# MINUTES OF THE
# SENATE COMMITTEE ON JUDICIARY

## Seventy-fifth Session
## May 4, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 9:12 a.m. on Monday, May 4, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Mark E. Amodei

**COMMITTEE MEMBERS ABSENT:**

Senator Maurice E. Washington

**GUEST LEGISLATORS PRESENT:**

Assemblyman Bernie Anderson, Assembly District No. 31
Assemblyman Mo Denis, Assembly District No. 28
Assemblyman James A. Settelmeyer, Assembly District No. 39

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst
Risa B. Lang, Chief Deputy Legislative Counsel
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

**OTHERS PRESENT:**

William O. Voy, District Judge, Department A, Eighth Judicial District
Sam Bateman, Deputy District Attorney, Clark County; Nevada District Attorneys Association
Carey Stewart, Division Director, Protection Services, Department of Juvenile Services, Washoe County; Nevada Association of Juvenile Justice Administrators
Pauline Salla, Social Service Chief, Juvenile Justice and Delinquency Prevention, Division of Child and Family Services, Department of Health and Human Services
Constance J. Brooks, Senior Management Analyst, Administrative Services, Office of the County Manager, Clark County
John Tatro, Justice and Municipal Court, Justice Court II, Carson City
Jason Frierson, Office of the Public Defender, Clark County

VICE CHAIR WIENER:
Chair Care is in Committee this morning. We will begin with Assembly Bill (A.B.) 265.

**ASSEMBLY BILL 265 (1st Reprint)**: Revises provisions governing juvenile justice. (BDR 5-834)

ASSEMBLYMAN MO DENIS (Assembly District No. 28):
Let me present the background on A.B. 265. My constituent, a hearing master in Clark County, and I had discussions about helping the issue of truancy. My constituent buys candy bars and movie tickets with his own money for truant kids. He has an 80-percent success rate in getting these kids back to school, but there is that 20 percent who need additional help. He threatens to lock these truant kids up, but these 20 percent quickly realize he is blowing smoke and has no power to do anything. He wanted to have the ability to do more than just threaten these kids, thus we brought A.B. 265 forward.

The statute reads you must have a formal probation which requires a hearing. It does not give much leeway for informal probation. Informal probation allows one to work with juveniles to find ways to help them. An Assembly amendment exempted the truant folks and provided the juvenile delinquents with informal probation. The bill gives judges the ability to work with these kids who refuse to follow the judges' orders.

VICE CHAIR WIENER:
If the informal measure does not work as an alternative and the kids do not change their behavior or return to school, are measures in place under current law to address that situation?

ASSEMBLYMAN DENIS:
Correct. You then go to formal probation for a hearing process.

WILLIAM O. VOY (District Judge, Department A, Eighth Judicial District):
This bill was originally brought forward to deal with the issue that the court lacks the inherent authority of power of contempt. Under *Nevada Revised Statutes* (NRS) 62E, the ability to hold a child under the age of 18 in contempt of court was not granted to the court when sitting as a juvenile court. The bill brings back the inherent power of the court to hold someone in contempt with the removal of the provision that removes status offenders, such as truancy, from the bill.

This is advantageous for the volume of cases we handle in Clark County. I put about 1,000 kids every year on consent decrees where I order them to community service or some kind of treatment program. They are ordered to come back in 90 days to show completion of the assignment. If successful, their case is dismissed. If they do not complete the assignment, they go to informal probation for about six months where they are reinstructed to do the same thing that was ordered three months prior. If they still fail to comply, the probation officer has to do a formal probation violation notice and hold a hearing. Allowing the court to have its inherent power of contempt back would allow the court to order someone to go from the courtroom to community service and report back in 60 days. If community service is completed, the case is closed just like every other court in the system. The amended bill brings the inherent authority to hold someone in contempt to enforce its orders back to the court. It specifically delineates that so-called status offenders cannot be held in contempt. That is the bill before this Committee.

VICE CHAIR WIENER:
It always helps to have someone from the bench to provide an explanation.

SAM BATEMAN (Deputy District Attorney, Clark County; Nevada District Attorneys Association):
The Nevada District Attorneys Association supports A.B. 265. With this type of statute and authorization of contempt time, it will increase the number of juveniles we can put on consent decree status, which is informal probation.

Oftentimes, prosecutors think they can help juveniles maintain clear records by putting them on a consent decree and ultimately dismissing the case if the juveniles comply. This bill allows prosecutors to put juveniles on a consent decree and work with them to steer them on the right path more often than we do now. The Association does not think the ten-day contempt time necessarily takes the place of any other orders or punishments that can be done once someone is on probation. With the amendment, we are addressing juveniles who are less serious offenders who we can help before things get more serious in the system.

VICE CHAIR WIENER:
We will now hear from the opposition.

CAREY STEWART (Division Director, Probation Services, Department of Juvenile Services, Washoe County; Nevada Association of Juvenile Justice Administrators):
Since 2004, Washoe and Clark County have been involved in an initiative called the Juvenile Detention Alternative Initiative. During that time period, both Washoe and Clark County have had significant reductions in their detention population. Clark County has reduced their overall detention population 31 percent, and Washoe County has reduced their detention population 28 percent. In working with this initiative, we have found that eliminating the unnecessary use of detention is key to the successful reduction of detention population. In doing so, we have found the kids that should be in detention are those who are of utmost risk to the community to commit serious offenses. They need to be in a secure environment so they do not reoffend.

During our involvement with this initiative, we also found through research that when you put low-risk kids into a secure detention environment with high-risk offenders, the low-risk offenders become worse. Detention is not a cure-all for their noncompliance and contempt-type of behavior. When kids enter detention, their chances of coming back into detention multiple times increase significantly with only one detention.

The Nevada Association of Juvenile Justice Administrators are concerned that A.B. 265 could have an adverse affect on disproportionate minority confinement. Most jurisdictions throughout the United States struggle with the challenge of disproportionate minority confinement. Assembly Bill 265 will take low-risk offenders and put them in a secure detention facility as a means of punishment to correct their behavior. It will have an adverse affect with the low-risk offenders, but we do not know the impact it will have on our kids of color. Multiple facets of the juvenile justice system impact our kids of color. By randomly using detention as a means of consequence to these kids, the Association's position is it will increase this disproportionate minority confinement.

Another area of concern regarding the bill is that our federal funding through the Office of Juvenile Justice and Delinquency Prevention (OJJDP) could be jeopardized in certain types of cases. Most notably, when we place kids on probation or order kids for minor possession of alcohol offenses into detention, those are potential violations from the federal government. Minor possession of alcohol is classified as a status offense or children in need of services (CHIN) type of probation. If we have many of those violations, we are at risk of losing our funding. Without having much control in regard to utilization, that could have an adverse affect on us.

We do not need A.B. 265 to effectively work with our kids in the State of Nevada. We have evidence-based programming. We have different methods we can use with our kids. We do not need secure detention with our low-risk offenders.

VICE CHAIR WIENER:
You shared quite a substantive response to the measure. Did you share this in the Assembly?

MR. STEWART:
Yes, I did.

SENATOR COPENING:
How much funding could potentially be in jeopardy?

PAULINE SALLA (Social Service Chief, Juvenile Justice and Delinquency Prevention, Division of Child and Family Services, Department of Health and Human Services):
I am a juvenile justice specialist neutral on the bill. We receive $600,000 from the Title II Formula Grants Program from OJJDP. To receive that funding, the State must be in compliance with four core requirements. One of those core requirements is the institutionalization of status offenders.

CONSTANCE BROOKS (Senior Management Analyst, Administrative Services, Office of the County Manager, Clark County):
I am here to testify in opposition of A.B. 265. Our assistant director for the Clark County Department of Juvenile Justice is in Washington, D.C., working with United States Senator Harry Reid on issues relating to national juvenile justice concerns. We echo the sentiments of Mr. Stewart. Assembly Bill 265 would drive up numbers for our detention population and contribute to recidivism of low-level offenders.

MS. SALLA:
I want to break down the funding even further for the Committee. If we are out of compliance with any of the four core requirements, we have the potential to automatically lose 20 percent of our funding off the top. The remaining 50 percent of our funding must be used to correct the problem. In the end, if we are out of compliance and cannot meet the minimum exceptions with OJJDP, we would be sub granting approximately $133,000 throughout the State.

ASSEMBLYMAN DENIS:
This same testimony came forward in the Assembly, and that is the reason we exempted out the CHIN or status offenders because we were worried about funding. Therefore, I do not understand the testimony that our funding could be in jeopardy. That was only with CHIN offenders, and we exempted them.

VICE CHAIR WIENER:
We will close the hearing on A.B. 265 and open the hearing on A.B. 475.

**ASSEMBLY BILL 475 (1st Reprint)**: Makes various changes concerning the revision of statutes. (BDR 17-47)

ASSEMBLYMAN BERNIE ANDERSON (Assembly District No. 31):
I will read my prepared testimony (Exhibit C).

JOHN TATRO (Justice and Municipal Court, Justice Court II, Carson City):
I am a lower court judge in Carson City and immediate past President of the Nevada Judges of Limited Jurisdiction. It was our priority to make NRS 484 easier to understand as it relates to the driving under the influence (DUI) section. It has been amended many times over the years. There are many five-digit references past the decimal point. It is difficult for attorneys representing clients who have not had many DUIs to figure out what they need to do and how the law pertains to them. Chair Anderson, Risa Lang, Jennifer Chisel and I formed a committee consisting of defense lawyers, prosecutors and judges. We met with the Department of Transportation, Department of Motor Vehicles and the Department of Public Safety. This rewrite will make it easier for any attorney or layman to follow any section of the *Nevada Revised Statutes.*

RISA B. LANG (Chief Deputy Legislative Counsel):
I am here to answer questions. We recodified NRS 484. When we put things in better organization with these types of projects, we anticipate all the additional concerns that may be raised. The project has been carried out, but we will have to update it with any changes made during this Legislative Session. To make this simpler, we agreed that whenever we change numbering in NRS, we keep the old numbers for a period of two years. Since these sections are frequently cited, the Legislative Counsel agreed to leave those in the statutes for at least five years until people get used to the renumbering of the chapters as NRS 484A through NRS 484E are recodified.

CHAIR CARE:
Section 5 addresses gender neutral. When you use a third-person singular common noun you are to use a plural possessive pronoun. For example: A person who has been injured is entitled to exercise “their” rights as opposed to “his” rights. In the old school, the pronoun and possessive had to agree as being singular or plural.

MS. LANG:
In our current drafting, we would have those agree. To correct any inconsistencies, we will read each section and change the language to gender neutral.

SENATOR MCGINNESS:
What will the reference be to make it gender neutral?

MS. LANG:
It will depend on how the section is written and what topic is addressed. It could be person or plural. I do not think we would go to a he-or-she-type thing. We will read each section and make a determination.

CHAIR CARE:
We will close the hearing on A.B. 475 and open the hearing on A.B. 311.

**ASSEMBLY BILL 311 (2nd Reprint)**: Revises provisions governing the financial statements of common-interest communities. (BDR 10-389)

ASSEMBLYMAN JAMES A. SETTELMEYER (Assembly District No. 39):
A constituent contacted me in the interim about an issue dealing with homeowners' associations (HOA). According to law, most HOAs must do regular audits and/or reviews. This bill tries to help the smaller HOAs.

In the State of Nevada, we have 2,952 associations representing 469,460 units. We have four HOAs removed for every one added. At this rate, we will not have many HOA issues to deal with in the future. The sizes of the HOAs range from four units with a budget of $1,315 to larger HOAs of 7,962 units with budgets of approximately $54 million. A proposed HOA in Coyote Springs that was to have 160,000 units has been put on hold because of the economy.

Within the bill, we have a tiered system explaining how HOAs determine if they should have a review or an audit. The lower threshold is $0 to $75,000 representing 1,260 associations. The middle threshold, $75,000 to $150,000, represents 563 associations. Last Session, laws were changed, requiring smaller HOAs to have a full audit every four years. Some of those HOAs are coming up against that time frame for a full audit. Some of these smaller HOAs with an annual budget of approximately $1,315 will have to come up with $5,000 minimum for a review or possibly $20,000 for an audit. They are finding the cost of their membership is large, and they would like to do away with the HOA.

My suggestion was for the smaller HOAs to do a review rather than a full audit. Certified Public Accountants (CPA) have indicated most reviews would determine any type of criminal activity. If criminal activity is found, we left in the law the ability for the HOA to gather 15 percent of the voting members to order a full audit, understanding the costs associated with the audit. Assembly Bill 311 provides some economic relief to individuals within the HOAs.

SENATOR COPENING:
If a review discovers criminal activity, does this bill require the HOA to then have an audit?

ASSEMBLYMAN SETTELMEYER:
The reports stating whether to have an audit or a review are to be reported to the members of the HOA. If the members of the HOA receive a report stating something is wrong with the budget, this should trigger the 15 percent threshold of the HOA membership to come forward and order a full audit. When you get to the breaking point between the small and mid-sized level, this is when tomfoolery might occur. Most people living in HOAs are very involved in their associations, and this should raise a warning flag.

CHAIR CARE:
Some of the statutes enacted under NRS 116 are a burden to the smaller associations.

We will close the hearing on A.B. 311 and open the hearing on A.B. 499.

**ASSEMBLY BILL 499 (1st Reprint)**: Revises provisions relating to discovery in criminal proceedings. (BDR 14-1158)

JASON FRIERSON (Office of the Public Defender, Clark County):
Assembly Bill 499 represents consensus language reached between public defenders and the District Attorneys Association with respect to access to discovery and preparation for preliminary hearings. This bill was designed not to address or require that district attorneys do anything more than what they are doing now. It sets up a statutory scheme to reflect the actual practice.

Originally, it was required that discovery be provided at initial arraignment, which is typically two weeks before preliminary hearing. However, in

discussions with the District Attorneys Association, it became clear that some of the smaller counties were unable to accommodate that requirement. The spirit of the bill is to provide discovery at an early point in the process so that proper preparation can be had.

The language in A.B. 499 provides large and small counties some flexibility in the time line for providing discovery. The language makes it clear that the preference is to provide discovery as early as possible, but no later than five days. Prior to A.B. 499, it was two days, but that was not enough time to adequately prepare for a preliminary hearing. Administrative Docket (ADKT) No. 411 came out, and the Nevada Supreme Court imposed those performance standards. This bill was not because of ADKT No. 411, but it reiterated the need for the providing of discovery as early as possible. Assembly Bill 499 represents consensus language that unanimously came out of the Assembly.

MR. BATEMAN:
We worked with Mr. Frierson and agreed with the language in the bill. It is meant to cover any discovery currently in the possession of the prosecutor at the time as opposed to the statutes in discovery that involve actual district court trials. Those statutes say it is in our constructive possession. If it is in the possession of a state agency, we would have constructive possession over that discovery. However, this refers only to what is in our actual possession. Mr. Frierson would acknowledge that is the intent.

SENATOR COPENING:
Mr. Frierson, can you explain to me why you added the specific category "felony or a gross misdemeanor" on line 1 on page 2?

MR. FRIERSON:
That language reflects in practice what was already there. Current statute refers to a preliminary hearing. Because there are no preliminary hearings for misdemeanors, the city attorneys were concerned it might affect misdemeanor trials. We included that language to clarify this is only with respect to preliminary hearing preparation and not intended to affect misdemeanor trials.

CHAIR CARE:
Since we do not have everybody here, I am going to have a meeting by the bar during floor session to see if there is an appetite for the Committee to take action on the last three bills we heard today. There is no further business. We are adjourned at 9:54 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: