

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session  
April 19, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:07 a.m. on Tuesday, April 19, 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:**

Assemblywoman April Mastroluca, Assembly District No. 29

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Policy Analyst  
Bradley A. Wilkinson, Counsel  
Judith Anker-Nissen, Committee Secretary

**OTHERS PRESENT:**

Jon Sasser, Washoe Legal Services; Washoe County Senior Law Project; Legal Aid Center of Southern Nevada  
Kevin Schiller, Director, Washoe County Social Services  
Connie S. Bisbee, Chair, State Board of Parole Commissioners  
Tonja Brown

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CHAIR WIENER:

I will open the hearing on Assembly Bill (A.B.) 147.

ASSEMBLY BILL 147 (1st Reprint): Revises provisions relating to the termination of parental rights. (BDR 11-116)

ASSEMBLYWOMAN APRIL MASTROLUCA (Assembly District No. 29):

This bill is about a situation that can happen to unadopted children in our foster care system. Our laws are written so that a child is not entitled to any inheritance, including survivor benefits from social security, when a parent whose rights were terminated dies. There are times where it is necessary or even advantageous for a child who is aging out to receive those benefits. However, the process will terminate if a child is adopted. So once a child is adopted, all rights and benefits are completely terminated from a parent.

CHAIR WIENER:

Are there any questions of the sponsor, Committee?

Mr. Wilkinson, I thought we previously had a bill with right of inheritance, and I am seeing some stricken language in this bill. Could you explain what we might have done in the past?

BRADLEY A. WILKINSON (Counsel):

I am not sure that has been addressed previously.

KEVIN SCHILLER (Director, Washoe County Social Services):

I know there was much discussion in the interim Legislative Committee on Child Welfare and Juvenile Justice.

SENATOR MCGINNESS:

The bill talks about the right of the child. I do not know if that is drafting, and if there is more than one child, is it split? In Mr. Sasser's testimony, it says "often these children." Is this bill written in the singular for drafting purposes?

ASSEMBLYWOMAN MASTROLUCA:

It is my understanding that the singular is standard in drafting, and yes, it would be divided if there were multiple children.

JON SASSER (Washoe Legal Services; Washoe County Senior Law Project; Legal Aid Center of Southern Nevada):

I participated in the interim when this bill came about. My challenge was to research the impact of our laws on social security, which is the testimony I provided ([Exhibit C](#)). Under social security law, the Social Security Administration looks to whatever state law says about inheritance rights. If in state law it provides the child can inherit if there is no will, intestate succession, then the child can get these benefits. If under state law they cannot, then they can lose out on those social security benefits. I would also point out if there is a will, if the parents whose rights were terminated want to leave their money to someone else, they can. This only applies if they die without a will, intestate succession.

CHAIR WIENER:

Any questions, Committee?

MR. SCHILLER:

I offer my support for A.B. 147. I would highlight we average about 800 children in our foster care system. At any one time, we are dealing with approximately 100 children for whom we are recruiting or who are in the process of termination of parental rights. This bill is focused primarily on the children we cannot find a permanent home for, who are looking at aging out of the system. The inheritance of social security and disability benefits is critical as we move forward to set the children up when they age out of foster care. Having been in the system, many of these children present with significant issues. We support anything we can do to assist these children. It does not happen that often, but when it does, it is critical to be successful. I believe this is the hardest population we serve as a department, and we owe it to them to do the best we can for any benefit we can get them.

CHAIR WIENER:

We are focusing on a younger population, those who might have more difficulty in adopting out. The way this is drafted, if a child is not adopted, these rights would be for that child all the way into adulthood.

ASSEMBLYWOMAN MASTROLUCA:

I want to add something to Mr. Sasser's testimony. In doing research with the Social Security Administration, because our law is not clear, we have cases less than a year apart where one child was granted Social Security survivor benefits

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and another child was not. If we can make this clear in our State law, then it will help when children are trying to access those benefits in federal law.

CHAIR WIENER:  
How did that happen?

ASSEMBLYWOMAN MASTROLUCA:  
I do not work for the federal government. I do not know.

CHAIR WIENER:  
I will close the hearing on A.B. 147.

SENATOR COPENING MOVED TO DO PASS A.B. 147.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:  
I will open the hearing on 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)

CONNIE S. BISBEE (Chair, State Board of Parole Commissioners):  
I will read from my written testimony ([Exhibit D](#)).

The sections that refer to parole hearings and how the Legislature wished to have those proceedings conducted was tacked on to S.B. No. 471 of the 74th Session, the Adam Walsh law. When the courts enjoined the Adam Walsh law, the Office of the Attorney General's informal opinion was to keep doing what the Legislature told us to do, and we are doing that. They also suggested that we clean it up in this Session so it is very clear that we are doing exactly as the Legislature intended in 2007.

CHAIR WIENER:

For clarity, the piece that is not germane to the Adam Walsh law injunction is the piece of the bill you have before us?

MS. BISBEE:

Exactly. Rebecca Gasca, representing the American Civil Liberties Union of Nevada (ACLU), testified neutral on the bill before the Assembly and said that the ACLU had no issue with this bill and did not feel that it was part of the intent of the legal action against S.B. No. 471 of the 74th Session.

CHAIR WIENER:

Your counsel recommended that you continue what you were doing and go forward with A.B. 18 with the same language you had, independent of S.B. No. 471 of the 74th Session. Would you explain to us what the procedure is so that we are clear as to what it is you have before us.

MS. BISBEE:

This clarifies that the meetings of the Board of Parole Commissioners (Parole Board) are quasi-judicial and therefore subject to the particular rights that are afforded. Section 3 of A.B. 18 is exactly what the Legislature changed in 2007.

We are asking that section 8 be repealed. We are asking that section 3 be put back in. The bill directs that the Department of Corrections (DOC) notify the Parole Board when prisoners are eligible for their first parole; the DOC provides the data and information the Parole Board needs from the DOC's point of view; if the prisoner is being considered for parole from a sentence imposed for conviction of a crime that involved the use of force and resulted in bodily harm, photographs may be provided to the Parole Board. In eight and one-half years, I have only seen photographs two or three times after thousands of hearings. Section 3, subsection 2 says you cannot bring a cause of action against the State and the subdivisions for the use of photographs. Section 3, subsection 3 says, "Meetings to consider prisoners for parole may be held semiannually or more often." If we could manage to see 8,000 prisoners semiannually, we would be pretty darn good. This requires the Parole Board notify prisoners of an upcoming hearing within five days and that we do a public notification. We make the notifications part of the record, and we acknowledge it at the hearing.

In part of the quasi-judicial rule, it says the Parole Board can deliberate in private after a public meeting to consider parole; parole hearings are public meetings. Anyone who chooses can walk into the Parole Board and sit in on the hearings all day long. The part that is under the quasi-judicial rule is that the deliberation on the case can be done privately, and confidential information a victim wants to present needs to be done privately. Everything else happens in the open. A victim is notified of the hearing and also gets notified of the final decision through the courts. The courts let them know how to contact us, they contact the DOC or they contact us directly, and we notify them. Their personal information, including their impact statements, their addresses and so on may be held confidential.

Under section 9, we cannot deny parole unless the prisoner has been given reasonable notice to be present.

The Parole Board allows prisoners, at their own expense, to have representation. Originally, there was some thought that prisoners would use attorneys at their hearings. Representation means they can ask for anybody to sit at the table with them and assist them with what they want to present to the Parole Board. The representative can speak entirely on behalf of the inmate, or sometimes we have a combination where the representative and the inmate speak.

Upon making a final decision, the Parole Board is required to notify the inmate in writing within ten days. So, you may have a hearing today, but deliberation may take a while.

Those were the items that the Legislature directed us to add to hearings. We have been doing that. In 2010, our Legislative Counsel Bureau (LCB) audit found us to be in absolute compliance with the *Nevada Revised Statutes* (NRS) and the *Nevada Administrative Code*.

CHAIR WIENER:

Is there anything new in section 3? Is this exactly what was added from S.B. No. 471 of the 74th Session?

MS. BISBEE:

That is it exactly. Counsel advised us to ask you to rescind it and then reinstate it on its own.

TONJA BROWN:

I am an advocate for the innocent and inmates. I have some concerns with A.B. 18. I presented you with some documentation to amend A.B. 18 and to add "Nolan's law" ([Exhibit E](#)).

There have been great concerns over A.B. 18. On the Legislative Counsel's Digest, line 8 says "judicial in nature." To the inmates and advocates, that means at the discretion of the Parole Board and has never been exactly defined.

There is a case pending before the Nevada Supreme Court, *Brian Kamedula vs. The State of Nevada (Kamedula)*. That case has been put on stay until you reach a decision. It refers to *Witherow vs. Board of Parole Commissioners*, 123 Nev. 305, 167 P. 3d 408 (2007) case (*Witherow*), and it clearly defined quasi-judicial. Quasi-judicial means the right to cross-examine, to see the evidence and so on. I have spoken to numerous inmates, and I have attended parole hearings, so I have personally witnessed the Parole Board in violation of quasi-judicial. The inmates are looking to moving forward to file writs in district courts.

In November and December 2010, I was asked—not as a representative for the inmates—to represent a victim in a sexual assault case of her child. I agreed as I personally knew the people. She had given me some letters from the Parole Board and when I saw that, I said, oh, my gosh, they are violating the inmate's rights. Because what they are telling the victims is that as long as you submit it—anything you want to say—in writing and you submit it in writing, it is confidential. But if you speak publicly, that is where it would be under the quasi-judicial rule. Inmates do not know what evidence is being presented because it is not being turned over as part of the quasi-judicial rule. The Parole Board is violating their rights, and this is an issue. I think A.B. 18 needs to define what quasi-judicial in nature actually is.

On page 7 in section 3, subsection 8 after it says, "All personal information, including, but not limited to," it should state only "address, phone number, social security," not "but limited to current." It says, "which pertains to a victim which is received by the Board." When it says "information," that means anything that the Parole Board gets does not have to be turned over to inmates, so they have no idea what is the truth and what is not. This again is in violation of *Witherow*, and it is also mentioned in the *Kamedula* case. I am asking that you take that part out, at least unless you define it, and say, "only the address,

phone number and social security." And it needs to be defined what "judicial in nature" is because to us that is "at the discretion."

As I said, the victims came in, met privately with the Parole Board, and the inmates knew nothing of the victims being there. Assemblyman Harvey J. Munford, Assembly District No. 6, along with Las Vegas Mayor Oscar Goodman, provided information in support of a parolee. The inmates knew nothing of this until I actually had to have it read on the record. I know that the victims have said things publicly pertaining to this case that were not true. So there is no doubt in my mind that there are some things in the files of the Parole Board that are kept secret. The inmates cannot defend themselves; they cannot cross-examine because it is all confidential. Under the quasi-judicial rule, according to the Nevada Supreme Court, they have to overturn it, and the Parole Board is not doing that now. It is opening up the door for writs.

I would like to move forward with the proposed amendment. I sent you some documentation pertaining to what I referred to as Nolan's law. It was Assemblyman Munford's [proposed but not introduced as a bill] bill draft request (BDR) 1081, [Exhibit E](#). Originally, Nolan's law would provide that once a defendant is arrested and charged, the law enforcement agency must provide the accused with a copy of all exculpatory evidence in the possession of the prosecution at the time of the arrest. After the arrest, copies of any additional exculpatory evidence provided to the prosecution must be simultaneously provided to the accused.

I have also provided you cases of evidence as recent as 2009, in which evidence by the prosecution has been withheld ([Exhibit F](#)). This is DNA evidence that exonerates these inmates. I refer to this as Nolan's law because my brother Nolan Klein was wrongfully convicted. Prior to my brother's death, Brent Adams, District Judge, Second Judicial District Court, ordered Washoe County District Attorney Richard Gammick to turn over the entire file and the DNA test results. Prior to Nolan's death—we saw the evidence—there were over 200 pages of documents found in the file, exculpatory evidence that showed the theory was that another man committed the crime. Nolan had an airtight alibi, or so we thought, placing him in Carson City, across the street at Jack's Bar the night of the crime. Everything that dealt with the D.A.'s prime suspect was that he committed the crime for which my brother was convicted. Those victims had cleared my brother not only of that crime, but other crimes as well. All evidence was withheld.



CHAIR WIENER:

Ms. Brown, we are a lawmaking body, not a judicial branch of government. We are not here to hear appeals or hear the cases but to consider lawmaking. If you could wrap up ...

MS. BROWN:

I just wanted to give you comparisons as to why we need this. You have prosecutors who are violating the accused's rights, which is in violation of the Brady law. The second part is that prosecutors who intentionally withhold evidence must be disbarred. As you can see in the documents I have provided you ([Exhibit G](#)), in several other cases, one prosecuting attorney has repeatedly denied the accused their constitutional rights. Some of this was DNA evidence that exonerated them.

And paragraph (c) of BDR 1081, in the event the court denies petitioners their genetic marker analysis testing, the petitioners may go forward without the court's permission, bearing the costs themselves. This year, Valorie J. Vega, District Judge, Eighth Judicial District, rendered a decision and denied a petition that was brought. The petition was put together by Barry C. Scheck from the Innocence Project out of New York and Canada and was represented by an attorney from Nevada. Judge Vega not only denied the petition, but she denied the DNA testing. In the Kristen Lobato case, she received life without parole. People think they can get their DNA testing after they are convicted, but that occurs only if the court allows. Under "Nolan's law," part of this would be in the event it should happen, which we now know it does happen, and Ms. Lobato would still be able to move forward and get the DNA done at her own expense. If this does exonerate her, she would be free. We would not be incurring the cost of her incarceration.

I have been told we have laws on our books on discovery, but clearly by the documents that I have provided you, our laws are not working. "Nolan's law," if amended, would prevent an overzealous prosecutor from withholding evidence in cases. I ask that you amend A.B. 18 and place Assemblyman Munford's BDR 1081 in as an amendment to this bill, because it does deal with quasi-judicial with evidence. How can the Parole Board make proper decisions if they do not know the true facts of the case, if prosecutors are withholding evidence? I do not know if you are aware of this, but ...

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CHAIR WIENER:

Ms. Brown, I need you to wrap up, please.

MS. BROWN:

I would like to know if Ms. Bisbee can come back and define what quasi-judicial in nature is.

CHAIR WIENER:

It is the job of the Chair to determine when people come back to the table. I want to ask counsel if this is germane because we are talking about amendments. Would you address that please?

MR. WILKINSON:

I am familiar with Assemblyman Munford's BDR. Assembly Bill 18 relates to parole, whereas the proposed amendment relates to exculpatory evidence and pretrial discovery. This would not be a germane amendment to this bill. It does not relate to the general subject of the bill—being parole—and it does not relate to the specific subject that is included in the bill, which is the parole meeting. Pursuant to the rules, it would not be permissible.

CHAIR WIENER:

Ms. Bisbee, please come forward to add some clarification.

MS. BISBEE:

I will read from my written testimony ([Exhibit H](#)).

As to Ms. Brown's testimony about receiving the information that a victim gets, those are the victim's rights. So certainly the victim's rights would not be afforded to the inmate because he or she has his or her own set of inmate rights.

I will remind you that the LCB did audit us—the auditors lived with us for six months—and they found us to be in complete compliance with the law.

CHAIR WIENER:

Very, very briefly, Ms. Brown.

MS. BROWN:

Ms. Bisbee is referring to *Stockmeier*. They are referring to what the Nevada Supreme Court refers to *Witherow*. I do not recall her saying cross-examine, but that is the case of *Stockmeier v. State Board of Parole Commissioners [et al]* to be held on May 19. And the *Kamedula* case references and outlines what quasi-judicial is, referring to *Witherow*. And inmates do have a right to cross-examine.

And on the amendment for A.B. 18, would it be possible to amend this to A.B. 269, which is dealing with grand jury evidence?

CHAIR WIENER:

We do not have that bill.

MS. BROWN:

Yet. May I bring it back under that?

CHAIR WIENER:

We have open meetings, and as that bill comes forward, we could certainly consider your request. Consideration does not mean anything more than that. However, we do not have custody of that measure yet, so I could not respond to your question until I see the bill.

CHAIR WIENER:

I will close the hearing on A.B. 18.

SENATOR ROBERSON MOVED TO DO PASS A.B. 18.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

I will open the hearing on A.B. 464.

**ASSEMBLY BILL 464**: Ratifies certain technical corrections made to NRS and Statutes of Nevada. (BDR S-944)

MR. WILKINSON:

This bill is our ratification bill, and we do it every Session. It incorporates all of the technical corrections we make following codification of the previous Session. It is smaller than usual this Session, so I guess we did a good job last Session.

There are a wide variety of technical mistakes and errors of one sort or another that we are correcting in this bill. For example, we have section 3, which contains a provision where we had conflicting effective dates—we put in two different effective dates for the same section—so we are fixing that.

CHAIR WIENER:

If I may interrupt, if you have conflicting effective dates, how do you determine which one is utilized?

MR. WILKINSON:

For example, section 3 has one that is very clear from the context of the bill what was intended to be the correct effective date, so that was easy to fix. We also have sections that expire when they should not. There are many things that could go wrong of a technical nature.

CHAIR WIENER:

If you have two similar bills and one would take effect on July 1, and the other one on the default date of October 1, which one would be the effective date?

MR. WILKINSON:

I am not sure that we have a situation exactly like that. I am not sure how we would ...

CHAIR WIENER:

Because this dealt with The Hague Convention, it was obvious, correct?

MR. WILKINSON:

Yes, that was an internal thing where we did not change a reference to a date that we should have.

CHAIR WIENER:

So the Committee understands, how do you determine where some of these technical changes need to be made? How would you be flagged?

MR. WILKINSON:

This all comes up during codification after Session when we look at everything that has happened and start putting them together. When you have multiple amendments for the same section that is usually where issues arise. But this is all done after Session. These are changes that we have already incorporated into NRS, so NRS looks like this. We are asking these changes be ratified.

CHAIR WIENER:

If they did come into effect, Committee, they were allowed to go forward, and ratification means we say, yeah, you did a good job, it was important work, and we are confirming that through our vote in Committee and on the Senate floor.

SENATOR GUSTAVSON:

I did read part of this. I have sat through many of these before. But after I looked through this one, I was trying to determine, in the different sections at which I looked, and I could not tell what changes were made. You mentioned effective dates, that is obvious, but these others. I could not see what those changes were. And it looked like all new language. Could you please explain?

MR. WILKINSON:

It can be confusing to see exactly what the change is because it is all shown as new language. We are adding some more new language to a section that has new language—so you will not be able to see that unless you went back and put the bills together that contain that provision or that did not contain a provision. Section 1 is a good example. We added a new subsection 7 which clarifies that someone is subject to an additional penalty. The only way you could look at that is, that subsection was not included in the original bill and it should have been included. You could go back and look at the bill, and you will see that subsection is missing.

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CHAIR WIENER:

I will close the hearing on A.B. 464.

SENATOR BREEDEN MOVED TO DO PASS A.B. 464.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

The meeting is adjourned at 8:52 a.m.

RESPECTFULLY SUBMITTED:

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Judith Anker-Nissen,  
Committee Secretary

APPROVED BY:

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Senator Valerie Wiener, Chair

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

<b><u>EXHIBITS</u></b>			
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 147	C	Jon L. Sasser	Written Testimony
A.B. 18	D	Connie Bisbee	Written Testimony
A.B. 18	E	Tonja Brown	Nolan's Law
A.B. 18	F	Tonja Brown	Withholding Evidence in Cases
A.B. 18	G	Tonja Brown	Washoe County District Attorney Withholding Evidence
A.B. 18	H	Connie Bisbee	Written Testimony