

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
April 7, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:05 a.m. on Thursday, April 7, 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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

John Pappageorge, Republic Services
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Bill Uffelman, President and CEO, Nevada Bankers Association
Tonja Brown

CHAIR WIENER:

I will open the work session on Senate Bill (S.B.) 171.

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SENATE BILL 171: Revises the provisions governing the possession of dangerous weapons at certain locations. (BDR 15-867)

LINDA J. EISSMANN (Policy Analyst):

I have a work session document for this bill ([Exhibit C](#)). Two amendments have been proposed, one by the Sheriffs' and Chiefs' Association and one by the sponsor of the bill. There was some opposition to the bill's application to knives. Some of those opposed to the bill state they might support the amendment offered by the Sheriffs' and Chiefs' Association.

CHAIR WIENER:

I have talked to Senator Leslie, and she confirmed that she would be satisfied if the bill applied only to swords, axes, hatchets and machetes.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 171 WITH SENATOR LESLIE'S AMENDMENT.

SENATOR COPENING SECONDED THE MOTION.

SENATOR ROBERSON:

Does the form of the bill under discussion allow an adult to be on the grounds of a school event with an ax in his car?

CHAIR WIENER:

The amended form of the bill adds swords, axes, hatchets and machetes to the list of weapons that may not be brought onto school grounds. Otherwise, the statutes remain as they are.

SENATOR ROBERSON:

I am opposed to S.B. 171. I do not think someone carrying a legal item like an ax in his or her car should be in violation of the law. There are legitimate work or recreation purposes for having such items in a car. In another committee, we passed S.B. 231 to allow holders of concealed weapons permits to bring firearms on campus, which I support.

SENATE BILL 231: Makes various changes relating to concealed firearms.
(BDR 20-742)

If both these bills pass, we will have a situation in which a person can bring a gun on campus but cannot have an ax in the trunk of his or her car.

SENATOR GUSTAVSON:

I agree. When I go camping, I bring an ax or hatchet with me. If I go to pick up my grandchildren from school to take them camping for the weekend, I will be breaking the law. I understand the intent of the bill, but sometimes we go too far and have to deal with unintended consequences that I cannot support.

SENATOR MCGINNESS:

I remember an incident in which a young man brought his father's bayonet to school. His father had no idea he was doing that. Section 3 of the bill states that a child suspected of threatening to violate the act must be taken into custody, tested for drug use, detained in a facility and so on. For one stupid act, we could be causing some real problems.

CHAIR WIENER:

I would point out that section 3 is current law.

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

CHAIR WIENER:

I will open the work session on S.B. 175.

SENATE BILL 175: Revises provisions governing concealed firearms permits.
(BDR 15-186)

MS. EISSMANN:

I have a work session document for this bill ([Exhibit D](#)). There was no opposition to this bill, and there are no amendments.

SENATOR COPENING MOVED TO DO PASS S.B. 175.

SENATOR GUSTAVSON SECONDED THE MOTION.

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THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

I will open the work session on S.B. 183.

SENATE BILL 183: Restricts the authority of associations of certain planned communities to regulate the storage and placement of containers for the collection of recyclable material. (BDR 10-610)

Ms. EISSMANN:

I have a work session document for this bill ([Exhibit E](#)).

SENATOR COPENING:

I need some clarification. If I understand the bill correctly, it is saying if a municipality has adopted a recycling program, a homeowners' association (HOA) within that municipality can vote not to participate. Would this bill require them to participate?

JOHN PAPPAGEORGE (Republic Services):

That is the way I understand the bill.

SENATOR COPENING:

That causes me some concern. There have been many executive boards of HOAs that have held open meetings and voted not to participate.

SENATOR BREEDEN:

That is my concern as well.

CHAIR WIENER:

Is there a motion on this bill? Hearing none, I will close the work session on S.B. 183 and open the work session on S.B. 194.

SENATE BILL 194: Urges the Nevada Supreme Court to amend the Nevada Rules of Civil Procedure to require certain disclosures in class action lawsuits. (BDR S-563)

Ms. EISSMANN:

I have a work session document for this bill ([Exhibit F](#)).

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 194 WITH THE AMENDMENT PROVIDED BY SENATOR HARDY.

SENATOR GUSTAVSON SECONDED THE MOTION.

SENATOR COPENING:

I want to share my experience with this situation and why I am so strongly in favor of this measure. When I was employed by Pulte Del Webb as director of public affairs from 2000 to 2006, I dealt with a great number of class action lawsuits brought against the company for construction defects. In one particular case, a class action lawsuit was filed against Sun City Summerlin, and the elderly people in that community did not understand that they needed to opt out if they did not want to be part of the class action. I spent many hours on the phone with residents who said they did not want to sue Del Web, and I had to tell them they are included because they did not opt out of the suit. I have long wanted this type of disclosure and transparency, and so I encourage the Committee to pass this bill.

THE MOTION PASSED UNANIMOUSLY.

CHAIR WIENER:

I will open the work session on S.B. 200.

[SENATE BILL 200](#): Makes various changes relating to time shares. (BDR 10-217)

Ms. EISSMANN:

I have a work session document for this bill ([Exhibit G](#)) that includes an amendment from Karen Dennison, American Resort Development Association (ARDA). There was concern that publication of notice needs to continue in the newspaper, since there are problems with verifying posting requirements on the Internet. I have had no specific amendment to address that issue, but there has been some discussion that there may be a way to address it.

CHAIR WIENER:

One of my concerns was the integrity of information posted on the Internet.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

I have a proposed amendment that I believe will help in this regard ([Exhibit H](#)). The Real Estate Division, because we are doing online transactions, has started using a statutory declaration in lieu of a notarized document. One solution to the concern about the veracity of the information—specifically, the date it was posted on the Internet—would be to attach and require a declaration as part of that posting. The unsworn declaration in lieu of affidavit or other sworn declaration is found in *Nevada Revised Statute* 53.045. The process is simple. You write a statement that would include what you want to be verified, which is the date of the posting, a statement that the information is true and correct and can be relied upon. It is then signed and dated, and this could be scanned and attached with the posting on the Internet. There would still be newspaper postings in an abbreviated form, with the expanded notice of sale and all the detailed information available on the Internet.

The Division would offer to prepare the form and make it available on our Website. We have a project section within our section, and we have extensive documents that we make available to the public to use in terms of disclosures. Ms. Dennison supports this in terms of the ARDA's concerns and needs.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 200 WITH THE AMENDMENTS FROM MS. DENNISON AND
MS. ANDERSON.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

CHAIR WIENER:

I will open the work session on S.B. 201.

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

MS. EISSMANN:

I have a work session document on this bill ([Exhibit I](#)). [Exhibit I](#) includes a proposed amendment from the Office of the Attorney General that would address some of the concerns raised, and I understand Senator David Parks is putting forth that amendment today.

CHAIR WIENER:

I have spoken with Senator Parks, and he had some tweaks for the proposed amendment in [Exhibit I](#) and the bill:

- Between subsections 1 and 2 of the amendment, add section 12 from page 3 of the original bill. This allows the Ombudsman to establish procedures.
- In subsection 2 of the amendment, the Attorney General's report shall be submitted to the Board of State Prison Commissioners rather than to the Legislative Commission. Senator Parks feel this is where the report will have the most impact.
- In subsection 2, paragraph (c), the text should say "... that were resolved through the program."

BRETT KANDT (Special Deputy Attorney General, Office of the Attorney General):
We concur with the changes Senator Parks suggests to the amendment.

SENATOR COPENING:

If I understand correctly, the amendment would replace the bill in its entirety, but retain section 12 and send the report to the Board rather than the Commission. The Office of the Ombudsman will not be created; rather, the Attorney General will instead establish the Ombudsman as a position in her office. Is that right?

CHAIR WIENER:
Correct.

Mr. Kandt, in our meeting there was strong support for being able to provide these services. You already do this for federal offenders. Is that correct?

MR. KANDT:

Yes. The federal courts have established a mediation program to mediate complaints from federal prisoners. It has been in place for some time now. As we discussed, that program has been productive, and something similar to that

could be established for complaints from State prisoners if we had the discretionary authority to do so.

CHAIR WIENER:

There have also been comments that the appropriate place for this position is at arm's length from the prison facility. The Attorney General met with me to assure me that her staff is eager to do this as they are able to roll it out. This amendment is a collaborative effort between the Office of the Attorney General and the sponsor of the bill.

SENATOR ROBERSON:

Is there still a fiscal impact involved?

MR. KANDT:

Because the bill is permissive, it grants us discretionary authority to establish a program. That gives us some flexibility in utilizing existing resources. It is not a mandate. For that reason, we feel it is something we can work toward with minimal fiscal impact.

SENATOR ROBERSON:

I would like some time to consider this amendment before we go to a vote.

SENATOR MCGINNESS:

I would like to see some numbers from Mr. Kandt on this. I have some concerns about putting section 12 back in. For one thing, it allows complaints from Legislators, offenders and family members, which opens it up to a lot of people. Also, subsection 2 allows complaints about "significant issues relating to the health or safety of offenders." I would like a definition of "significant" in this context.

CHAIR WIENER:

We will hold this bill and consider it again in a work session on Tuesday, April 12. I will close the work session on S.B. 201 and open the work session on S.B. 221.

SENATE BILL 221: Makes various changes relating to trusts, estates and probate. (BDR 2-78)

MS. EISSMANN:

I have a work session document on this bill ([Exhibit J](#)) that includes a proposed amendment to section 46 from Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services. There was also concern expressed regarding section 182 of the bill, but I have not received an amendment for that section.

SENATOR ROBERSON:

I have a concern about sections 182 and 183. I would like to see an amendment making those sections prospective rather than retroactive. I understand Bill Uffelman, Nevada Bankers Association, has been in consultation with Julia Gold, State Bar of Nevada, and they are working on an amendment. I am not opposed to the bill, but if it is possible, we might want to wait till we see that amendment before we act on this bill.

BILL UFFELMAN (President and CEO, Nevada Bankers Association):

With regard to sections 182 and 183, the Probate and Trust Section of the State Bar of Nevada has not gotten back to me with a specific response to why we could not make these provisions prospective. If we do that, no one has to rewrite existing trusts. The president of the Whittier Trust Company told me it would cost him something like half a million dollars to implement the changes we made two years ago.

CHAIR WIENER:

For disclosure, the changes we made two sessions ago were in a bill I introduced. I am intimately familiar with this issue, and what unfolded was a great inequity for those people who are recipients of trust income.

What kind of notice would you provide to people that they could have this done?

MR. UFFELMAN:

My understanding from speaking with the people at Whittier Trust and others is that no matter what happens, they are going to have to send a notice. The way this bill is written, they will have to effectively change all the trusts that are affected by this whether it is wanted or not.

CHAIR WIENER:

This will be the law going forward, but the retroactivity provision would give them the opportunity to have it imposed or take effect retroactively.

MR. UFFELMAN:

Yes. If we make this change prospective, we will notify any trust that is currently in place that they have the opportunity to make a change to their existing trust beneficiary scheme because the Legislature has provided that opportunity. It is not mandatory. That would be the difference. The way this is written, it is mandatory.

CHAIR WIENER:

I understand that. We are going back to what we did two years ago that was undone last Session and redoing it. Everyone is on board with regard to the prospective provision. I am talking about the retroactive provision. I would love to have people given three notices to give them the ability and opportunity to make this change if they wanted it. I want them to be notified in every possible way and not in gobbledygook language so that they have no idea what that notice is telling them.

MR. UFFELMAN:

We can figure something out. Notices are cheap. Having to do the legal work to rewrite something people did not necessarily want to have happen is expensive.

CHAIR WIENER:

I will reschedule the work session on this bill for Tuesday, April 12, to give you a chance to come up with an amendment I am happy with. We want equity to be the priority here.

I will close the work session on S.B. 221 and open the work session on S.B. 257.

SENATE BILL 257: Revises various provisions governing graffiti offenses.
(BDR 15-616)

MS. EISSMANN:

I have a work session document on this bill ([Exhibit K](#)), which includes an amendment offered by the sponsor of the bill.

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SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 257 WITH SENATOR WIENER'S AMENDMENT.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

I will open the work session on S.B. 279.

SENATE BILL 279: Revises provisions concerning the renewal of permits to carry concealed firearms. (BDR 15-1060)

Ms. EISSMANN:

I have a work session document for this bill ([Exhibit L](#)). There was no opposition to this bill, and no amendments were offered.

SENATOR COPENING MOVED TO DO PASS S.B. 279.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

I will open the work session on S.B. 348.

SENATE BILL 348: Eliminates limits on the amounts of certain property that is exempt from execution. (BDR 2-779)

Ms. EISSMANN:

I have a work session document on this bill ([Exhibit M](#)). There was no opposition to this bill, and no amendments were offered.

SENATOR BREEDEN MOVED TO DO PASS S.B. 348.

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SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

I will open the work session on S.B. 376.

SENATE BILL 376: Increases the penalty for certain technological crimes.
(BDR 15-1000)

Ms. EISSMANN:

I have a work session document on this bill ([Exhibit N](#)). There was no opposition to the bill, but two small amendments were offered that are included in [Exhibit N](#). Sam Bateman, Chief Deputy District Attorney for Clark County, confirmed with me that he is fine with either of those amendments.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 376 WITH BOTH AMENDMENTS.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

I will open the work session on S.B. 381.

SENATE BILL 381: Revises provisions regarding who may issue a marriage license. (BDR 11-227)

Ms. EISSMANN:

I have a work session document on this bill ([Exhibit O](#)) that includes the revised amendment to the bill supplied by the sponsor of the bill.

SENATOR COPENING:

The revised amendment makes the bill applicable only to Washoe County. Are we allowed to do that?

BRADLEY A. WILKINSON (Counsel):

Yes. We regularly designate bills by the population of the county. If the intent is to specify just Washoe County, for example, the bill refers to counties with a population less than 400,000 and more than 100,000.

SENATOR COPENING:

I respectfully request we hold this bill for a later work session. This morning, we received two more exhibits on this bill, one from Washoe County ([Exhibit P](#)) and one from Clark County ([Exhibit Q](#)). I would like more time to study these handouts before we take action on the bill.

CHAIR WIENER:

We will reschedule the work session on S.B. 381 for Tuesday, April 12. I will open the work session on Senate Joint Resolution (S.J.R.) 14.

SENATE JOINT RESOLUTION 14: Proposes to amend the Nevada Constitution to create an intermediate appellate court. (BDR C-1013)

Ms. EISSMANN:

I have a work session document on this bill ([Exhibit R](#)). There were no amendments, and no one spoke in opposition to the bill.

SENATOR ROBERSON:

I know there is a need for this measure. I was persuaded by the Chief Justice that if and when S.J.R. 14 is passed by the people, it will be years before we have to come up with money for this. If we needed to find the money today, I would vote no.

SENATOR ROBERSON MOVED TO DO PASS S.J.R. 14.

SENATOR COPENING SECONDED THE MOTION.

SENATOR GUSTAVSON:

I believe the citizens voted this concept down in the past, partly because of the financial cost. The concept is a good one, but do we really need this? The

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courts say they do, but I looked at their caseload, and they seem to be managing it. I will vote no on this bill.

THE MOTION PASSED. (SENATOR GUSTAVSON VOTED NO.)

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CHAIR WIENER:
I will open the floor for public comment.

TONJA BROWN:
I am an advocate for inmates and the innocent. I would like to touch on S.B. 201. This is a good bill, but there may be a fiscal impact. Our idea was to have the Ombudsman be staffed on a volunteer basis. This would cost the taxpayers nothing. Our idea was to have four to six people at each institution, people like doctors or people from law enforcement, and change them every six months so they would not get burned out. If the fiscal impact is a problem, please consider doing the program on a volunteer basis.

I would also like to speak on a bill that will be coming to you in the future, and that is Assembly Bill (A.B.) 18.

ASSEMBLY BILL 18: Clarifies that meetings of the State Board of Parole Commissioners are quasi-judicial and clarifies the rights of prisoners and other persons who appear before the Parole Board. (BDR 16-460)

Assemblyman Harvey J. Munford, Assembly District No. 6, submitted a bill draft request (BDR) for what I call "Nolan's Law."

BILL DRAFT REQUEST 14-1081: Revises provisions governing criminal procedure.

This BDR would have covered three issues. First, it covered the way evidence is being turned over from law enforcement agencies. When a person is charged with a crime, the evidence would then be turned over to the prosecution and the defense at the same time, thereby leveling the playing field.

Second, it covers DNA evidence. This measure would have stated that in the event the court denies DNA testing, the inmate could have it done at his or her own expense.

The third part was prosecution. If a prosecutor intentionally withholds evidence in a case, they must be disbarred and prosecuted. It is illegal.

Assemblyman James Ohrenschall, Assembly District No. 12, was going to introduce BDR 14-1081. However, he told me that Assemblyman William C. Horne, Assembly District No. 34, told him he could introduce it, but Assemblyman Horne would never hear it as a bill.

I am asking that BDR 14-1081 be incorporated into A.B. 18. I am told Assemblyman Horne thinks we have laws on the books that cover these matters. However, I have documents showing that a specific Washoe County district attorney has repeatedly withheld DNA evidence that exonerates people charged with crimes. This has got to stop. You have innocent people in prisons because prosecutors are withholding evidence. If we had it on the books to protect the rights of the accused, how is it that prosecutors can continue to withhold evidence from the defense?

I referred to BDR 14-1081 as Nolan's Law. Nolan was my brother. He spent 21 years in prison for a crime he did not commit. Three months prior to his death, evidence was found in a district attorney's file in Washoe County that cleared him of the crime and proved someone else had committed the crime. Nolan died in prison.

I appeared before the Advisory Commission on the Administration of Justice on June 23, 2010, to bring these matters to the Commissioners' attention. A county district attorney was standing in as a Commissioner on that day. When I presented the documentation showing his employee had been cited for withholding evidence and asked why he continued to be employed, nothing was said. At a public occasion on August 30, 2010, I asked the same gentleman the question again, and he said, "Because he's a great guy." I guess if you're a great guy, you can do whatever you want.

If A.B. 18 passes with the amendment, it will protect the rights of the accused and the rights of the innocent. We cannot have prosecutors withholding evidence that leads to innocent people being wrongly convicted. I beg of you to

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amend A.B. 18 because the laws we have now are not doing the job. Nolan's Law would prevent this because it would level the playing field. This will not ensure that law enforcement will not withhold exculpatory evidence; however, it does ensure that if the prosecution gets it, so will the defense.

CHAIR WIENER:

Is there any further business to come before the Committee? Hearing none, I am adjourning the meeting at 9:12 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 171	C	Linda Eissmann	Work session document
S.B. 175	D	Linda Eissmann	Work session document
S.B. 183	E	Linda Eissmann	Work session document
S.B. 194	F	Linda Eissmann	Work session document
S.B. 200	G	Linda Eissmann	Work session document
S.B. 200	H	Gail J. Anderson	Proposed amendment for S.B. 200
S.B. 201	I	Linda Eissmann	Work session document
S.B. 221	J	Linda Eissmann	Work session document
S.B. 257	K	Linda Eissmann	Work session document
S.B. 279	L	Linda Eissmann	Work session document
S.B. 348	M	Linda Eissmann	Work session document
S.B. 376	N	Linda Eissmann	Work session document
S.B. 381	O	Linda Eissmann	Work session document
S.B. 381	P	Amy Harvey	Opposition/Amendments to S.B. 381
S.B. 381	Q	Diana Alba	Opposition to S.B. 381 as amended
S.J.R. 14	R	Linda Eissmann	Work session document