

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fifth Session
February 26, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 9:03 a.m. on Thursday, February 26, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Nicole Bailey, Committee Assistant

OTHERS PRESENT:

Ben Graham, representing the Administrative Office of the Courts, Carson City, Nevada
Julie Butler, Manager, Criminal Justice Records, Records and Technology Division, Department of Public Safety
Kristin Erickson, representing the Nevada District Attorneys Association, Reno, Nevada
John McCormick, Rural Courts Coordinator, Administrative Office of the Courts, Carson City, Nevada
Lee Rowland, American Civil Liberties Union of Nevada, Reno, Nevada
Keith G. Munro, Assistant Attorney General, Office of the Attorney General, Carson City, Nevada
James Earl, Executive Director, Technological Crime Advisory Board, Carson City, Nevada
Dennis Carry, Detective, Crimes Against Children Unit, Washoe County Sheriff's Office, Reno, Nevada

Chairman Anderson:

[Roll Call. Opening remarks on protocol.]

Today we are in work session. Public testimony is not accepted during this time; however, the Chair may call forth those interested individuals who may give clarity to amendments that have been submitted.

Jennifer M. Chisel, Committee Policy Analyst:

You have the work session document in front of you. As part of the Research Division, I can neither advocate for nor against a bill; I just present the information that was provided to the Committee by testimony and amendments. The Committee, then, can discuss that information and vote.

Chairman Anderson:

Ms. Chisel, I neglected a very important issue. Mr. Horne, I believe, from the other committee had an important announcement to make, and there was another procedural question.

Assemblyman Horne:

(Referring to the Assembly Committee on Corrections, Parole, and Probation meeting of this day) I neglected to assign the floor statement for Assembly Bill 35 to a committee member. I need to do that. We also have an amendment, and that will be the privilege of Mr. Segerblom. Mr. Anderson will do the Floor statement for this bill.

Jennifer Chisel:

We can go ahead and start with the first bill on the list?

Chairman Anderson:

Yes, please. Let us take up Assembly Bill 27.

Assembly Bill 27: Clarifies requirements and procedures for obtaining a Nevada identity theft passport. (BDR 15-264)

Jennifer M. Chisel, Committee Policy Analyst:

You will find Assembly Bill 27 in the work session document (Exhibit C). The Committee heard A. B. 27 on Friday, February 20. It was presented by Keith Munro, the Assistant Attorney General, and Heather Procter, Deputy Attorney General. The bill makes revisions to the Attorney General's (AG) identity theft passport program, including changing the name of the program, changing some of the applicant criteria between residents and nonresidents of Nevada, and also changing the agencies that may accept a program application. There were no proposed amendments on this bill, and there was no opposition testimony on this bill.

Chairman Anderson:

There were concerns raised at the time of the hearing, and I believe they have been answered. Mr. McArthur, your concerns have been answered?

Assemblyman McArthur:

Yes, I did not have opposition to the bill. I just had a couple of concerns, and they have been cleared up.

Chairman Anderson:

The Chair had entertained a motion, initially submitted by Ms. Parnell, which was seconded by Mr. Mortenson. Is it the intention of Ms. Parnell and Mr. Mortenson to reaffirm their initial motions?

Assemblywoman Parnell:

Yes, I would be happy to recommend a do pass.

Assemblyman Mortenson:

I would continue to second.

ASSEMBLYWOMAN PARNELL MOVED TO DO PASS
ASSEMBLY BILL 27.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

Assemblyman Gustavson:

I had some concerns on the bill. After talking with Mr. Munro from the AG's office, he cleared that up for me, and I am not as concerned now about a terrorist or somebody else being able to get one of these ID cards. I just wanted to make very sure that there is more of a process to go through to get this ID card than to get a driver's license. My concerns have been met.

THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:

Mr. Kihuen, you will make the Floor statement.

Let us turn to Assembly Bill 63.

[Assembly Bill 63](#): Makes various changes to provisions regarding justice courts.
(BDR 1-398)

Jennifer M. Chisel, Committee Policy Analyst:

[Read from Work Session Document ([Exhibit D](#)).] Assembly Bill 63 was presented by Chief Justice Hardesty and Justice of the Peace Melissa Saragosa. The bill authorizes the appointment of masters to hear certain matters and relieve the caseload in justice courts. It also revises provisions related to referees appointed in justice courts. The referee program is already in place in justice courts; it was just making a couple of amendments.

The Committee has two amendments on this bill to consider. The first came from Ben Graham on behalf of the Administrative Office of the Courts, and it

relates to a portion of his testimony during the hearing. The amendment, on the last page, adds a section to the bill to clarify that under *Nevada Revised Statutes* (NRS) 189.010, decisions made by masters may be appealed in the same manner as decisions by justices of the peace. I believe Mr. Anthony had also pointed out that there may potentially be another section, NRS 177.015, to which the same provision applies.

The amendment also deletes section 2 from the bill related to the justice court referees and revises the effective date. We had a question on this particular amendment, and I am hoping that Mr. Graham could help us clarify this. We wanted to know regarding the deletion of section 2 from the bill, pertaining to the referees, is that to delete just the changes that you had wanted to make to section 2 in the bill, or is it to delete that statute from the NRS?

Ben Graham, representing the Administrative Office of the Courts, Carson City, Nevada:

The intent here was simply to leave existing law in place by removing the language from the bill that was initially introduced.

Chairman Anderson:

The new suggested language change is in section 2, subsection 4 on lines 24-32 only? Is that where it is?

Ben Graham:

I believe so.

Chairman Anderson:

I think that is where it is. If you notice, the stricken language is above that.

Jennifer Chisel:

I believe the language that has been struck from the amendment from Mr. Graham begins on page 2 line 32 of the bill, which is section 2 of the bill, and it goes through line 37 on page 3 of the bill. It deletes section 2 out of the bill entirely. What Mr. Graham is saying, is that NRS 4.355, which is in section 2 of the bill, is existing law. The Administrative Office of the Courts had proposed some amendments within the bill, and what they want to do, now, is keep the existing law, not propose the changes that they had made in section 2. The section needs to be deleted out of the bill, because there are no changes that they want to make to it.

Ben Graham:

That is correct. I want to apologize to the people who have been here for a little while. There are a lot of great changes with lines and colors, I almost need a new program to figure out some of the details.

Nick Anthony:

Yes, we can certainly make those changes. Also, just to point out, it would also delete subsections 5 and 6, which is all of section 2, as well.

Chairman Anderson:

To further clarify, as it is proposed here from lines 32 on, you are not deleting the existing language of the law? You are not eliminating the referee program in townships?

Ben Graham:

That is correct. The deletion is out of the proposed bill, so the existing law would remain intact.

Nick Anthony:

I think we are fine, Mr. Chairman.

Chairman Anderson:

Are there any questions relative to the first suggested amendment?

Assemblyman Carpenter:

If we go back to the original language, which states that the referee "must be paid one-half of the hourly compensation of a justice of the peace," you want to leave that in also, right?

Ben Graham:

I think so.

Assemblyman Carpenter:

What about where you wanted the addition of "except NRS 484.3775"?

Jennifer Chisel:

I believe you are referring to section 2, at line 40, where it is adding to NRS 484.3775, which applies to vehicular manslaughter. That would be another type of case that a referee could not preside over. I believe that was the proposed change in the bill. Is that correct, Mr. Graham?

Ben Graham:

Yes. Keep in mind, this is permissive. We are just authorizing potential cases on down the line.

Chairman Anderson:

The only other note I have is clarification that the qualifications of the appointee must not be less than the qualifications held by the justice of the peace (JP) of that township. In other words, if he is required to be an attorney, the master or referee has to be an attorney. Is that clearly understood, Mr. Graham?

Ben Graham:

Yes. For this type of master, it was felt that it would be good that they have the same qualifications as required for the actual elected official.

Jennifer Chisel:

The other amendment was just to revise the effective date of the bill. It would be effective on July 1, 2009, instead of upon passage and approval.

There is a second amendment for the Committee to consider, which was proposed by Mr. Carpenter. He would like to add that masters would be authorized to hear first or second offense driving under the influence (DUI) cases if the master had relevant education or experience. I also wanted to note that, as part of the amendment explanation, the Administrative Office of the Courts has specifically asked that masters not be authorized to hear those types of DUI cases.

Chairman Anderson:

Since third time DUIs have the potential for prison sentencing and are predicated on the events that took place for the first and second conviction, it puts DUI into a special kind of category. Mr. Carpenter, was it your intention to pursue that particular amendment?

Assemblyman Carpenter:

The reason that I suggested this amendment is that this would apply to a person that had special education, maybe a lot of experience, and he could be appointed as a master just to hear first or second DUIs. I think what has happened today is that the justices of the peace are so busy that they do not have time to really consider the individual cases that come before them.

I know in my area there are people who have been long-time counselors. If we could call upon the expertise that these people have, they could perhaps counsel a first or second DUI offender and help get them into programs to help the offender. I think that we are missing an opportunity to use the expertise of

a lot of people out there. I just do not think that the JPs have the time to consider the individual cases, and they just kind of give them what the law provides. I think we have missed the opportunity to help people because we know that if they are helped, at the first offense especially, a lot of them will not reoffend. That is why I proposed this amendment.

Chairman Anderson:

Although I do not think that was the intention of the bill, apparently Assemblyman Carpenter is thinking that this is an opportunity for the creation of a DUI court, by adding this language to this section. It would really set up a special kind of master that would be different than any other kind of a master and would be just for DUI: somebody within the community who meets the same qualifications as the judge or JP but has special training for DUI. He would not have the power to do other kinds of things? Is that what your intent is with your amendment?

Assemblyman Carpenter:

That is my idea. We could call upon these people who have special education and have spent most of their lives working with these types of offenders. I think that it also should be just a "may": if the JP knew someone that he wanted to help in this endeavor, he could then call upon them. In my way of thinking, the law should be narrowly limited to the expertise that these people would have in regard to DUIs.

I know in third DUI cases, offenders' freedoms can be taken away for a long time, and I think that should be up to the regular justice of the peace. It seems to me that we are getting more DUIs, especially in my area. I do not think the JPs have the time nor really the knowledge and the expertise to deal with DUI offenders that maybe someone who has practiced in this area for a long time would have.

Assemblyman Horne:

If we adopt Assemblyman Carpenter's amendment, would it pertain only to those areas in which a master would not need the same qualifications? I think part of the issue in allowing masters to hear the DUI matters could be the potential of that third offense being challenged because of who presided over the first two hearings and convictions. While I respect, and completely understand what Assemblyman Carpenter is saying, the role of that master is not to necessarily counsel that offender, but it is to oversee what the penalty may be. That is my concern with the amendment.

Ben Graham:

Subsection 3 of the amendment states, "The Supreme Court shall provide by rule...a course of instruction" on the duties and the substantive law. If you add that task for masters, I think that the Administrative Office of the Courts would be up to accepting that challenge. To emphasize, if the i's are not dotted, and the t's are not crossed, a third DUI sometimes is not provable, and that is the concern that I think was discussed. The discretion of the Committee certainly is to open this up a little more, and if so, we will certainly accept that challenge.

Assemblyman Carpenter:

I bring this for the discussion, and I certainly understand Mr. Horne's concern, but we are going to have to start getting a little smarter about these things and take advantage of the people out there who do have the experience and the knowledge to turn people's lives around. I just bring it forward. If it is fine, it is fine; if it is not, the people that do not like it can go to the Senate, and we can do it over again.

Chairman Anderson:

Well, I do not want to endanger the bill. I think what we are trying to do is to provide an opportunity. There is a certain level of reluctance when it is recognized that DUIs fall into an unusual category as compared to many of the other crimes due to the recidivist nature of the crime and the potential for a felony for a third offense.

Assemblyman Carpenter, you make a very strong argument. Let us see what the feeling is from the members of the Committee.

Assemblyman Gustavson:

Although I do share the concerns of Assemblyman Carpenter that in the rural counties the JPs might be overloaded with cases, I am concerned about these court masters taking on this responsibility. I have a concern with that, but I would not want to jeopardize the bill. I have a problem with court masters to begin with, statewide. On this particular case with this bill, I do not think that we should be giving them that authority at this time for DUI cases. I have the same concerns that you have, Mr. Chairman and Assemblyman Horne.

Chairman Anderson:

Anybody else want to weigh in on the question?

Assemblyman Manendo:

Maybe we could do it for counties under a certain population limit to see what happens. I am just throwing that out for discussion.

Chairman Anderson:

I have grown to be very unhappy about the division of population figures. It continues to cause us confusion, particularly now as we approach a decennial count of the population of the United States. Since we will use the 2010 census figures for all of the statutes that we pass for the next 10 years, if we deal with that issue, now, it will have to be dealt with again in the next session when the overall population reports come in. As I understand it, Elko is currently approaching the fifth largest city in the state.

Assemblyman Carpenter:

I think Elko County is approaching 50,000.

Ben Graham:

Let me suggest this: let us pass the legislation without Mr. Carpenter's provision on it, and assuming it makes it to the Senate side, I will have people work with Mr. Carpenter from the justice court and the Supreme Court and see if there is something we can work out that would be a good amendment to address Mr. Carpenter's concerns. That could be a viable option.

Chairman Anderson:

Assemblyman Carpenter, would Mr. Graham's suggestion be acceptable to you?

Assemblyman Carpenter:

I believe so. I just wanted to get this idea out there. It is my idea that we are not taking advantage of the talent that we have out there to help some of these people. We know that the drug courts work, and this may be a little simpler process to help these people. If we can advance the idea, I am in favor of it.

Chairman Anderson:

I would suggest that we move forward, with the bill, with the removal of the language in section 2, lines 24-32, and that the bill drafters find the other parts that make cross-references to those provisions. I would also suggest that we change the effective date in section 3 from "passage and approval" to July 1, 2009.

I suggest an amend and do pass motion with the clear understanding that in doing so, if it can be arranged, we would not be surprised to see an amendment to be added in the Senate. This Committee would have the opportunity to look at the amendment when the bill is returned to this Committee, if the bill were to pass the Senate. The Chair could approve the amendment, having already consulted with the Committee.

I also want to clarify in section 2 of the amendment, the right to appeal, when the action was adjudicated by either the justice of the peace or master pursuant to section 1 of the bill. The right of appeal is not being deprived of anyone who is found guilty by a master, as amended here.

The Chair will entertain a motion for the amendments suggested by the Administrative Office of the Courts to their bill.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND
DO PASS ASSEMBLY BILL 63.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN DONDERO
LOOP ABSTAINED FROM THE VOTE.)

The Floor statement will be made by me, and the amendment will be handled by the Vice Chair.

Let us turn to Assembly Bill 93.

[Assembly Bill 93](#): Revises the definition of the crime of assault. (BDR 15-313)

Jennifer M. Chisel, Committee Policy Analyst:

[Read from work session document ([Exhibit E](#)).] The Records and Technology Division presented this bill, which expands the definition of "assault" in Nevada law. The change relates to the federal Brady Handgun Violence Prevention Act (Brady Bill), and the change captures the element of domestic violence within the crime of assault, which is a disqualifier for a person to obtain a gun.

The Committee heard testimony on the proposed amendment that addressed concerns of the District Attorneys Association because of the use of the words "deadly weapon" within the definition of assault, which could possibly change that offense to a misdemeanor whereas it is a felony in current law. The amended language provides that "assault" means "unlawfully attempting to use physical force against another person." You can see the change on the page under the amendment section ([Exhibit E](#)).

On the page under the special note section, I put a note, not an amendment, that during the hearing Mr. Anthony brought up the issue of the "or" within this definition and whether that would cause a delay in the Brady check. The parties discussed this during and after the hearing and agreed it would not be an issue.

Chairman Anderson:

Would you then clarify that for us please?

Julie Butler, Manager, Criminal Justice Records, Records and Technology Division, Department of Public Safety:

I wanted to clarify the delay. Under the bill, if we get an individual who has been convicted of assault and is attempting to purchase a firearm, the "or" will put it into a delay status for up to three days while we research whether the conviction was under subsection 1(a)(1) or 1(a)(2) of the assault statutes.

The maximum we can delay an individual is three days per federal law. If we cannot get a disposition on the individual's particular case, then it goes into what is called an "unresolved status." At that point it is up to the firearms dealer whether or not to release the weapon.

Chairman Anderson:

So the ultimate decision goes to the guy selling the gun?

Julie Butler:

If it goes into unresolved status, that is correct.

Chairman Anderson:

Captain P.K. O'Neill and Ms. Butler have indicated that this was a necessary language change in order to facilitate the use of the system for the Brady check, which is pretty quick compared to many states. This wrinkle could potentially add waiting time.

Assemblywoman Parnell:

I would like to go back to something I asked when we had the discussion initially. If we look at the additional language on the first page of the bill and do not pay attention to the amendments that have been presented, does it indeed set a higher or lower standard? My concern is weakening anything that is currently in the criminal definition for assault.

Chairman Anderson:

I do not know the answer; maybe Ms. Chisel can enlighten us.

Jennifer Chisel:

I cannot give a legal opinion, but because this change is adding an additional paragraph to the crime of assault and leaving the existing "Intentionally placing another person in reasonable apprehension of immediate bodily harm" the existing language will remain in statute as a second definition of the crime of assault.

Kristin Erickson, representing the Nevada District Attorneys Association, Reno, Nevada:

I believe the existing language is subparagraph (2): "Intentionally placing another person in reasonable apprehension of immediate bodily harm." The District Attorneys Association would like to leave that in place. As long as it is in place, we are fine with the bill. We prefer the amendment, which contains the new language as suggested by the repository and includes the "or." That leaves us the option of charging the existing language, which is subparagraph 2, or the new language, which is subparagraph (1), of paragraph (a) of subsection 1 of section 1 of the bill.

Assemblywoman Parnell:

That makes me comfortable. We discussed the language from 2001, so as long as you are comfortable with it, I would make the motion to amend and do pass Assembly Bill 93 with the amendment shown on the work session document ([Exhibit E](#)).

ASSEMBLYWOMAN PARNELL MOVED TO AMEND AND
DO PASS ASSEMBLY BILL 93.

[Chairman Anderson reviewed the amendment.]

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

Chairman Anderson:

The change gives us access to the overall state-to-state and federal government data system.

Assemblywoman Parnell:

I have a question about the original bill and the amendment. The bill was brought by the Department of Public Safety, Records and Technology Division. They suggested the amendment. I want to be sure that everybody finds the amendment to be the preferable language.

Julie Butler:

Yes, we find the amended language acceptable.

Chairman Anderson:

Ms. Erickson indicated that it was acceptable as long as the "or" was retained.

Assemblyman Gustavson:

I have a question about the Brady Bill requirements. The national repository wants us to change the language, but what are the consequences if we do not? I know it was discussed, but I do not remember.

Julie Butler:

The consequences if we do not enact the changes are these: when we come across an individual who attempts to purchase a firearm and he has assault on his record, we have to automatically proceed that individual, meaning that he gets to purchase a firearm. The way the statute is currently worded, where it is a crime of fear, we cannot use it to deny an individual a firearm. Depending on the individual, it could have some disastrous consequences.

Chairman Anderson:

We are giving the agency a stronger definition to work with in terms of processing paperwork, and the stronger the definition, the easier it is to do what they are doing.

The answer to the question about whether this will delay purchase really is, we do not know. It could, but the federal requirement is that the most it can be delayed is three days. Then it ultimately goes to the seller of the firearm to make the final determination. I would expect that Assemblyman McArthur or Assemblyman Hambrick have greater experience in this area, but I would suppose if I were a scrupulous firearms salesman, I would err on the side of caution.

THE MOTION PASSED UNANIMOUSLY.

I will assign the Floor statement to Assemblyman Hambrick.

Let us take up Assembly Bill 104.

Assembly Bill 104: Revises the provisions governing the failure to appear in court for the commission of certain misdemeanor traffic offenses.
(BDR 14-95)

Jennifer M. Chisel, Committee Policy Analyst:

[Read from work session document ([Exhibit F](#)).] Assembly Bill 104 was presented by Assemblywoman Parnell along with Judge John Tatro. The bill provides for the forfeiture of bail in misdemeanor traffic offenses when the defendant fails to appear in court.

During the hearing, Judge John Tatro presented an amendment, however that amendment was replaced with a compromise amendment which is what the Committee will consider in this work session. The compromise is between Judge Tatro, John McCormick from the Administrative Office of the Courts, and Lee Rowland from the American Civil Liberties Union (ACLU).

The amendment deletes the issuance of an arrest warrant for failure to appear in these cases and provides that the forfeiture of cash bail, after a waiting period of five days, is sufficient to deem the case closed. The five-day waiting period was discussed during the hearing to allow for extenuating circumstances.

Ben Graham, representing the Administrative Office of the Courts, Carson City, Nevada:

The amendment cleared up some concerns about people's due process rights.

I asked Judge Tatro to pull, at random, some cases to see how this would work. These are cases from 2006 and 2007 where people had been arrested, told to appear, bailed out, and then they did not appear.

Chairman Anderson:

I will enter the letter summarizing two cases entered into the record ([Exhibit G](#)).

This comes back to an old issue. The amendment, in section 2 states, "This act applies to all cash equal to the amount of bail for that offense deposited with the court by defendants who have been charged with a misdemeanor traffic offense, and becomes effective upon passage and approval." This is what was submitted in the compromise amendment, but it raises the question of fees, fines, and forfeitures, again, which is an unsatisfactory issue for me.

Ben Graham:

That is beyond my area of expertise.

Chairman Anderson:

I had not been focusing on section 2, so I had not thought of it before. Is this the same old question of when the justice court also happens to be the municipal court? When the municipal court is handling these kinds of things, all of the money goes to the city, whereas if it is justice court, it is supposed to come back to the Distributive School Fund. Would this mean that 100 percent goes to the justice court to fill the allocations for the things that court filing fees get used for and nothing goes to the Distributive School Fund?

Ben Graham:

If that is what is happening in the lesser amounts that were discussed in prior years, then this would be the case as well. I do not know if that is happening.

Chairman Anderson:

Was Assemblywoman Parnell made aware of the amendments to her bill prior to arriving here?

John McCormick, Rural Courts Coordinator, Administrative Office of the Courts, Carson City, Nevada:

It was my understanding that Judge Tatro had forwarded the amendment to Assemblywoman Parnell.

Assemblywoman Parnell:

I have seen the amendment, but I have a question about the addition of section 2. I know that several of you worked together to come to agreement on the compromise amendment. For what purpose was section 2 added and who brought that to the table?

John McCormick:

Section 2 was at the desire of the justice courts to allow them to clear their backlog of cases, as provided in the example ([Exhibit G](#)) where the person failed to appear, and the court still held the cash equal to bail.

Assemblywoman Parnell:

I would be happy to make a motion to amend and do pass Assembly Bill 104.

Chairman Anderson:

With or without section 2?

Assemblywoman Parnell:

I would include section 2, now that I know why it is needed. This is the common sense part of it. Let us get it moving and clear the backlog.

Chairman Anderson:

The Chair is not going to entertain a motion at this time because I am still concerned about section 2. Why was section 2 not part of the original draft of the legislation if that was what was requested? Assemblywoman Parnell presented the bill at the request of the justice courts, particularly the one here in Carson City. The backlog may be a particular problem for this particular justice court since it has the responsibilities of both the municipal court and the justice court. Other justice courts do not have this problem.

Ben Graham:

The overall court structure was not involved in the initial discussion or drafting of this legislation. We became aware that they had not been involved, but we intend this to apply statewide because it definitely will be a benefit to the entire system.

Chairman Anderson:

I am concerned about section 2 of the bill. I will hold the bill until I get a clear idea of whether it has some unintended consequences. I agree there has to be some mechanism for the justice courts to clear these cases, but I am concerned about the opportunity to divert more money away from the Distributive School Fund. There is a question about whether this is turning the justice court system into a money-making opportunity for the counties.

This would also be retroactive to the cases that are in the backlog.

I will hold on to the bill until I get some clarity on that. I will close the hearing on A.B. 104.

Lee Rowland, American Civil Liberties Union of Nevada, Reno, Nevada:

I submitted a joint amendment with the Administrative Office of the Courts on A.B. 104. I defer to John McCormick on the testimony.

Chairman Anderson:

Let us turn to Assembly Bill 88.

Assembly Bill 88: Establishes a civil remedy for a person who was a victim of a sexual offense which was used to promote child pornography.
(BDR 15-267)

Jennifer M. Chisel, Committee Policy Analyst:

This was the first bill that the Committee heard. [Read from work session document ([Exhibit H](#)).] It was presented by Jim Earl, the Executive Director of the Technological Crime Advisory Board; also Detective Dennis Carry of the Washoe County Sheriff's Office provided some testimony. It creates a civil cause of action for a minor who is the victim of a child pornography offense.

Mr. Earl submitted amendments during the hearing. The first is to remove the subsection addressing a victim's ability to request the Attorney General's Office to bring such a civil suit on the victim's behalf. That provision can be found on the second page of the bill, section 1, subsection 5, lines 15 through 20. The desire is to strike that language out of the bill.

Another amendment was to add two sections to the bill. That language can be found on page three of the discussion of the bill. The first amendment is to NRS 200.725 and it removes the element of advertising or distributing child pornography. The testimony indicated that these elements are encompassed within the definition of "promote," which is crime outlined in NRS 200.720. That crime is punishable as a category A felony. This was to provide an opportunity for charging under that promotion crime.

The other section that would be amended at the request of the Attorney General's Office, is NRS 200.730, which would add the offense of accessing with the intent to view child pornography. The testimony on this indicated that it was to assist law enforcement involving Internet crimes.

As you can see in the special note section, during the hearing, Assemblyman Carpenter asked about the three-year statute of limitations, which is provided in the bill for this new civil offense—the cause of action of a minor who is the victim of child pornography. As you can see in section 3 of the bill, currently there is a ten-year statute of limitations listed for the civil cause of action of sexual abuse of a minor. Assemblyman Carpenter's question was whether this new cause of action, with a three-year limitation, would be in conflict with the ten-year provision. It is not in conflict, but it is a policy decision that this Committee can make as to how long the statute of limitations should be for this new civil offense.

To clarify, the ten-year statute of limitations on the civil cause of action for a victim of sexual abuse is the existing law. The new provision is to provide a three-year statute of limitations for this new civil cause of action.

Chairman Anderson:

I think there were still some concerns about this piece of legislation. Assemblyman Hambrick, do you still have some questions?

Assemblyman Hambrick:

They have been addressed.

Assemblyman Horne:

I have some concerns with the conceptual amendment for the offense of accessing a site to view. I think the testimony was that the police believe these offenders were visiting certain sites, and the offenders can view this prohibited material without downloading it on their computer. There is no evidence on the computer that the offender viewed it. The police would use the evidence that the offenders visited a site as evidence that they viewed it. That is bothersome to me. I have been thinking about it, and the best analogy I can think of is the

following: in the neighborhood where I grew up, there was a place where one could go to solicit prostitutes. I knew where it was; anyone could drive down that street. If you were to witness John Doe drive down that street once a week for months, but never actually saw him solicit, he might be arrested for visiting that street over and over again, but he could not be charged for the crime of soliciting. This amendment is similar to that analogy.

I know what the Attorney General is trying to achieve, but it is still making a crime out of a place someone visited, and I have problems with that. I am okay with the rest of the bill.

Assemblyman Segerblom:

I have a problem with the category A felony. I think there should be a range of felonies; I just do not believe in making it an A felony.

Chairman Anderson:

What do you think would be the more appropriate choice?

Assemblyman Segerblom:

I would ask for a range. If we take away discretion, it defeats what we are trying to do.

Chairman Anderson:

Currently, among the A felonies are the following: crimes in the commission of a felony; terrorism resulting in substantial bodily harm and death; murder in the first degree; kidnapping in the first degree with no substantial bodily harm; aiding and abetting in kidnapping; sexual assault with or without substantial bodily harm; sexual assault upon someone under 16; poison with intent to kill; and it goes on.

The sentence is life with a 25-year minimum, no parole, probation, or suspended sentence. Sexual assault on victims under the age of 14 is 35 years. Promoting child pornography of a child 14 years or older is life with a five-year minimum.

Category B felonies on the other hand include: to aid in concealed child escape from the state; security fraud; intimidating public officials; conspiracy to commit robbery; manslaughter; a woman taking drugs to terminate pregnancy; and others.

Assemblywoman Parnell:

I share many of the concerns that Assemblyman Horne does. Another area I would like to take a look at is section 1, subsection 6, which states, "An action

may be brought pursuant to this section regardless of whether any person has been prosecuted or convicted...." That really poses a problem for me. At this time I agree with Assemblyman Horne. I like the intent to be able to recover damages but I have concerns about the rest of the bill.

Chairman Anderson:

Coming back to Assemblyman Segerblom, the question was about having a choice between A and B felonies. The Attorney General wanted it to be clear that it was going to be this statute and not that statute. To clear up some ambiguity that seems to exist, I guess we could move all child pornography offenses to B felonies, but while that would please some, it would leave others terribly upset.

Assemblyman Segerblom:

Mr. Anthony, I guess I did not fully understand the issue. I guess it is unclear because it is an A and B in the statutes, so the question is whether we make it an A or B, and my preference would be to make it a B.

Nick Anthony, Committee Counsel:

The portion of the language we are talking about is not actually in the bill, it is in existing NRS. *Nevada Revised Statutes* 200.720, defines "promotion" of a sexual performance and NRS 200.725, defines "preparing, advertising, or distributing materials." Under NRS 200.725, "preparing, advertising, or distributing materials" is a category B felony. Under NRS 200.720, "promotion" is a category A felony, and the rub lies in that the definition of "promotion" includes advertising or distributing. Therefore one could be charged under NRS 200.720 or NRS 200.725.

**Keith G. Munro, Assistant Attorney General, Office of the Attorney General,
Carson City, Nevada:**

With respect to NRS 200.720 versus NRS 200.725, the Legislature has already made "promotion" an A. If you choose to make it a B, we defer to your discretion on that.

Regarding NRS 200.730, our effort here is to try to keep pace with technology with respect to child pornographers. We think the words "knowingly and willfully" intending to access requires some evidence of the body of the crime. There is a theory called *corpus delicti* that Detective Carry and similar detectives would have to prove in order to charge someone who is viewing child pornography content on a streaming video.

James Earl, Executive Director, Technological Crime Advisory Board, State of Nevada, Carson City, Nevada:

The addition of "accessing with intent to view" was an attempt to come to grips with streaming video rather than downloading an executable file.

Dennis Carry, Detective, Crimes Against Children Unit, Washoe County Sheriff's Office, Reno, Nevada:

I want to clarify Assemblyman Horne's concern dealing with the evidence. The answer is there might be evidence or there might not be evidence in those types of cases. We can identify someone who accesses with intent. If the intent is not there, then there is no crime. I want to give an example. This meeting is being streamed, someone might not possess it, but they are watching it.

Chairman Anderson:

That is a good example, but it also brings out the difficulty we are having in dealing with the issue of intent. There may be people who are looking at the website for the Legislature, trying to figure out which committee is dealing with their particular topic, and they may drop in and see what we are doing and realize we are not talking about their topic. They would then quickly move to another committee or stay to listen to the hearing.

So how do you discern if someone is intending to view? One might be at a site for any number of reasons that I can imagine.

Dennis Carry:

Computer technology allows us to view the sites to which suspects go. Another good example of how we can prove intent and why we are talking about accessing "with intent to view", is webcamming. We can prove that this person went to that webcam streaming group five or ten times in a week, watching a small child being sexually abused over and over again. They were watching it, viewing it, they requested to be part of this group and belonged to this group, but it would not be on their computer. We may have infiltrated the group through law enforcement or may have discovered it through another investigation.

We know they are there every day. That is what we are trying to address with the amendment language. People are intentionally deleting the information from their computer, but we might be able to prove through various means that the suspects went to the site every day. Going to a website one, twice, or even a few times is completely different than going to a site 100 times, when one knows specifically what is there.

Chairman Anderson:

Let us say that I was in the computer business, and I wanted to know what kinds of sites might be marketable. Therefore, I visit all of these different sites on a regular basis. Does that make me a criminal?

Assemblyman Horne:

Mr. Munro, I know what *corpus delicti* is. Even though there is this body of evidence needed to prove the case, it does not mean it needs to be present to charge someone. To charge someone for this offense requires a different standard, but once this bell is rung, it is a very loud bell. I am concerned that we could be charging someone with this crime without the *corpus delicti*.

Assemblyman Manendo:

I understand going to a link and downloading, but my question is: what if it is not downloaded? What if an image is sent to you and you opened it? Now you are knowingly viewing something on your computer. Can you help me understand this better?

Dennis Carry:

That is covered under the existing law of knowingly and willfully possessing. If there is no knowingly and willfully possessing, there is no crime.

Assemblyman Manendo:

If you save it?

Dennis Carry:

Having one image is not necessarily a crime, unless we can prove that the suspects intentionally sought the image out, brought it to their computer, and saved it for a reason. Those are all things we would look for in the investigation. We know the possibility exists for spam email, and that is why under the existing law, under possession, there is the caveat of knowingly and willfully. That is why in the amendment there is "accesses with the intent."

Assemblyman Manendo:

Can one be charged with a crime of knowingly possessing what some may call child pornography if the picture is of themselves?

Dennis Carry:

That is actually a technical question that is being looked at all over the country right now. It has to do with so many other issues that you see in the news, including "sexting," which is sending nude pictures of yourself via cell phone. There are a lot of issues out there that under the legal definition are not

criminal. Is it in your best interest to send those pictures? Most definitely not, but those are separate issues to address.

Assemblyman Manendo:

I was just thinking about naked baby pictures of me and my cousins. I knowingly possess it, so I was just wondering where that all fits in. I met with someone from the Attorney General's Office on that question, and I never got an answer back.

Assemblyman Cobb:

I, too, had some of these similar concerns about the bill and the level of evidence needed to convict someone of this crime. If I understand correctly, it would have to be proven that the suspect was intentionally viewing this material. And to prove it, it would have to be shown that the suspect visited or streamed content not just once, but many times over, or you would need an admission from the person that they intentionally viewed these streams. You would need this proof to help bolster the *mens rea* requirement for this crime, correct?

Dennis Carry:

That is correct.

Chairman Anderson:

Let me give the Attorney General's Office an opportunity to respond directly to Assemblyman Manendo's concerns. Could you drop by his office to address this issue specifically?

It is the intent of the Chair to move this bill to our next work session. Is there anything that anyone wants to get on the record now so it can be answered in the next work session? I am sure that the Attorney General's Office would appreciate it.

I will close the hearing on A.B. 88. I will close the work session. Please advise me if you are ready with a position on this bill, so I know how to proceed.

Meeting adjourned [at 11:01 a.m.].

RESPECTFULLY SUBMITTED:

Emilie Reafs
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 26, 2009

Time of Meeting: 9:03 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 27	C	Jennifer Chisel, Legislative Counsel Bureau	Work Session Document
A.B. 63	D	Jennifer Chisel, Legislative Counsel Bureau	Work Session Document
A.B. 93	E	Jennifer Chisel, Legislative Counsel Bureau	Work Session Document
A.B. 104	F	Jennifer Chisel, Legislative Counsel Bureau	Work Session Document
A.B. 104	G	Ben Graham, Administrative Office of the Courts	Letter with summary of two cases
A.B. 88	H	Jennifer Chisel, Legislative Counsel Bureau	Work Session Document