

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

**Seventy-Fifth Session
March 5, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:04 a.m. on Thursday, March 5, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was video conferenced 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

GUEST LEGISLATORS PRESENT:

Assemblyman John Ocegüera, Clark County Assembly District No. 16
Assemblywoman Heidi Gansert, Washoe County Assembly District
No. 25

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Karyn Werner, Committee Secretary
Robert Gonzalez, Committee Secretary

OTHERS PRESENT:

Tom Roberts, Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department, Las Vegas Nevada
Robert Lawson, Detective, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada
Samuel G. Bateman, representing the Nevada District Attorneys
Association, Las Vegas, Nevada
Orrin Johnson, Deputy Public Defender, Washoe County Public
Defender's Office, Reno, Nevada
Dr. Gabriel A. Bonnet, Medical Director, American Red Cross, Reno,
Nevada
Graham Galloway, representing the Nevada Justice Association, Reno,
Nevada
Randi Thompson, representing the American Red Cross, Reno, Nevada

Chairman Anderson:

[Roll called. Opening remarks.]

We will start with Mr. Ocegüera's bill, Assembly Bill 182.

Assembly Bill 182: Makes various changes concerning crimes involving
explosives. (BDR 15-195)

Assemblyman John Ocegüera, Clark County District No. 16:

I am here today to introduce Assembly Bill 182, which expands the definition of
explosives to include the list of explosive materials published in the
Federal Register, which is revised annually. The bill also provides for a greater

penalty under certain circumstances when a person commits a crime involving explosives.

Tom Roberts, Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

For the last couple of years we have been working on a joint task force with the Las Vegas Fire and Rescue and the Clark County Fire Department in our All-hazards Regional Multi-agency Operations and Response (ARMOR) task force. During the course of the last couple of years, some of the detectives assigned to do follow-up investigations on some of the explosives noticed a few things in the *Nevada Revised Statutes* (NRS) that needed revision and a couple of chapters that could be eliminated. So, if it pleases the Chair, I have Detective Robert Lawson in Las Vegas ready to testify, to give you a better explanation of why there is a need for this bill.

Robert Lawson, Detective, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

The definition of "explosive" in NRS has not been revised since 1971. By adding the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) *Federal Register* rules, which are updated annually, it would eliminate having to come back every two, four, or six years to add revisions as new precursors and new explosives are being manufactured. They will be automatically updated in the *Register* and the state law.

In addition, we found that, under NRS 476.020, it is a misdemeanor to be in possession of an explosive device. We feel that that is already covered under NRS 202.262, where it is a felony. In NRS 202.810, which has not been revised since 1971, it is a gross misdemeanor to carry an explosive into a state building, but it does not address local or county entities. However, if you carry an explosive device into a personal business or building, it is a felony. I think it is antiquated that you can walk into a state building with an explosive and only be charged with a gross misdemeanor. *Nevada Revised Statutes* 476.020 and 202.810 should be repealed.

I believe, with the wording that Assemblyman Ocegueda has proposed, everything should fall into place with the enhancements under NRS 202.270 for destruction, endangering, and damaging of a building or property by explosives.

Chairman Anderson:

Are you unable to charge somebody because we are surrendering to the *Federal Register*? I find it very difficult to believe that the federal government moves faster than the state government. It is like saying that the state government moves faster than the local governments.

Robert Lawson:

The *Federal Register* lists a couple of pages of what constitutes explosives; it lists precursors and primary explosives. Where our definition is very well written in the first half, the *Federal Register* lists other components for an explosive. If you stop somebody, and he has two parts of an explosive, but they are not mixed together yet, you have precursors. What we are trying to do is to tighten that up. There are always new advances in explosives; for instance, Tannerite. When you mix two parts together, you have an explosive. The two parts in themselves do not constitute an explosive. We are just trying to tighten up the definitions and loopholes as far as adding each ingredient. The list in the *Federal Register* specifically spells out all the different chemical properties because there are numerous items you can mix together for explosives.

Chairman Anderson:

What about the mining industry? And I have several family members who like to load their own shotgun shells and do their own rifling.

Robert Lawson:

This would not affect them or the mining industry because they are covered under ATF rules, and mining is a legitimate business. It still comes down to common sense. Are we going to charge miners? No. These laws are for people who are out there making chemical bombs and explosives. We have an increase in chemical bombs in Clark County because of YouTube and the Internet. The kids are going out and making explosive devices and setting them off.

Chairman Anderson:

A question that immediately arises is the category A felony in subsection 2 of section 2 of the bill.

Robert Lawson:

Yes, it is category A for destroying a building, vessel, structure, aircraft or railcar when knowing or having reason to believe that human beings are inside. That is the intent there, that you are trying to cause damage, and that stems from the Oklahoma City bombing or any of the other places where bombing occurred.

Chairman Anderson:

So that would be putting it in the same category as if you shot at somebody and, therefore, made an attempt with a firearm.

Robert Lawson:

Yes, sir.

Chairman Anderson:

So you would be treating it the same.

Assemblyman Carpenter:

If you blow up a building and kill someone, is that murder?

Robert Lawson:

That is correct.

Tom Roberts:

I believe in that instance, if somebody were to become a victim and died from that device, it would probably be more appropriate to charge them with a murder offense. I believe that if they were not successful and someone was lucky enough to escape the building, but the intent was there to harm or kill someone, I believe we would probably submit this statute, and it would be at the discretion of the district attorney on which one, the explosives statute or the homicide statute, he would charge under.

Assemblyman Gustavson:

I would like to know what items will be added to this list. We do not have a list of the items that are on there now, and I would like to see what is on there and what we will be adding to it.

Tom Roberts:

We talked about this and we should have provided you with a list of the chemicals in the *Federal Register*. I can provide that to the Committee and give you a history of what has been added and how it has been revised in the last year or so, and how often it is revised.

Assemblyman Gustavson:

I would appreciate that because I am not an explosive expert, and I do not know exactly what you are talking about, but I would like to have more of an explanation of why these chemicals are on the list.

Chairman Anderson:

Since you made the offer to Mr. Gustavson, if you would provide it to us, or I can get it from our Legal Division, if you prefer.

Tom Roberts:

I can get it for you.

Chairman Anderson:

We need to have that in a timely fashion. If you would provide that to Ms. Chisel, she will make sure the Committee gets it.

Mr. Gustavson, in the future, if this bill passes in this format, it will no longer be listed in NRS. It will be in the *Federal Register*, which is readily available on the Internet.

Assemblyman Mortenson:

I would like to reiterate what Mr. Gustavson said. I have a small chemistry lab in my house, and I just want to know if I am illegal. I presume that you will also supply the legal quantities with the list. Can you do that?

Assemblyman Ocegüera:

As long as Mr. Mortenson does not take his chemistry set into a state building, I think he will be fine.

Assemblyman Mortenson:

You are deleting a section that just says, "Making or possessing explosives in a city or town." That is being deleted, so I presume that possessing might be a penalty.

Chairman Anderson:

The bill repeals NRS 476.020. We will have the Legal Division see if what Assemblyman Mortenson refers to is covered in some other statute. I believe Mr. Lawson indicated that, in review, there are several places in the statute that are redundant, and the Legal Division may want to clarify it.

Assemblyman Mortenson:

I am looking at that section, and it just says that, if you have it in a city or town, you can be found guilty.

Chairman Anderson:

Is your concern, Mr. Mortenson, the mere possession?

Assemblyman Mortenson:

Yes, Mr. Chairman. The way I read NRS 476.020, it says, "Making or possessing explosives or combustible substance in a city or town." It also says, "Every person who makes or possesses any explosive" Since it says "or," making or possessing is a crime, apparently.

Robert Lawson:

Under NRS 476.020, which is already on the books, it is a misdemeanor for the mere possession. I felt that that is redundant under NRS 202.262, which is a category D felony for the manufacture or possession of an explosive device. I feel that we can take out NRS 476.020, because the mere possession can be covered under fireworks, city and county ordinances, that are already in place, along with the making or possession of an explosive device, which is covered under NRS 202.262. I feel that it is redundant and it would be common sense. It would not apply.

Chairman Anderson:

That would be fine for Clark County, but we would not have uniformity statewide. Every county does not do things like Clark County.

Robert Lawson:

You would still have the law under NRS 202.262 for the manufacture or possession of an explosive device. There are instances where you are allowed to have an explosive device: in the course of mining and other legal work.

Chairman Anderson:

I think that is the nature of Mr. Mortenson's question. What happens to his home chemistry set?

Robert Lawson:

He would still be able to possess it. The law is intended for the criminal, not for the person who is at home making explosives for use in places other than out in public.

Chairman Anderson:

We have a difficult time with law enforcement and other state agencies that sit in front of us and say "trust me," and then we see what happens as a result. I think that is Mr. Mortenson's concern.

Robert Lawson:

I understand. The intent of the law is not to go after somebody who has a chemistry set; the intent is for the individual who is performing criminal acts. It will not interfere with anybody legally doing their jobs.

Chairman Anderson:

Mr. Mortenson, let me indicate to you and Mr. Lawson that this bill will not remove the law under NRS 202.262. Subsection 3 of section 1 states, "This section does not prohibit a person from possessing any material, components,

or device," so it appears that the exception will still be there. We will have the Legal Division check to make sure that we have no unintended consequences.

Assemblyman Carpenter:

The witness in Las Vegas alluded to this, but what is the situation on fireworks?

Robert Lawson:

They are still covered under city and county ordinances. There is also the fireworks portion under NRS Chapter 476. These laws will not affect fireworks unless you are going to take them apart and create a larger explosive device to harm somebody, or to harm a building, vessel, or vehicle.

Assemblywoman Dondero Loop:

I have a clarification question on the "Leadlines of Repealed Sections" at the end of the bill. Am I clear that the requirements of all those statutes are someplace else and are covered? I am a little concerned about "common sense," and, although I am all for common sense and believe in common sense, we all know that the person who makes the rule may not have common sense. Are all of these covered somewhere else?

Chairman Anderson:

Mr. Lawson, I think that is directed to you, since you are the one who indicated in your testimony that, in reviewing, there were places in the statutes that you found redundant or in conflict with the bill. Therefore, the bill would eliminate the problems, so these statutes were no longer needed.

Robert Lawson:

Yes. When he wrote portions of the bill, Mr. Ocegüera had found that these were covered under some of the other statutes and we could get rid of them, for example, "destruction of building by explosives" and "unlawful possession of explosives in state buildings," which was a gross misdemeanor and was already covered under the statute with a greater penalty. I could not understand how walking into a state building with an explosive was a gross misdemeanor but walking into any other building was a felony. So they are covered under the other statutes.

Chairman Anderson:

Ms. Dondero Loop, did you want reassurance where the provisions are specifically found?

Assemblywoman Dondero Loop:

I was just concerned because the last one, for example, "Endangering property by explosives" is pretty broad to me. I just want to make sure it is covered some place.

Chairman Anderson:

We will ask to see where those are specifically found. I know our legal staff is busy right now, so it will probably take them a while to have an opportunity to go through all of this. I do not want to take them away from the task we asked them to do in bill drafting, so we can get our bills and amendments out. We will hold on to this for a while if it is all right with Mr. Ocegüera.

Assemblyman Gustavson:

Mr. Mortenson brought up another question. Mr. Mortenson decides to mix some chemicals in his lab that may become an explosive mixture, for example, for fireworks; then he would like to take it out to a rural area to see if it does cause an explosion. If some of these chemicals are on this list, but he has no intent to use it criminally, would he be protected?

Chairman Anderson:

Criminal intent is part of another statute that is covered elsewhere. We will check on that and make sure how the criminal intent question is dealt with. And, of course, I am sure the District Attorneys' Association representative will be happy to give testimony relative to how they would charge in this area.

Assemblyman Gustavson:

It just says "possession," so that is my question.

Jennifer M. Chisel, Committee Policy Analyst:

I have the luxury of having the statute books in front of me, and I wanted to let you know that under NRS 202.262 there is an exception to the possession of explosive materials. It reads like this: "This section does not prohibit a person from possessing any material, component, substance or device: (a) As required for the performance of his duties related to mining, agriculture, construction or any other valid occupational purpose, or if the person is authorized by a governmental entity which has lawful control over such matters to use those items in the performance of his duties; (b) In an amount which, if detonated or otherwise exploded, would not ordinarily cause substantial bodily harm to another person or substantial harm to the property of another; or (c) As part of a model rocket or engine for a model rocket that is designed, sold and used for the purpose of propelling a model rocket." So there are exceptions in here and the amounts that would be criminal.

Assemblyman Gustavson:

I am just concerned because the statute does say "for occupational use or in business." Mr. Mortenson's lab is a hobby and would not be an occupation.

**Samuel G. Bateman, representing the Nevada District Attorneys Association,
Las Vegas, Nevada:**

I do not know if you want me to answer a specific question.

Chairman Anderson:

The question is about criminal intent and how you would go about charging.

Sam Bateman:

It is my understanding that the question is about statutes that are not actually in the bill before us. Is that correct?

Chairman Anderson:

In part. We are concerned about what happens to someone like Mr. Mortenson who has a lab at home for the purposes of doing his business and professional experiments and also as a hobby, which requires potential explosives using chemical components which might be listed in the *Federal Register* and may be in the amounts and conditions that might get a prosecutor's attention. People in the community know that he does these experiments. How do you determine the difference between individuals acting legally or illegally?

Sam Bateman:

Without getting into the specifics of the possession statutes, generally, possession statutes are about possessing something that you cannot possess for a particular reason. If it is investigated by law enforcement and submitted to a district attorney's office, it is likely that the prosecuting office would prosecute you if you meet the elements of the crime. It sounds to me, after listening to Ms. Chisel, that this particular possession statute says you cannot possess certain things, with the exception of these other things. It would depend on the law enforcement investigation, why they are investigating, and if he meets the legal definitions for not being able to possess a certain thing, regardless of his intent. He will likely be prosecuted if he is doing something with potential explosives. If, on the other hand, the possession of those things is excepted from the statute, law enforcement probably would not be concerned about Mr. Mortenson and, certainly, a prosecuting agency would not be prosecuting Mr. Mortenson. To give you a better answer than my general answer, we would have to look at the elements of the specific statutes, what is included in the statutes, and what is excepted from the statutes.

Chairman Anderson:

To your knowledge, have you ever had to charge anyone under this statute?

Sam Bateman:

I would have to check with our office and our case assessment, but I have never seen it in the five years I have been in the district attorney's office in Clark County.

Chairman Anderson:

Is there anyone in opposition of A.B. 182?

Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:

I just put myself down as neutral or monitoring it in case something came up in the testimony concerning us. We do not have any concerns one way or the other.

Chairman Anderson:

In your experience, have you ever had any cases in this area?

Orrin Johnson:

No. But my experience in the public defender's office has been limited. Fortunately, we have not had a lot of blowing-people-up cases.

Chairman Anderson:

We will close the hearing on A.B. 182. We will wait for more information from Mr. Roberts to Mr. Gustavson as to the full extent of the *Federal Register* list. I think we found the correct response, but if he is still uncertain about it, we will take a look at that. Ms. Dondero Loop, we will wait for the response regarding the assurance that the statutes being repealed are in fact covered some place else, particularly the reference to NRS 476.050.

We will open the hearing on Assembly Bill 200.

Assembly Bill 200: Extends limited immunity from civil liability to certain medical providers who render gratuitous care under certain circumstances. (BDR 3-469)

Dr. Gabriel A. Bonnet, Medical Director, American Red Cross, Reno, Nevada:
[Read from written statement. ([Exhibit C](#))]

In an Associated Press article citing the results of a Robert Wood Johnson report, *Ready or Not? Protecting the Public's Health from Diseases, Disasters and Bioterrorism*, published December 10, 2008, Nevada was rated number 44.
[Continued to read written statement.]

Assemblywoman Heidi Gansert, Washoe County Assembly District No. 25:

The Red Cross came to me last summer to talk about this and the need for volunteers. I recognized that, a lot of times, we do not have the counseling available. As Dr. Bonnet stated, this is a time when we need a lot of volunteers because times are tough and, if there was a natural disaster, it is important to have access to those types of individuals in the healthcare profession. That is why I brought this bill to you, and I appreciate your consideration today.

Assemblyman Horne:

I have not heard of any overwhelming problems with psychologists being utilized in these emergency situations or treatment of people who have been traumatized by these events. I have not heard of any lawsuits arising out of these situations where immunity would even apply.

Dr. Gabriel A. Bonnet:

I am not aware of any lawsuits here in Nevada. Psychologists do, however, play an important role, and I am concerned that they have not been afforded protection in the past as they should have. They are, in fact, providing important services related to counseling and support services to victims.

Assemblyman Horne:

I recognize that this is the role they have typically played. I have not learned of anything happening outside of the scope of duties that they have performed. As to the protections that they need or are lacking, it is like putting a flak jacket on an airman who is operating a drone aircraft at Nellis Air Base, no one is shooting at him.

Dr. Gabriel A. Bonnet:

But, in fact, they are taking care of a very vulnerable population who, at the time of disaster, are often times extremely stressed and could possibly do something harmful to themselves as a result of that stress. I am concerned about the situation whereby somebody who is stressed as a result of a disaster might, after seeking counseling from a psychologist, do something inappropriate to himself and, thereby, put the psychologist at risk for a lawsuit. I think that potential is there; we just have not addressed it in the past.

Chairman Anderson:

To draw a conclusion from that statement, as far as you are concerned, anybody who is involved in any aspect of providing aid in this situation should be granted immunity?

Dr. Gabriel A. Bonnet:

Well, certainly any health professional, or any professional whose license is involved in part of the process. I think psychologists could probably be considered a health professional, but they have not been included in legislation in the past.

Chairman Anderson:

There may have been a reason for that. When we first heard this, it was a very contentious issue, and it continues to be. I guess that is what we are concerned about.

Dr. Bonnet, have you had an opportunity to show the amendment that you are suggesting to the primary sponsor of the bill?

Dr. Gabriel A. Bonnet:

Yes.

Assemblywoman Gansert:

It looks like it was almost a typo to tell you the truth. In Chapter 632 of *Nevada Revised Statutes* (NRS), nurses were in the rest of the bill, but were just left out in part 3. They are delineated under parts 1 and 2.

Chairman Anderson:

So this would appear that they removed something that should not have been removed, just an oversight in drafting.

The doctor has submitted a proposed amendment and his remarks are in writing, with a statement from a newspaper article from the Associated Press, although it does not give the source, or if it appeared in print anywhere.

Is there anyone in opposition?

Graham Galloway, representing the Nevada Justice Association, Reno, Nevada:

The Nevada Justice Association opposes this bill as it is presently presented. Fundamentally, our organization opposes any restrictions or limitations on an individual's right to seek redress for injuries suffered at the hands of another. It is with reluctance that we are before you because this is an extension of a statute where there is immunity. Having said that, we recognize that, years

ago, this deliberative body passed legislation on behalf of Good Samaritans, and we are in favor of individuals volunteering, particularly in emergency situations. I do not want to be misconstrued or have our opposition misinterpreted here. We think that, years ago, when the original Good Samaritan statute was passed, it was a proper balance between the competing interests of the policy of encouraging people to volunteer and the policy of protecting individuals who have been injured by others.

I struggle to be here before you because the Red Cross and the sponsors of this bill are encouraging volunteers, and we support that, but we have concerns about the way it is presented in that the proposed bill is vague. It talks about disasters and emergency situations, but there really is not a definition as to what constitutes an emergency, or how long a man-made or natural disaster lasts. The example that has been discussed among us is Hurricane Katrina. We all saw the pictures of the Gulf Coast in the 24 or 48 hours after the hurricane hit, and there is no doubt that that was an emergency situation. We saw the pictures of people clinging to their homes and swimming in water. But then we also saw clips one, two, and even three weeks later of individuals still floundering. Is that an emergency situation? That is the concern that we have with the language that is being presented to you: it is not being defined narrowly. You are going to take away individual rights, which is what is happening here. When you give immunity to a particular class, another class loses their rights. Individuals, here, are having their rights to seek full redress for injuries taken away from them. If you are going to do that, we believe it should be done very carefully, very narrowly, and in a restrictive manner. Our concern is that the language does not meet those criteria.

Assemblyman Segerblom:

I recall, after Katrina, a lot of people from New Orleans came to Nevada. As I read the statute, they would be covered if they were treated in Las Vegas or Reno.

Graham Galloway:

That is correct. That is our concern: when does the emergency situation cease to exist? The proposed legislation does not define that, and some people will expand the reading or the immunity granted if you give it a wide or broad interpretation. That is our concern. As the sponsors of the bill have pointed out, this is an issue that can be dealt with through insurance. I understand that there is a financial crisis. I understand that budgets are tight, but some of the organizations, as mentioned, already have insurance. I am not convinced that adding that coverage—and it sounds like Washoe County would be the one that would have to deal with this—would be that big of a burden, considering the other competing interests that are involved here.

Randi Thompson, representing the American Red Cross, Reno, Nevada:

I just want to clarify a concern that they had, if that is possible. We did not anticipate this coming up, or we would have addressed it earlier.

Chairman Anderson:

I am going to allow it, however, please understand those in favor speak, then those in opposition speak, and then those who are neutral speak. It is not an argumentative counter to a counter.

Randi Thompson:

I just want to clarify that NRS Chapter 414, the emergency management statutes in this state, define what an emergency is, and this bill does not address or change at all what an existing emergency is.

Chairman Anderson:

Thank you for the clarity.

We will close the hearing on A.B. 200 and bring it back to Committee.

Chapter 630 of the NRS is a relatively long statute, which is a general statute that is very broad, so we are going to wait and see if there are any unintended consequences regarding the questions in front of us.

We are adjourned [at 9:05].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 5, 2009

Time of Meeting: 8:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 200	C	Dr. Gabriel A. Bonnet, Medical Director, American Red Cross, Reno, Nevada	Written statement of Presentation to Judiciary Committee, Dated March 5, 2009, with a proposed amendment.