

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session  
March 8, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:06 a.m. on Tuesday, March 8, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 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

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Policy Analyst  
Bradley A. Wilkinson, Counsel  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada  
Greg Cox, Acting Director, Department of Corrections  
Jeffrey Mohlenkamp, Deputy Director, Support Services, Department of Corrections

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Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of  
the Attorney General  
Tonja Brown

CHAIR WIENER:  
I will open the hearing on Senate Bill (S.B.) 201.

**SENATE BILL 201**: Revises provisions relating to correctional institutions.  
(BDR 16-827)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):  
This is a fairly straightforward bill that creates the office of the Ombudsman for Offenders within the Office of the Attorney General. When the State incarcerates a person for committing a crime, it assumes the obligation to treat that person humanely and provide housing, food, rehabilitation and health care for that individual. That is why we believe S.B. 201 is necessary, as it provides for the establishment of an Ombudsman who will ensure prisoners are treated humanely. This issue has been discussed over the last several Legislative Sessions, and it has been a continual point with the Advisory Commission on the Administration of Justice.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):

I have written testimony explaining the provisions of S.B. 201 and the need for this bill ([Exhibit C](#)). As you may know, the American Civil Liberties Union of Nevada (ACLUN) represented inmates in the class action lawsuit, *Riker v. Gibbons*, Case No. 3:08-CV-00115-LRH-VPC, in the United States District Court for the District of Nevada. That lawsuit was settled in July 2010. The settlement established standards for medical and dental care that Ely State Prison (ESP) is required to meet. It also provided a monetary amount to allow for additional outside oversight. This bill seeks to enforce the standards portion of that settlement throughout the Department of Corrections (DOC).

Sections 20 and 21 of the bill require the DOC to establish regulations that comply with the standards of the National Commission on Correctional Health Care (NCCHC).

Establishing the Ombudsman would be a reasonable way to move toward accountability and transparency while hopefully preventing the type of litigation

that we saw in *Riker* and another case brought by a private litigant. Combined, those two cases have cost the State almost \$750,000. This bill will end up saving the State money in the long run in spite of the initial fiscal impact.

[Exhibit C](#) details a few recommended amendments to the bill. It should be included that the Ombudsman is an autonomous body not influenced by the DOC, the Attorney General, prison staff or any Constitutional State Officer or Legislator. The reports should be made public, and the Ombudsman should have fair and efficient access to documents, procedures and inmates in order to investigate complaints. In section 21, mental health should be added to the coverage of medical and dental services.

CHAIR WIENER:

We will review these amendments. We should perhaps discuss section 13, subsection 2 of S.B. 201, which states, "The Ombudsman is not required to process or report a complaint" and "A person is not entitled as a right to have his or her complaint processed or reported by the Ombudsman."

MS. GASCA:

That provision is an important mechanism for ensuring the Ombudsman is not overwhelmed by complaints. Because of the nature of our organization, the ACLUN knows this problem firsthand. Prisoners tend to have a lot of time on their hands and to write a lot of complaints. We receive hundreds of complaints with requests for legal assistance every month. About 75 percent of those complaints come from inmates in Nevada prisons and jails. We anticipate that the Ombudsman could receive a large amount of complaints, and it is important to lay out that this is not a right. The office of the Ombudsman is an oversight mechanism that will allow additional insight into the prison system and enhance accountability and transparency. It shows the commitment of the State to ensuring accountability.

Right now, the ACLUN is the only nongovernmental organization filling this role. We are overwhelmed, and there is only so much we can do. Taking on cases like *Riker* is important. Over the last couple sessions, adequate reason has been put before the Legislature to create some sort of mechanism to handle these issues within the government itself.

CHAIR WIENER:

Section 16 describes the report to be made by the Ombudsman to the Legislature every Legislative Session. This report should also include the number of complaints not processed so we get a sense of the percentage of redundant or frivolous complaints received, as well as the general reasons the complaints were not processed, without naming names.

MS. GASCA:

That is a good suggestion and would help to ensure transparency. It would enable the public to understand the amount of information coming forward and the reasons why the Ombudsman might decide not to process a complaint.

CHAIR WIENER:

You mentioned the fiscal impact of S.B. 201. We do not yet have a fiscal note for this bill, but hopefully we will get that information today.

SENATOR ROBERSON:

What were the problems at ESP cited in *Riker*?

MS. GASCA:

The suit alleged gross and inadequate medical and dental care. The terms of the settlement and details about what was found at ESP can be found on our Website: < <http://www.aclu.org/prisoners-rights/riker-v-gibbons-settlement> > . Dr. William Noel, the expert we retained to investigate medical conditions inside ESP, said the conditions showed "the most shocking and callous disregard for human life and human suffering that I have ever encountered in the medical profession in my 35 years of practice."

We are hopeful that the mechanisms put in place at ESP will prevent anything like this from happening again at that facility. However, since the litigation was specific to ESP, the standards and mechanisms put in place were not applied to the rest of the prison system.

SENATOR ROBERSON:

Do you have any reason to believe this is a systemic problem within Nevada prisons? If you do, are you suggesting the DOC is not doing its job?

MS. GASCA:

I have provided a copy of a booklet produced by the ACLUN entitled, "Not Fit for Human Consumption or Habitation: Nevada's Prisons in Crisis" ([Exhibit D](#), original is on file in the Research Library). Without question, there are issues systemwide. As you can see from the cases in [Exhibit D](#), an outside monitor would ensure we do not come to a point where a class action suit across the entire DOC would be warranted.

SENATOR ROBERSON:

You may be right about the problems, but my concern is the fiscal impact. This bill would allow the Ombudsman to hire staff, purchase equipment, lease office space and so on. We are broke. Every dollar we spend on an Ombudsman and staff is a dollar we cannot spend on a teacher or school books to help our children. If this were an existing program, it would be one of the first to be cut.

SENATOR COPENING:

You said you thought we could save money by establishing this office. Are you referring to the lessening of class action lawsuits?

MS. GASCA:

Recent settlements have shown there are issues within ESP. That was proven. It would take additional lawsuits to prove that similar circumstances exist throughout the system. We support this bill because we do not want to get to that position. Now that we have identified the problem and a good mechanism to ensure it does not continue within one prison, we think it would be prudent for the State to apply that mechanism systemwide.

I am not here to threaten lawsuits; I am not an attorney. I speak on behalf of the organization and on good sound public policy and legislative intent. That is why the ACLUN is here in support of Senator Parks' bill. This was not an idea generated by the ACLUN. It came from an independent organization: the Vera Institute of Justice, which went into detail about the accountability and audit mechanisms within the State and how the State could more adequately respond to existing conditions. That report is available at < [http://www.doc.nv.gov/Vera\\_Oversight\\_Status\\_Report\\_for\\_NDOC\\_July\\_2010.pdf](http://www.doc.nv.gov/Vera_Oversight_Status_Report_for_NDOC_July_2010.pdf) > .

SENATOR COPENING:

Are there any ways other than avoiding lawsuits that an Ombudsman would save us money?

MS. GASCA:

Yes. As the prison population ages, acute medical and dental issues arise. Catching those medical problems earlier rather than later means they will not turn into severe and expensive medical issues. An independent monitor making sure those issues were being caught early on could prevent increased medical bills the State would otherwise have to absorb.

SENATOR BREEDEN:

Is there a process in place for offenders to request medical help?

MS. GASCA:

There is, but that process was also in place in ESP before the lawsuit. From our perspective, that process is not responsive in an adequate and timely fashion. One of the cases that triggered the *Riker* case was an inmate who was allowed to die from gangrene. Gangrene is a condition that takes years to kill a person. It is a visible and painful condition. That case is an example of suffering an independent monitor could have prevented.

SENATOR GUSTAVSON:

I would like to see an Ombudsman in place. However, as my colleague said, we just do not have the money to do this right now. It is the responsibility of the wardens to know what is going on in their institutions. If they did, some of these problems would be eliminated. Do you agree?

MS. GASCA:

Yes. We understand that the State is in a fiscal crisis, and we see it touching many areas in which the ACLUN has an interest. If the State is fiscally unable to provide an outside independent monitor such as an Ombudsman, it would be prudent to at least put forward statutory provisions requiring the DOC to move forward with regulations regarding compliance with national standards, more transparency, reports to the public and other minor steps.

SENATOR GUSTAVSON:

We receive many letters on issues like this as well. We are aware of the problem, but we cannot take care of all the problems any more than the ACLUN can.

SENATOR COPENING:

The Ombudsman position is an important one for us to create. I do not know how the prison system operates, but we have heard bad stories anecdotally. Is there a way prisoners could contribute to help fund this position? I would hate to see us lose this opportunity because of our fiscal crisis.

SENATOR PARKS:

This is a proactive bill. This is a bill that will address a lot of issues and will save the State far more money than it will cost. Consider the costs associated with the *Riker* case. In addition to the settlement, which was in excess of \$800,000, the legal costs to defend the State were hundreds of thousands of dollars. We are looking at something that, while it does have a significant initial cost, will ultimately save the State significant dollars in the long run. Nevada has the second lowest per inmate cost in the Country. The creation of the Ombudsman will lift the cloud that seems to hang over the DOC from the accusations of abuse and neglect made in the past. When I first visited one of the prisons 14 years ago, I was astounded to find the equipment in the dental clinic covered with plastic sheets and a layer of dust. When I asked about this, I was told by staff that they had not been giving any dental treatment. That is the kind of issue we have seen over the years.

Ombudsman programs have been shown to work well across the Country. It has been suggested to me that we need an ombudsman in each facility. I agree that we need that level of oversight, but we need to start somewhere, and this is a minimum.

MS. GASCA:

We are not here to point fingers. The Department is under new leadership, and we look forward to working with the State. We put ourselves forward as a resource for the Department and its new director, as well as the Legislature, and I want this Committee to understand that the ACLUN always seeks to prevent litigation. We endeavored to do that by engaging in direct communication with the DOC before we got to the class action stages to resolve the issues at ESP. We look forward to increased accountability and transparency, and S.B. 201 will ensure that.

GREG COX (Acting Director, Department of Corrections):

Many corrections departments across the Country have added an office like the one in S.B. 201, and the DOC would welcome such an office in Nevada.

However, sections 20 and 21 would have a huge fiscal impact to the State and the taxpayers. If those sections remain in the bill, I would oppose the bill.

The DOC currently has a tremendous amount of oversight of our processes through the courts. We have a viable grievance process in place that is monitored closely. We asked for the Vera Institute to come in, and it gave us a report. We undergo a legislative audit. We are currently working on a request for proposal concerning medical providers: physicians, dentists and psychiatrists. Looking overall at other methods we have in regard to our processes in the DOC, I would say that we provide constitutional medical care for our inmate population and will continue to do so.

I support transparency and the ability of inmates to have their complaints investigated. At the same time, I am concerned about the fiscal impact of this bill. I support the concept of S.B. 201, but the structure and how it reports and other issues associated with it seem to be problematic and costly to the State.

CHAIR WIENER:

Do you support the bill apart from those sections? How close do we come to meeting the NCCHC standards?

MR. COX:

We are working toward meeting all those requirements in our operational procedures. However, it would require a huge increase in staffing to fully comply with those standards. We have looked at those processes, and it would be a substantial impact to our budget.

CHAIR WIENER:

Please let us know the fiscal impact of the bill if we remove sections 20 and 21.

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

We have a fairly large fiscal note attached to this bill. We expect a cost of \$1,131,854 in fiscal year (FY) 2011-2012 and \$1,560,934 in FY 2012-2013. The majority of this amount is related to increasing medical care. It would provide for a number of new positions, including those necessary for quality assurance and to attain accreditation under NCCHC. We have one position for a program officer I to interface with the Ombudsman and make sure we can provide information on a timely basis. This is our best estimate. It is possible



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there will be additional costs as we go forward to bring our full system into compliance with NCCHC.

CHAIR WIENER:

Can you tell us what your costs would be without sections 20 and 21?

MR. MOHLENKAMP:

That would be approximately \$52,000 in FY 2011-2012 and \$62,000 in FY 2012-2013.

SENATOR ROBERSON:

How did you come up with that last number? As I read the bill, it allows the new Ombudsman to hire people, lease office space, buy equipment and so on. Your number seems low.

MR. MOHLENKAMP:

This is the cost that would be borne by the DOC. The bill states the Ombudsman's direct costs would be borne by the Office of the Attorney General.

MR. COX:

I have been looking at similar ombudsman programs across the country, and the reporting structure described in this bill seems problematic. I would like to work with the Committee and the sponsor of the bill to look at different avenues that we could do to reduce the cost.

KEITH MUNRO (First Assistant Attorney General and Legislative Liaison, Office of the Attorney General):

The Office of the Attorney General has already created an ombudsman program within our office for federal litigation purposes.

For the past two years, we have been working on a program using existing resources to hire two former directors and one former chief of classification to work on inmate grievance issues. Valerie P. Cooke, Magistrate Judge, District of Nevada, found a group of independent arbiters who could work on cases before they work their way through the DOC's grievance process. After they file in federal court, we have an independent arbiter and an ombudsman to work on these types of issues on behalf of the DOC so we can continue to provide a safe and secure environment for inmates.

With regard to *Riker*, we hired an expert, Dr. Ronald Shansky, to look at the medical system at ESP. He previously represented the ACLU in California in their case against the state of California. As soon as Dr. Shansky gave the opinion that the DOC had an adequate medical system at ESP, the case came to a screeching halt, and the ACLUN immediately came to the bargaining table. Dr. Shansky continues to work with us to ensure we provide adequate medical care throughout the system.

CHAIR WIENER:

Is the ombudsman function in your office currently focused on federal cases?

MR. MUNRO:

Our three ombudsmen are handling both federal and state cases that have come through the inmate grievance process and have resulted in litigation. Glenn Wharton, Robert Bayer and Robin Bates work as ombudsmen. They came in as contract employees because they want to make sure the DOC is operating properly. So far, it has been a good program.

CHAIR WIENER:

How many cases have you processed?

MR. MUNRO:

About 45 cases so far.

CHAIR WIENER:

We would also like to know exactly what your process is and how many complaints you have had. I am curious about the number of cases actually processed.

MR. MUNRO:

We will get you as much information as we can.

SENATOR ROBERSON:

Can you give us the fiscal impact of S.B. 201 on the Office of the Attorney General?

MR. MUNRO:

Our fiscal note is based on guesswork, since we did not know the details of the bill. The position would clearly entail either a lot of travel or two ombudsmen,

one for northern Nevada and one for southern Nevada. We are willing to work with the sponsors on our fiscal note as we get a clearer picture of what they have in mind.

CHAIR WIENER:

We did not get a copy of your fiscal note. Could you give us an estimate of the costs?

MR. MUNRO:

I do not have the figures with me. It would be several hundred thousand dollars.

CHAIR WIENER:

It looks like we have some work to do here. Senator Parks, we would be happy to work with you and anyone else at the table on this bill.

SENATOR PARKS:

To reiterate, this issue has been an ongoing concern to the Commission. Like you, I get numerous letters asking for investigation of issues like this. I would be happy to work with all parties to reconcile the concerns. It is in the best interest of the State to look at wherever we can avoid expense.

CHAIR WIENER:

Please continue to work on this and let us know what you come up with.

TONJA BROWN:

I am an advocate for inmates, and I support S.B. 201. This bill is something we have wanted for a long time. I have brought with me today a sampling of the complaints I have received from inmates on the lack of medical care, loss of property, civil rights violations and lawsuits, and it makes a large pile. We truly need this Ombudsman position, and I appreciate your effort in this field. However, if the Office of the Attorney General is in control of the Ombudsman, you will be setting the fox to guard the henhouse. Under the current process, grievances that are denied are sent to the office of the Attorney General for appeal. Under this bill, complaints would still go to the office of the Attorney General for resolution. This will not resolve the grievances that lead to litigation, and the taxpayers will continue to foot the bill for the lost lawsuits.

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To be most effective, the office of the Ombudsman should be under the Board of State Prison Commissioners, and the Ombudsman should be assigned to the Office of the Governor. This will greatly reduce litigation.

SENATOR BREEDEN:

Mr. Cox, what process should I follow to ask for a tour of the Nevada State Prison here in Carson City?

MR. COX:

Any time you would like to go to the facility, we will be glad to have you.

CHAIR WIENER:

The entire Committee would like to do that, if we can get our schedules together. Senator Breedon, if you arrange a time, please let us know so those who are free can go with you.

I will close the hearing on S.B. 201. Is there any public comment?

MS. BROWN:

I have further testimony related to S.B. 201 and its impact on inmates and their families. A family purchased a television for an inmate, but there was a glitch in the paperwork and the serial number was off by one number. The television was confiscated because the serial number was wrong, and the family had to dish out another \$300 to replace it. If we had an Ombudsman, the family could have gotten the money back without filing a lawsuit. The policy and practice of the Office of the Attorney General is not to resolve issues or take action until an inmate brings a lawsuit to force them to do so. It costs the taxpayers thousands and thousands of dollars to resolve issues that could have been resolved simply and cheaply.

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CHAIR WIENER:

Is there any further business to come before the Committee? Hearing none,  
I will adjourn the meeting at 9:04 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Valerie Wiener, Chair

DATE: \_\_\_\_\_

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 201	C	Rebecca Gasca	Written testimony on S.B. 201
S.B. 201	D	Rebecca Gasca	Booklet: "Not Fit for Human Consumption or Habitation: Nevada's Prisons in Crisis"