

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
June 6, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 1:33 p.m. on Monday, June 6, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Clark County Senatorial District No. 7
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bryan Fernley-Gonzalez, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Peggy Lear Bowen
Larry Struve, Advocate, Religious Alliance in Nevada
Tierra Jones, Clark County Public Defender's Office
John V. Cracchiolo, Executive Director, Nevada Catholic Conference
Jeffrey Mohlenkamp, Deputy Director, Support Services, Department of Corrections
Keith Lee, Cantor Gaming

Senate Committee on Judiciary
June 6, 2011
Page 2

Brin Gibson, Cantor Gaming
Jennifer J. DiMarzio

CHAIR WIENER:

We will address Amendment Nos. 661 and 958 to Senate Bill (S.B.) 159 with which we have been asked to concur.

[SENATE BILL 159 \(3rd Reprint\)](#): Makes various changes governing offenders.
(BDR 16-74)

BRYAN FERNLEY-GONZALEZ (Counsel):

Amendment No. 661 from the Assembly removed provisions authorizing a court to require the earnings of a probationer to be held in trust to pay restitution, child support or other obligations of the petitioner. It also removed nonviolent Category B felonies from the list of felonies for which a court may require a convicted person to complete an alternative program, treatment or activity. Amendment No. 958, the most recent amendment, waives the fee for issuing a certified copy or official copy of the convicted person's birth certificate, record of birth, duplicate driver's license or identification card if the person missed documentation from the Department of Corrections verifying the person was released from prison within the immediately preceding 90 days.

SENATOR GUSTAVSON:

I am concerned about the possibility of an unfunded mandate to the counties. Assembly Bill (A.B.) 92 was amended into this bill in the Assembly Committee on Ways and Means. That originally had a fiscal note of approximately \$200,000. The Assembly Committee on Judiciary removed section 2 of the bill regarding trust funds. I am okay with that for now but would like to see it in there. Please address the fiscal note.

[ASSEMBLY BILL 92 \(1st Reprint\)](#): Provides for the waiver of fees for the issuance of certain forms of identifying information for certain persons released from prison. (BDR 40-598)

CHAIR WIENER:

We are looking at the overall policy. If we give inmates coming out of prison the opportunity to identify themselves and get employment, perhaps the burden on the correctional institutions and counties will be lower. These people will not

come back to the facilities because, with an identification, they can get employment.

SENATOR GUSTAVSON:

This bill will help people get back to work so they do not recidivate.

SENATOR GUSTAVSON MOVED TO CONCUR WITH AMENDMENT NOS. 661 AND 958 TO S.B. 159.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR WIENER:

We will address Amendment No. 548 to S.B. 282 with which we have been asked to concur.

[SENATE BILL 282 \(1st Reprint\)](#): Prohibits the willful and intentional public posting or displaying of the social security number of another person. (BDR 15-792)

MR. FERNLEY-GONZALEZ:

The amendment adds the word "willfully" to the language creating a crime so the crime is defined as "willfully and intentionally" posting or displaying in any public manner the social security number of another person. The amendment also added specific circumstances which would not constitute committing the crime. Those circumstances would be using a social security number for internal verification or administrative purposes and placing them in documents that are recorded or required to be open to the public pursuant to federal or State law or regulation. The amendment also specifies certain circumstances that do constitute posting or displaying a social security number in a public manner. That is a nonexhaustive list.

CHAIR WIENER:

Does that include without limitation? It gives a scheme we did not have in the original bill. Senator Gustavson, I talked to counsel before I knew of your concerns that this might water down some of the provisions. According to

counsel, this does not dilute the value or import of what we attempted to accomplish.

MR. FERNLEY-GONZALEZ:

The exclusions are more specifically defined circumstances that may or may not have constituted the crime in the first place. For example, the first circumstance is using the social security number for internal verification or administrative purposes. This means it is not being used in a public manner. The other circumstance is documents recorded or required to be open to the public pursuant to federal or State law. The original version of the bill said "unless the person is authorized or required to post or display pursuant to federal or state law."

SENATOR GUSTAVSON:

The bill says, "willful and intentional." I do have a concern with that.

CHAIR WIENER:

If we do not take this step, we have nothing.

SENATOR GUSTAVSON:

We do need something.

SENATOR GUSTAVSON MOVED TO CONCUR WITH AMENDMENT NO. 548 TO S.B. 282.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

We will address Amendment No. 732 to S.B. 376 with which we have been asked to concur. Former Senator Ann O'Connell's son related his experience with his e-mail being hacked. The bill had the penalty as a misdemeanor. This Committee felt the action was more egregious than a misdemeanor and raised it to a Category E felony. The other House brought it down to a gross misdemeanor. I have spoken with the sponsor, and she would have liked the

Category E felony, but agreed with the gross misdemeanor. The action must be malicious in addition to knowing and willful. Without this, we have nothing.

[SENATE BILL 376 \(2nd Reprint\)](#): Increases the penalty for certain technological crimes. (BDR 15-1000)

SENATOR GUSTAVSON MOVED TO CONCUR WITH AMENDMENT NO. 732 TO S.B. 376.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

PEGGY LEAR BOWEN:

I want to thank you for all your service and hard work. No matter where you stood on the issues, thank you for being here.

CHAIR WIENER:

I will open the work session on A.B. 219. This bill was referred to as "ticket in, ticket out." It dealt with unclaimed property of slot machine vouchers at hotels. Often, people do not know they have left a voucher behind. Assemblyman William C. Horne brought this bill on request from a constituent. A compromise was reached where 75 percent goes to the State as unclaimed property and 25 percent to the casino. No amendments were offered.

[ASSEMBLY BILL 219 \(2nd Reprint\)](#): Revises provisions governing the expiration of slot machine wagering vouchers. (BDR 10-811)

SENATOR BREEDEN MOVED TO DO PASS A.B. 219.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON AND ROBERSON VOTED NO.)

Senate Committee on Judiciary
June 6, 2011
Page 6

CHAIR WIENER:

I will open the hearing on A.B. 93.

ASSEMBLY BILL 93 (2nd Reprint): Provides for the establishment of a pilot diversion program within the Department of Corrections to provide treatment for alcohol or drug abuse or mental illness to certain probation violators. (BDR S-509)

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):

It became clear this bill would not go anywhere because of the fiscal note. We worked with the State to modify A.B. 93. District Judge Jackie Glass, Eighth Judicial District, initiated a program where people with nonviolent drug- or alcohol-related issues are treated separately even though they have convictions. Persons who successfully complete the program end up without convictions on their records. This bill will help keep that program going and hopefully expand it over the next four years. We are trying to keep people out of the criminal justice system because if there is a felony on record, the rest of that person's life is pretty much destroyed.

CHAIR WIENER:

Will this be integrated in some way with the community court program?

ASSEMBLYMAN SEGERBLOM:

Not at this point. We hope we can evolve to that. We are looking at first-time nonviolent offenders. If we can deal with them and their addiction problems early and keep them out of the system, that is a much better way to go for them and all of us. If they continue going back into the system, we pay the price.

CHAIR WIENER:

In my first session, I sponsored legislation to create therapeutic communities in prisons. We have learned that if people with addictions do not get help, 85 percent of them return to the system. Of those involved with a therapeutic community, those statistics flip as approximately 15 percent return because they have the chance to build healthy habits and get the aftercare. You are saying if we reach the problem early enough, maybe the person will not go into prison in the first place.

ASSEMBLYMAN SEGERBLOM:

That is the thought. If it does not work, these people can go through the system. We will at least give them a chance. We are trying to prevent people from having felonies on their records. If they do have felonies, they will get driver's licenses when they come out of prison. We will work with them. To have felonies is devastating to them and all of us because they are unproductive and drains on society.

SENATOR MCGINNESS:

When I first came to the Legislature, I went to Las Vegas and visited the drug court. This turned out to be a great program. I have always had a concern that we are dispensing unequal justice because if you are in rural Nevada and get picked up with marijuana, for example, you go to prison. If you get picked up for marijuana in Clark County, you go to a diversion program. How do you reconcile that?

ASSEMBLYMAN SEGERBLOM:

The cost-effectiveness of the program is the problem. The program should be everywhere. Since you have a judge in Churchill County, perhaps that judge can devote some time to this. District Judge Glass just created this program. A judge can develop that program on his or her own.

SENATOR MCGINNESS:

This says it includes an appropriation not included in the *Executive Budget*. How will we pay for this?

ASSEMBLYMAN SEGERBLOM:

There is no cost. This is enabling language allowing the State to do what it has been doing. It is more comfortable working with District Judge Glass and looking to expand the program. Perhaps, we come back in two or four years when we have more money. The costs are paid by the inmates. They pay for their counseling. Keeping people out of jail saves \$20,000 per year, per inmate.

LARRY STRUVE (Advocate, Religious Alliance in Nevada):

This bill is an example of what can be done to address the problem of recidivism and growing population in the prison system. The Religious Alliance in Nevada (RAIN) board was involved in the Advisory Commission on the Administration of Justice, Department of Corrections (DOC), which was set up by then-Assemblyman David Parks' Assembly Select Committee on Corrections,

Parole and Probation in the 74th Session. Through our involvement, at the invitation of Justice James Hardesty of the Nevada Supreme Court, we became aware of the potential for an intermediate sanctions facility to reduce the costs of the prison system. The RAIN board has voted to give A.B. 93 a top priority. We support A.B. 93.

We understand the bill as amended is limited in scope. It will deal only with the resources available in the DOC. It is a start. If successful, it can hopefully be expanded in the future. We would work with the DOC in trying to find resources to make an intermediate sanctions program successful so we do not have to build new prisons and spend huge sums of money in dealing with these people.

TIERRA JONES (Clark County Public Defender's Office):

We agree with the remarks of Assemblyman Segerblom and Mr. Struve. This would be a good program. We recognize the amendments limit the bill. However, we understand that is what is possible in our State in our economic situation. Philip J. Kohn, Clark County Public Defender, is a member of the Advisory Commission on the Administration of Justice. He looks forward to working with Assemblyman Segerblom and expanding this program when it is more appropriate for Nevada.

Many of our clients would benefit from this program. District Judge Glass runs the specialty courts in Clark County. Mental health court is available to people with mental issues that may prevent them from being successful without that type of monitoring. District Judge Glass also coordinates the drug court program. These programs have been successful for our clients.

JOHN V. CRACCHIOLO (Executive Director, Nevada Catholic Conference):

We support the bill. The treatment for drug and alcohol problems would have been beneficial but was negotiated out because of the fiscal note. These problems perpetuate people returning to our prisons, but I understand the fiscal aspect. This bill is a step forward, and we hope it can be expanded down the road.

JEFFREY MOHLENKAMP (Deputy Director, Support Services, Department of Corrections):

We support this bill. This codifies what we already do. We have approximately 380 beds at Casa Grande Transitional Center in Las Vegas. Generally more than 100 beds are available for use in alternative programs. We have incorporated

this program over the last year. We are starting to get some numbers. We hope in the next year we will have more numbers and be able to come back to you next Session and identify the relative success of this program at keeping people out of the prison system. It is a good step forward. It will ultimately need dedicated funding for substance abuse treatment. The courts have some resources, and that is better than nothing. We are an alternative to individuals coming back into the prison systems. It gives courts another option.

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):
We have limited funds. We have tried to start programs that will provide treatment to individuals and reduce the number of individuals who must be reprocessed into the correctional system, which is a substantial cost. The Casa Grande Transitional Center is my crowning achievement. We need more of that, and I will pursue this in the future. This is a good program. It has shown that it works elsewhere. Not only does it save the State money, but it saves lives because it puts people back on the street in better condition.

CHAIR WIENER:
I will close the hearing on A.B. 93.

SENATOR BREEDEN MOVED TO DO PASS A.B. 93.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

CHAIR WIENER:
I will open the hearing on A.B. 279.

ASSEMBLY BILL 279 (2nd Reprint): Authorizes independent testing laboratories to inspect and certify gaming devices, equipment and systems. (BDR 41-570)

KEITH LEE (Cantor Gaming):
This bill was reviewed by the Assembly Committee on Ways and Means because of a question about a fiscal note. Assembly Bill 279 authorizes private

testing laboratories for gaming devices, wireless gaming devices and slot devices. These devices could be tested by an independent testing laboratory with the ultimate certification and approval of that certification by the State Gaming Control Board and the Nevada Gaming Commission. It went to the Fiscal Division because, as part of the Governor's budget, the Gaming Control Board's budget of \$800,000, plus or minus, was removed, which is the budget for the testing laboratory.

This bill contemplates phasing out the State testing laboratory and phasing in private testing laboratories. These laboratories would inspect and test various gaming devices called associated equipment, cashless wagering systems, mobile gaming systems, interactive gaming systems and other gaming devices to bring them to market more expeditiously. The cornerstone of the success of our gaming industry is the strict scrutiny, licensing and enforcement standards in Nevada. Among those are strict inspection and certification standards for these gaming devices. The various components are complex. The State laboratory is the only entity in Nevada that is able to and has the responsibility for inspecting and testing these various devices. It includes a staff of ten. They are swamped trying to bring these devices to the Gaming Commission for final approval. Some of these approvals can take as long as 12 to 18 months because of the backup within the laboratories.

To remain competitive in the worldwide marketplace, it is important that we bring these games to market quickly. In most other jurisdictions, that is 90 to 120 days. We are falling behind because of the backlog at the State Gaming Control Board.

Originally, this bill said the Commission "may" adopt regulations. Mark A. Lipparelli, Chair, State Gaming Control Board, suggested it be changed to "shall," which you will see in section 1, subsection 7 of the bill. This sets up a regulatory process by which the Nevada Gaming Commission will establish standards and licensing procedures for private laboratories, which must meet the proper criteria to be licensed in the Nevada to provide testing, inspection and certification of these devices. The Nevada Gaming Commission ultimately approves the testing and certification, whether it is done by a private laboratory as suggested in this bill, or by the State laboratory. The Gaming Commission, with advice from the Gaming Control Board, will have the ultimate authority on whether these gaming devices are brought into the gaming marketplace.

This bill allows a regulatory process to be put in place so the Gaming Commission, after taking public input, can develop the regulations to allow for the licensure of private laboratories for the testing, procedures and protocol necessary to have the proper interface between the State gaming regulators and the testing laboratory.

A number of jurisdictions in the world allow gaming in one form or another. We are one of the few jurisdictions that do not allow testing by private laboratories for gaming devices. We have at least two private testing laboratories in Nevada that are testing these devices for other jurisdictions. Macau is one of them. Macau is becoming a major competitor to Nevada. It is important we keep on a par with our sister jurisdictions that have gaming so we can maintain state-of-the-art gaming devices.

The only change to this bill from the Assembly is in section 1.5 where you see a date of October 1, which is the date by which the Gaming Commission must adopt regulations. Mr. Lipparelli indicated they are backed up with regulations. He has requested a date of May 1, 2012, to which we have agreed. This is good legislation. We have to replace the hole in the budget bill with private testing laboratories.

CHAIR WIENER:

These are independent testing laboratories. You represent Cantor Gaming, which is a gaming product manufacturer. Help me understand this.

MR. LEE:

I do represent Cantor Gaming. We are on the cutting edge of developing cashless wagering systems and Internet interactive gaming systems. We are not in the business of being private testing laboratories. This is good policy for Nevada because it is important that we bring these state-of-the-art interactive and cashless gaming systems into the marketplace and into play as quickly as we can while honoring the overall responsibilities of the gaming authorities to make sure these are as good as they can be. Cantor Gaming's only interest in this is working with the Office of the Governor and the Gaming Control Board to make this a reality and to help support it. We would like to be able to get our systems inspected and into play much sooner than we can now because of the backlog at the State testing laboratory.

CHAIR WIENER:

Would the private testing laboratory be independent of any manufacturer so there is no incestuous tie between the tester and that being tested?

BRIN GIBSON (Cantor Gaming):

That is correct. There are private testing laboratories throughout the world that have no association with manufacturers. That would be the case here as well. Cantor's primary interest is in moving the equipment onto the floor faster. Other jurisdictions are surpassing Nevada in gaming revenue. Given the population sizes of those jurisdictions and the fact they can move technology onto the floor so quickly, this is important for Nevada to be able to maintain its competitive advantage. That is the primary motivation for Cantor Gaming.

CHAIR WIENER:

Are these laboratories inspecting products that would be used inside and outside the State?

MR. LEE:

Yes. Two testing laboratories are doing business in the State, one of which has 60 employees. This would add jobs because, if we have more games these laboratories will need to test, they will have to hire more people to keep up with the demand of the marketplace.

CHAIR WIENER:

They are testing equipment that will be used in Nevada as well as equipment recognized worldwide. We have those standards that once it has been tested, it would be used inside or outside Nevada.

MR. GIBSON:

The independent laboratories make use of the protocol the jurisdictions require. For example, a device is being tested for Macau, and Macau has specific regulations. The device would be tested according to those regulations. Nevada has its own regulations. The laboratories are flexible and able to do that. They test for devices going around the world using different protocols.

CHAIR WIENER:

You mentioned an \$800,000 hole. Are you anticipating this could help fill that hole and then go beyond that?

MR. LEE:

It was \$800,000 for the biennium. The State would outsource to these laboratories. These laboratories can only charge the cost of testing. Their profit is built into that cost of testing. Part of this regulatory process is to develop the procedures and protocols the gaming authorities will expect any licensed laboratory to follow. These laboratories must be licensed by the State before they can begin testing any devices or components to devices that would be put into play in Nevada.

CHAIR WIENER:

These laboratories are testing for outside jurisdictions now because that licensure does not affect products used in our State.

SENATOR GUSTAVSON:

You mentioned \$800,000 coming into the State revenue. Where would this come from?

MR. LEE:

The State has its own testing laboratory with ten employees. The cost of operating the laboratory is \$800,000 for the biennium. The testimony in the Assembly Committee on Ways and Means was that there was a small net to the State from the money people must pay to have their games tested by the State. The \$800,000 hole in the budget is in the budget now. If I understand it correctly, the State laboratory will not be funded going forward and will be outsourced, so it will save the State money because it will not be paying for that. The licensing and registration fees will go to the private laboratory. The trade-off back to the State is that we will get games into play much more quickly in Nevada, and it will enhance the gaming revenues. We no longer make as much money off table card games. The gaming devices are bringing the revenue into the State.

CHAIR WIENER:

We cannot take action on this bill until we have jurisdiction. The bill is in the other House.

JENNIFER J. DiMARZIO:

This bill will allow the Gaming Control Board laboratory staff to focus on looking at new technology and moving forward rather than testing old technology. It would be able to outsource to these independent laboratories.

CHAIR WIENER:

Would the State laboratory take on a different role with its own facilities, which it cannot do now?

MS. DIMARZIO:

That is correct.

SENATOR GUSTAVSON:

The top of page 1 of the bill says it requires a two-thirds majority vote. Will the independent testers be required to have a State license? Why is a two-thirds majority vote required?

CHAIR WIENER:

The first reprint requires a two-thirds majority vote. Has that changed?

MR. GIBSON:

If I recall correctly, looking through the fiscal narrative, there was a \$10,000 cost to training and moving people around within the laboratory. Over the biennium, it would be a \$42,000 savings to the State. That came about because of the original \$10,000 in training money.

Senate Committee on Judiciary
June 6, 2011
Page 15

CHAIR WIENER:

I will close the hearing on A.B. 279. I will open the hearing for public comment. There being nothing further to come before this Committee, we are adjourned at 3:23 p.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster