exhibit C](#), original is on file in the Research Library). There is a proposed Amendment 3310 to S.B. 14 prepared by Legal Division in [Exhibit C](#), pages 1 through 5.

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CHAIR AMODEI:

The Dakota County, Minnesota, proposal requires you to see the county attorney.

Ms. EISSMANN:

Page 6 of the work session document is a summary of their program. A district attorney would schedule and make contact instead of a juvenile probation officer.

CHAIR AMODEI:

Parents are responsible for attending class with the student; if they fail, it goes to juvenile court?

Ms. EISSMANN:

This is my understanding.

SENATOR MCGINNESS:

We are trying to keep this bill simple by putting in graduated citations. On the fourth offense, the judges have a broader choice of sentencing. There is a proposed amendment by the Washoe County District Health Department ([Exhibit D](#)). Their proposal brings a new dimension to the bill.

I have concerns, although all of the programs are great. The proposed amendments drafted by Legal will accomplish what we want.

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 14 WITH THE MOCK-UP AMENDMENTS IN [EXHIBIT C](#).

SENATOR CARE SECONDED THE MOTION.

CHAIR AMODEI:

I am not sure of the best solution. There are concerns from juvenile probation officers and health care communities. Is there any other discussion on the motion?

THE MOTION CARRIED. (SENATOR HORSFORD VOTED NO. SENATORS NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

The next bill in the work session is 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:

Operational capacity of city or county jails was an issue, and we have proposed amendments. Version 1 and Version 2 contained in [Exhibit C](#), pages 8 through 11, that define operational capacity are the amendments being considered today.

CHAIR AMODEI:

We cannot vote on this as it stands. We will suspend voting on S.B. 30 and move to S.B. 33.

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)

SENATOR HORSFORD:

I tried to ascertain the intent of providing the Division of Parole and Probation of the Department of Public Safety access to monitor individuals. Money is necessary to do the job. Presently, they do not have the tools necessary to access gated communities like other departments. I support Parole and Probation having access to tools like other law enforcement departments instead of what is proposed ([Exhibit C](#), pages 12–17).

I spoke with some representatives of homeowners associations and they continue to say that the financial burden should not be placed on them or property managers but to those who are under supervision. There is a fiscal note if we go in that direction.

CHAIR AMODEI:

We spent a lot of time on this issue. Mr. Wilkinson, is there an alternative amendment for the bill?

BRAD WILKINSON (Chief Deputy Legislative Counsel):

An alternative is to amend the bill to provide for an appropriation.

CHAIR AMODEI:

Let us amend the bill to provide for appropriation. Is there a motion for this bill to provide parole and probation funds for devices that other law enforcement departments have to operate?

SENATOR HORSFORD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 33 TO PROVIDE APPROPRIATION.

SENATOR CARE SECONDED THE MOTION.

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

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CHAIR AMODEI:

We will move on to S.B. 36 dealing with longevity pay.

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:

Two amendments were proposed on page 18 of [Exhibit C](#). A motion to amend and do pass was made, but we were short one member to pass the amendment.

CHAIR AMODEI:

What is the pleasure of the Committee on this bill? Seeing no comments, we will move on to S.B. 45 dealing with administrative assessments for driving under the influence.

SENATE BILL 45: Provides for the imposition of an administrative assessment on a person convicted of driving while under the influence of intoxicating liquor or a controlled substance. (BDR 14-672)

We had this bill and Senator Joseph J. Heck's bill in the Committee on Transportation and Homeland Security along with other justices. We need to know where we stand with assessments and fees ([Exhibit C](#), pages 21–30).

We have heard testimony that administrative assessments fund many programs. The issue before the Committee is what to do with overall administrative assessments and fees? This bill may be the vehicle, but it has fiscal implications. We have an obligation to bring this matter to the Senate Floor. The Committee's obligation will go deeper than this bill.

SENATOR WASHINGTON:

I understand the issue of administrative fees and assessments. The issue needs to move forward. We need to decide whether to continue our practices or fund this through the General Fund.

I suggest we pass the bill the way it stands and let it be debated on the Senate Floor.

CHAIR AMODEI:

Senate Bill 45 should be amended before we can debate. We need to find out where administrative assessments are going. Is this correct, Mr. Wilkinson? The record will reflect an affirmative response from Legal.

Based on testimony received by the Committee, we should resolve the nexus issues while processing some portion of the bill.

SENATOR WASHINGTON:

The nexus issue is a problem, and your suggestion is well taken.

CHAIR AMODEI:

If there are no more thoughts from the Committee, we will move to the next bill, S.B. 129.

SENATE BILL 129: Makes various changes to provisions relating to guardianships. (BDR 13-1109)

MS. EISSMANN:

Testimony and amendments are given in Exhibit C, page 31. Ms. Spoon of the Nevada Guardianship Association and Ernest Nielsen of the Washoe County Senior Law Project offered amendments. Pages 32 through 38 contain suggestions made and the agreed upon amendments.

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CHAIR AMODEI:

Where are we with agreements between Ms. Spoon and Mr. Nielsen?

Ms. EISSMANN:

They are in agreement with everything except sections 2, 3 and 4 covered on page 33, [Exhibit C](#). Page 39 provides language from Mr. Nielsen.

SENATOR CARE:

I am comfortable going forward with the bill. I question Mr. Nielsen's proposed amendments to sections 2, 3 and 4 regarding the 3 successive 60-day periods. The circumstances are going to be rare and should be left up to the courts.

CHAIR AMODEI:

What is the pleasure of the Committee on S.B. 129?

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 129 WITH AMENDMENTS, PAGES 31 THROUGH 35 AND PAGE 38, IN [EXHIBIT C](#).

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR AMODEI:

We will open the hearing on S.B. 132 ([Exhibit C](#), pages 41 – 45).

SENATE BILL 132: Makes various changes concerning the liability of trailbuilding organizations and landowners, lessees and occupants of land to persons using premises for recreational activities. (BDR 3-212)

The principals of this bill are in discussions and feel progress is being made. They have requested this bill be moved to our next work session. Another similar bill was referred to the Committee on Human Resources and Education. Senator Washington, do you have any thoughts?

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SENATOR WASHINGTON:

No. I spoke to Senator Care and since both bills are similar, it might be a good idea to put S.B. 195 in this Committee and deal with both at the same time.

CHAIR AMODEI:

Senator Care, any thoughts on this discussion?

SENATOR CARE:

Senator Washington is correct and the issues of liability are similar in both bills. My recommendation would be that both bills end up in one committee for consistency.

CHAIR AMODEI:

Mr. Wilkinson, work with Senator Washington's staff to get this rereferred.

SENATOR WASHINGTON:

I will have my counsel put it on our next work session to be rereferred.

CHAIR AMODEI:

We will put this on our calendar and move to S.B. 131.

SENATE BILL 131: Makes various changes regarding certain court fees charged and collected by county clerks. (BDR 2-385)

Ms. EISSMANN:

This bill will increase fees for improvements to technology used in the office of the county clerk. An amendment is found on page 40 of the work session document ([Exhibit C](#)).

CHAIR AMODEI:

Is this the marriage license fee?

Ms. EISSMANN:

The suggested amendment says "certificate under seal." I am not sure if this is for a marriage license. This was the only fee increasing from \$6 to \$10.

CHAIR AMODEI:

I would like to move this to the next work session for consistency dealing with fees and assessments. Mr. Wilkinson, the issues are administrative assessments, filing fees and their appropriate use. Does there have to be a nexus? When we talk about Senator Washington's bill, we want to make sure we are consistent with the policy regarding filing fees and court costs. If this is satisfactory to the Committee, we will move to S.B. 133. There is a proposed amendment found on pages 47 and 48 of the work session document ([Exhibit C](#)).

SENATE BILL 133: Enacts provisions pertaining to civil actions involving liquefied petroleum gas. (BDR 3-77)

SENATOR MCGINNESS:

The amendment is to eliminate subsection 2?

CHAIR AMODEI:

Yes, subsection 2 of section 1. The amendments will not eliminate definitions in subsection 3 and affirmative defenses found in section, 1 paragraphs (a) and (b).

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 133 BY OMITTING SUBSECTION 2 OF SECTION 1.

SENATOR NOLAN SECONDED THE MOTION.

CHAIR AMODEI:

Is there any discussion on these motions?

SENATOR CARE:

Subsection 2 is not necessary, but the affirmative defense should be available. Do we need a statute to make it available? The arguments on both sides of this bill were briefed. Unfortunately, there are only four statutory defenses. It is a fair question; if we do it for one, are we doing it for all?

I am convinced the affirmative defense exists through common law and other defenses such as plaintiff damages. I oppose the bill.

THE MOTION CARRIED. (SENATORS CARE AND HORSFORD VOTED NO.)

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Ms. EISSMANN:
Mr. Chair are we revisiting S.B. 30?

SENATOR WASHINGTON:
I would like to make a motion if it has not been voted on.

CHAIR AMODEI:
The bill has not been voted on, and there were two potential amendments that we will review briefly.

Ms. EISSMANN:
There are 2 amendments: Version 1 and Version 2 found on pages 8 through 11 in [Exhibit C](#). Version 2 shares a lengthy definition of "operational capacity" and Version 1 is more condensed.

CHAIR AMODEI:
Mr. Wilkinson, there are three choices for the Committee: Use Version 1, Version 2 or no definitions.

MR. WILKINSON:
The first option is not to define "operational capacity." It would have its ordinary meaning similar to the meaning in Version 1 of the amendment.

The next option is Version 1 where the person in charge of the facility would look at the number of prisoners that could be housed in the facility while complying with provisions of the *Nevada Administrative Code* (NAC). Version 1 incorporates that standard into the statutes.

Version 2 provides more detail; it is the maximum number of prisoners, rather than the person in charge, that determines how many are housed. It also has factors for the person in charge to consider including: the design capacity, capacity of double-bunking, current number and classification of the prisoners, current level of staffing and requirements contained in the NAC.

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SENATOR WASHINGTON:

I prefer Version 1, it gives a broader area to work with, still defines operational capacity and meets the intent of this legislation. The second version confines the operators of prisons to follow the detailed list. I will make a motion.

SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 30 WITH VERSION 1 OF THE AMENDMENT.

SENATOR MCGINNESS SECONDED THE MOTION.

CHAIR AMODEI:

Is there any discussion on the motion?

SENATOR HORSFORD:

The limited definition yields latitude on both sides. Keeping inmates in a facility without adequate space is not good. The other side is letting people out who should not be released. My concern with the bill, as currently written, is we are not addressing policy issues for alternative forms of sentencing.

Version 2 provides more context under subsection 7, paragraphs (a) through (e) defining "operational capacity." I will not support the motions but will explore other ways to address alternative forms of incarceration.

SENATOR WIENER:

I spoke with law enforcement representatives from the two large counties and asked for a specific definition of "operational capacity." I am more comfortable with Version 2.

SENATOR CARE:

I will support the motion. You do not need a definition. If this legislation passes, a judge will have to figure out what was meant by operational capacity. Those who argued for this legislation will have to explain. I see problems with both amendments; however, I am prepared to support the motion.

THE MOTION CARRIED. (SENATOR HORSFORD VOTED NO.)

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CHAIR AMODEI:

I would like to reopen S.B. 14 and S.B. 30 for votes. Mr. Wilkinson, how would I do this for Senator Nolan to vote?

MR. WILKINSON:

Committees have recorded the member voting or we could rescind all votes and vote again.

CHAIR AMODEI:

We will show the following motions on S.B 14.

SENATOR MCGINNESS MOVED TO RECONSIDER THE ACTION WHEREBY S.B. 14 WAS AMENDED AND DO PASSED.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 14.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR MCGINNESS MOVED TO RECONSIDER THE ACTION WHEREBY S.B. 30 WAS AMENDED AND DO PASSED.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR HORSFORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 30.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR AMODEI:

If there is no other business to come before this Committee, we are adjourned
at 10:17 a.m.

RESPECTFULLY SUBMITTED:

Gale Maynard,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____