

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

**Seventy-Fifth Session
April 17, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:14 a.m. on Friday, April 17, 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 James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman Harry Mortenson (excused)

GUEST LEGISLATORS PRESENT:

Senator Mike McGinness, Central Nevada Senatorial District
Senator Dean A. Rhoads, Rural Nevada Senatorial District

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Julie Kellen, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Mark Wier, Private Citizen, Mesquite, Nevada
Tim Kuzanek, Lieutenant, Research and Development Unit,
Washoe County Sheriff's Office, Reno, Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'
Association, Mesquite, Nevada
Brian O'Callaghan, Captain, Intergovernmental Services, Las Vegas
Metropolitan Police Department, Las Vegas, Nevada
Orrin Johnson, Deputy Public Defender, Washoe County Public
Defender's Office, Reno, Nevada
Jason Frierson, Chief Deputy Public Defender, Clark County Public
Defender's Office, Las Vegas, Nevada
Gail Anderson, Administrator, Real Estate Division, Department of
Business and Industry
Bjorn Selinder, Fallon, Nevada, representing Churchill, Eureka, and Elko
Counties

Vice Chair Segerblom:

[Roll called.] We will open the hearing on Senate Bill 142.

Senate Bill 142: Establishes the crime of criminal gang recruitment.
(BDR 15-723)

Senator Mike McGinness, Central Nevada Senatorial District:

Senate Bill 142 establishes the crime of criminal gang recruitment, which is committed when an adult engages in certain threatening or violent activities with the specific intent to coerce or solicit a child to join, rejoin, or remain in a criminal gang.

I spoke to Assemblywoman Parnell prior to the hearing about her bill. I think this bill, her bill, and possibly another bill sponsored by Assemblyman Munford, seem to be a pretty good package. I would urge your support.

Mark Wier, Private Citizen, Mesquite, Nevada:

I chair the Virgin Valley Community Education Advisory Board in Mesquite, Nevada. I have the opportunity to speak with parents, teachers, and administrators on a number of occasions. On certain occasions we have discussed gang activities. Those discussions led me to investigate which charges could be brought against adult gang members for recruiting minors. I found that many states have established criminal gang recruitment as a crime. Senate Bill 142 is an opportunity to do preventative work, and it will help break the gang cycle.

Tim Kuzanek, Lieutenant, Research and Development Unit, Washoe County Sheriff's Office, Reno, Nevada:

We are in support of this bill as a means to slow down some of the youth who are being brought into the fold of gang activities by following these older gang members.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada:

We supported the bill on the Senate side, and we it support here. We believe the testimony that we heard on the Senate side about the helpfulness of this bill to our officers on the street and in the trenches. From that perspective, I think it would be an added tool to dissuade those individuals from recruiting members into the gangs. We hope that you will support it.

Brian O'Callaghan, Captain, Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

As you know, we have a big problem with gang activity in Clark County. As my colleagues have stated, we support this bill.

Assemblyman Kihuen:

How would you be able to differentiate between someone who was recruited by a gang member and someone who voluntarily joins a gang?

Frank Adams:

I believe this bill is actually directed toward the individual who does the recruiting. Even if someone does join voluntarily, the impetus behind the volunteering comes from an older member. Those are the ones we are going after. We want to dissuade the individuals who are out there actively enticing others to come into the gangs.

Assemblyman Carpenter:

The bill says that if this adult uses or threatens to use physical violence or damage to property. Would they have to do that before they could be prosecuted? It seems to me that they use other methods.

Frank Adams:

As I understand the bill, the threat of doing that would be like a threat to harm you. For example, if I threatened to break the windows in your car or damage your physical property, that threat would invoke this statute, just as an assault would be a threat.

Assemblyman Carpenter:

What if they enticed them to join a gang by giving them something? It looks to me like that is a bigger threat than violence.

Frank Adams:

In section 2, subsection 1, it says, "intent to coerce, induce or solicit." We believe that this statute can be used against those individuals who take any of those actions toward a child in order to get him to join a gang. We are trying to dissuade those people from recruiting other individuals into gang activity. I think the terms "induce" and "solicit" would cover the issues that you are talking about, Assemblyman Carpenter.

Vice Chair Segerblom:

Mr. Anthony, do you have an opinion on that?

Nick Anthony, Committee Counsel:

In looking at the statute, to address Assemblyman Carpenter's concerns, the language might need to be slightly amended because it is a two-pronged test. The adult has to use (a) threat or physical violence, or cause or threaten damage to the property, and then (b) with the specific intent to "coerce, induce or solicit." If they merely "coerce, induce or solicit," I do not believe this drafting would cover that.

Assemblywoman Parnell:

I wanted to point something out. In the Senator's bill, *Nevada Revised Statutes* (NRS) 193.168 is very similar to the sections in Assembly Bill 335. This bill is making it a category D felony, and we should remember that my bill was amended down to a category E felony. That is something to consider.

Senator McGinness:

Assemblyman Carpenter brings up an excellent point. I think if there was an offer of money or something as a bribe, that may not be addressed in this bill. If the Committee determines that needs to be changed, that would be fine.

With regard to Assemblywoman Parnell's comments, we want to make sure that everything is equal, and that would be acceptable as well.

Assemblyman Anderson:

Senator McGinness, in terms of the equal question, we have been concerned about the prison population and the difference between category D and E felonies. The majority of category E felonies would result in probation. Your bill may end up with a category E felony rather than a category D.

Senator McGinness:

I appreciate that, and we are sensitive to those issues as well. I would understand the lowering of the felony category.

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

I signed in neutral and did not intend to speak, but Mr. Frierson and I talked, and we have a similar concern over the discussion about a potential change. The bill is tight as it is written. We went through it and tried to figure out what our objections would be, and there were not that many. Our concern is that if it is broadened to include any inducement to join a gang, the difference between threatening somebody to join a gang and inducing them in a less malicious way is substantial and should be recognized. We would be opposed to an amendment of that type.

Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:

We do not oppose this bill in its current form. We do have a concern about taking out the requirement of force because just about every gang member was recruited somehow by somebody. That is different from the situations where people get jumped or coerced. There are kids in neighborhoods who must join a gang in order to be safe in their neighborhoods. Those are different issues, and we do not have any opposition to dealing with the recruiters in a harsh manner when those children are threatened or some type of violence is directed toward them to force them to join a gang. Otherwise, all members of gangs were recruited or induced somehow, whether it is by money, popularity, or camaraderie. We think the threat of violence is in the bill for a reason, and that is to treat those individuals differently.

Assemblyman Carpenter:

How do we get to these people who are bringing others into the gangs if they induce them with gifts, money, or some other bribe? Do we just let the gangs grow?

Jason Frierson:

We believe that individuals who join a gang of their own free will need to be dealt with as gang members subject to the consequences of their conduct.

Also, Assemblywoman Parnell mentioned A.B. 335 which discusses some other options. There are a couple of bills that deal with nuisances and injunctions. There has been testimony that they have been valuable tools in other communities. We believe we currently have some tools to address public nuisance and injunctions, and to treat those individuals as gang members and impose any enhancements that may apply to that behavior.

Assemblyman Carpenter:

I understand if they join on their own, that is their prerogative. What if someone is after them to join a gang and uses anything in order to get them to join?

Jason Frierson:

Our concern, as a legal matter, is how to differentiate between the people who volunteered and those who were induced. I do not know if there is a legal standard for that. We believe that if the bill is broadened, it will open the door for every young gang member to say he was offered money, or some other bribe, to join the gang. Since every gang member would be able to say that somebody offered him something to join, we do not believe that conduct rises to the felony level where threats of violence would.

Orrin Johnson:

When they are offering gifts or money, many times it does not end there. The recruiter is not saying, "Hey, I will give you some money," and if the person says no, he walks away. Often threats are behind it: "You either take our carrot or you will feel our stick, but either way, it is up to you." Even when there are positive inducements, there are the negative ones as well.

The clear intent of this bill, and one of the reasons why we do not oppose it, is to protect those who are trying to get out of joining or do not want to join in the first place. When you have someone who is willing to join, especially with positive inducement, there are racketeering and conspiracy statutes and many other tools to go after them. There are gang enhancements in other bills as well. That is our concern with broadening the language. We think current law

is adequate, and this bill is tightly written and addresses a specific problem that needs to be addressed.

Vice Chair Segerblom:

We will close the hearing on S.B. 142.

I will pass the gavel to Chairman Anderson.

Chairman Anderson:

We will take a short break until Senator Rhoads shows up.

[Recessed and reconvened.]

Let us turn our attention to Senate Bill 149.

Senate Bill 149: Exempts limited-purpose associations that are created for a rural agricultural residential common-interest community from certain fees. (BDR 10-771)

Senator Dean A. Rhoads, Rural Nevada Senatorial District:

Regarding Senate Bill 149, the users came to me and Assemblyman Carpenter because they have been paying the ombudsman fee off and on for years, and they thought they should be exempt from it. We entered this bill in order to clean up the statutes. It would exempt a common-interest community (CIC) from the ombudsman fee in the rural, agricultural setting.

I have a letter from the chair of the Commission for Common-Interest Communities and Condominium Hotels, Michael Buckley. I would like to enter it into the record for the day.

[Read from letter ([Exhibit C](#)).]

On the Senate side, the president of the association testified, but since that time she has resigned and they have not appointed a new president.

Chairman Anderson:

Mr. Buckley has no objection to the loss of the revenue?

Senator Rhoads:

That is correct.

Chairman Anderson:

We are in the process of dealing with Assemblyman Carpenter's legislation in this regard. In fact, I think we have an amendment on it on the Floor. His language is a bit broader than yours and covers a few more areas.

Senator Rhoads:

That is what I understand.

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:

The common-interest communities program is within the Real Estate Division. I wanted to put a couple of things on the record. First of all, the Real Estate Division is neutral on S.B. 149. There have been rural residential communities that have utilized the services of the program, and I wanted the Committee to be aware of that. We have seven registered communities that have identified themselves to us as rural residential agricultural communities. It is of some interest to me that of those seven, three of them have utilized the services of the program—a number of years ago for some of them and more recently for the others. One of them, a northern association, has had 26 intervention affidavits filed through our office, which involves having the ombudsman offer to hold conferences to attempt to resolve the issue. In a recent case, she was not able to resolve it so the matter moved forward to our investigative section.

I want to put on the record, and make sure it is understood and agreeable, that if an association is deemed exempt and is not registered, then they would not be able to avail themselves of the services of the program. If they are not paying into it, they could not use the services.

I also want to ask that you clarify that if an association which is exempted chooses to register and participate in the services of the program, then they could do so. This bill should not preclude them from participating if they chose to do so.

Chairman Anderson:

Do you have anything in writing for us?

Gail Anderson:

I do not, but I can if you prefer it that way.

Chairman Anderson:

It would be helpful so we can make sure we have your recommendations in front of us when we deal with the bill.

Senator Rhoads, you have no objections if an agricultural group wishes to get into the system?

Senator Rhoades:

I have no problem with having that option. If they want to join, that is fine.

Chairman Anderson:

Assemblyman Carpenter, are there any points you need to make?

Assemblyman Carpenter:

No thank you, Mr. Chairman. I think the suggested amendment would be fine.

Chairman Anderson:

We will also look to see if there will be any conflicts with other legislation.

Bjorn Selinder, Fallon, Nevada, representing Churchill, Eureka, and Elko Counties:

I signed in support of S.B. 149. I have been following it since its inception. We would support Assembly Bill 207 as well. An amendment as suggested by Ms. Anderson is acceptable.

Chairman Anderson:

I will close the hearing on S.B. 149.

[Meeting adjourned at 9:00 a.m.]

RESPECTFULLY SUBMITTED:

Julie Kellen
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 17, 2009

Time of Meeting: 8:14 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Rosters
S.B. 149	C	Senator Dean A. Rhoads	Email from Michael Buckley