

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session  
April 9, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:16 a.m. on Tuesday, April 9, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Jason Frierson, Chairman  
Assemblyman James Ohrenschall, Vice Chairman  
Assemblyman Richard Carrillo  
Assemblywoman Lesley E. Cohen  
Assemblywoman Olivia Diaz  
Assemblywoman Marilyn Dondero Loop  
Assemblyman Wesley Duncan  
Assemblywoman Michele Fiore  
Assemblyman Ira Hansen  
Assemblyman Andrew Martin  
Assemblywoman Ellen B. Spiegel  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Lucy Flores, Clark County Assembly District No. 28



**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Brad Wilkinson, Committee Counsel  
Karyn Werner, Committee Secretary  
Colter Thomas, Committee Assistant

**OTHERS PRESENT:**

Travis M. Morrow, President/CEO, National Self Storage Association  
Kristin Erickson, representing the Nevada District Attorneys' Association  
Tonja Brown, Private Citizen, Carson City, Nevada  
Michele Ravell, Private Citizen, Las Vegas, Nevada

**Chairman Frierson:**

[Roll was taken. Committee protocol and rules were explained.] We have three bills on the agenda, but Assembly Bill 325 is going to be pulled for now. We now have two bills and five on the work session, only three of which we are going to work today. We have a floor session today, so we will do the work session first.

**Assembly Bill 325:** Authorizes a court to commit certain convicted persons to the custody of the Department of Corrections for an evaluation. (BDR 14-742) [Bill not heard.]

We will start with the first and largest bill, Assembly Bill 67.

**Assembly Bill 67:** Revises provisions relating to crimes. (BDR 3-403)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 67 is the first bill. It was sponsored by this Committee on behalf of the Attorney General. It was heard in a joint hearing with Senate Judiciary on February 20, 2013. This bill relates primarily to criminal procedure, crimes and punishment, and aid to victims of crime, specifically regarding human trafficking, sex trafficking, and related offenses. [Read from work session document ([Exhibit C](#)).]

There is a fairly lengthy mock-up of the amendment attached to the work session document.

**Chairman Frierson:**

The last proposed change in this bill deals with section 2 of the work session document, or of the bill in the mock-up. Per consultation with Ms. Martin of the

Office of the Attorney General, the mock-up should have included that section being stricken. Other than that, this mock-up reflects a tremendous amount of work, insight, collaboration, cooperation, and patience. I appreciate Ms. Martin's patience while working through the concerns in this bill. I think what we have now provides the tools to address the conduct targeting both child and adult victims who are forced into this life. It provides restitution and the necessary resources to protect these victims and put them in a position where they can overcome it. It makes a statement about the status of trafficking, which was the goal of Madam Attorney General from the very beginning of this process. We finalized this last evening, and it is something we can move forward.

I am open to any questions regarding the mock-up, although I have frequently communicated with the Committee through the process.

**Assemblyman Wheeler:**

With the amendment as presented, this is a really good bill and should have a unanimous vote.

**Chairman Frierson:**

Are there any other comments or questions? I will entertain a motion to amend and do pass with the amendments in the mock-up.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 67.

ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will be handling this floor statement.

Assembly Bill 97 is going to be pulled temporarily. Assembly Bill 113 is contained in its entirety within Assembly Bill 67. We are going to pull it for today and make sure there is nothing we have missed. We will move on to Assembly Bill 146.

[Assembly Bill 97](#): Revises provisions governing habitual criminals, habitual felons and habitually fraudulent felons. (BDR 15-680)

[Assembly Bill 113](#): Revises provisions relating to sex trafficking. (BDR 14-63)  
[These two bills were not heard.]

**Assembly Bill 146:** Revises provisions governing servitude of a minor.  
(BDR 15-752)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 146 was sponsored by Assemblyman Horne and was heard in this Committee on February 27, 2013. Assembly Bill 146 relates to crimes and punishments and other matters related to crimes against a minor. [Read from work session document ([Exhibit D](#)).]

**Chairman Frierson:**

Are there any questions regarding A.B. 146? With no questions, I will entertain a motion to amend and do pass.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 146.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Mr. Horne will handle the floor statement.

We will move on to Assembly Bill 182.

**Assembly Bill 182:** Revises provisions governing liens of owners of storage facilities. (BDR 9-965)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 182 was sponsored by Assemblyman Carrillo and was heard in this Committee on March 11, 2013. This bill relates to statutory liens of owners of storage facilities. [Read from work session document ([Exhibit E](#)).]

**Assemblywoman Spiegel:**

In section 7 of this bill—on the original bill it is page 4—it says, if the charges for rent or other items were unpaid for five days or more, the owner could deny the occupant access to the storage space. It is currently 28 days, and the amendment moves it to 10 days. I wonder if 10 days is enough time. The owners would presumably be totally locked out.

**Chairman Frierson:**

When you say it is currently 28 days, where is that?

**Assemblywoman Spiegel:**

That is what was said during the hearing.

**Chairman Frierson:**

I am looking at the language and current law says 14 days. In the amendment, section 2 was originally section 1.

**Assemblywoman Spiegel:**

So, is it currently 14 days and not 28 days?

**Chairman Frierson:**

It is currently 14 days plus 14 days. Existing law says, if the rent goes unpaid for 14 days, the owner may terminate the right to use, so it is then cut off. In another 14 days—or no longer than—they have to send a notice, so it is a total of 28 days.

**Assemblywoman Spiegel:**

This really cuts the time down by 30 percent.

**Chairman Frierson:**

I believe the proponents of the bill are here and will be able to answer some questions. It looks to me that existing law is 14 days plus 14 days. The new language proposes to allow 10 days simply to limit access, but not necessarily to terminate the agreement. They can provide clarification.

**Travis M. Morrow, President/CEO, National Self Storage Association:**

You are correct. It is 14 days plus 14 days. How the process currently works is, after the tenant is 14 days late, we send a notice that informs him that we will lock him out in 14 days. It is a total of 28 days. We are seeking to go from 28 days to 10 days.

**Chairman Frierson:**

It was my understanding that the 28 days was to terminate. The 10 days would not be to terminate, but to limit access. Am I incorrect?

**Travis Morrow:**

Yes, it is to deny access. It is to limit access after 10 days.

**Chairman Frierson:**

Under existing law, you can not only limit, but you can terminate. Under this, you can limit access, but when they pay within the 28 days, they can still continue to use the unit.

**Travis Morrow:**

Under current law, we have to grant access within those 28 days, which essentially allows them to come in and move everything out without paying that month's rent. We are trying to limit that window, so we can deny access to the unit. If they come in and pay, they get access to their unit again.

**Assemblyman Hansen:**

During the hearing, there was an issue with the police. I do not know if an amendment was worked out. They had a problem with going into the unit. Has anything been done? I do not recall the exact issue they raised, but I remember it was something significant from law enforcement's side. Did they work something out with you to amend the bill?

**Travis Morrow:**

It has been worked out. We were working with representatives from the Las Vegas Metropolitan Police Department (Metro). In the amendment, we addressed language that was acceptable to them. What we have done is include the language that makes it unlawful to use the storage facility as a residence. We also removed the steps that were originally suggested for law enforcement to follow in removing someone. Instead, we used the trespassing procedures that are in existing law to accomplish the same thing.

**Assemblyman Hansen:**

Are they on board with this bill then?

**Travis Morrow:**

Yes, that is correct.

**Assemblywoman Fiore:**

For the record, I am going to vote no on this with the option to change my vote.

**Assemblywoman Spiegel:**

Ditto.

**Assemblyman Ohrenschall:**

I am going to vote yes, but I want to reserve my right as well. I still have a couple of questions that I need answered.

**Chairman Frierson:**

Are there any other questions? I will accept a motion to amend and do pass.

ASSEMBLYMAN DUNCAN MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 182.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMEN FIORE AND SPIEGEL  
VOTED NO.)

Mr. Carrillo will handle the floor statement.

That concludes the work session. We will now go to the agenda for today. The first bill is also the shorter of the two. With that, we will open the hearing on Assembly Bill 233.

**Assembly Bill 233: Revises provisions governing postconviction genetic marker analysis. (BDR 14-1000)**

**Assemblywoman Lucy Flores, Clark County Assembly District No. 28:**

This is a cleanup bill. Assembly Bill 233 seeks to add to statute the right of appeal on a petition that was established in 2009. What happened was the U.S. Supreme Court decision came down saying that denial of postconviction DNA access was not a violation of constitutional due process. The Supreme Court was essentially denying people the opportunity to access new evidence, or evidence that potentially had not been tested in the past that could potentially exculpate them or prove their innocence, while sitting in prison. The states very aggressively began to move to establish that right at the state level. That is what happened in Nevada.

At the time, I was a law extern doing pro bono lobbying with the Rocky Mountain Innocence Center and we got that bill passed. William Horne was the sponsor. At that time, the only people who had access to postconviction DNA exculpatory evidence were people who had been convicted and sentenced to death. Everyone else—for example, those convicted of rape or a homicide—sitting in prison after DNA science had evolved could say that their DNA evidence had not been tested and ask to have it tested to prove their innocence, but there was no right for them to be able to test that evidence after they had been convicted.

We then passed a law in 2009 that expanded access to postconviction DNA to category A and B felons. That is the current law. Some of the folks who did not want that law to pass said that it would open the floodgate and everyone in prison would claim they were innocent and start filing petitions. We said that was not going to happen and, of course, it did not. It is very difficult to prove

your innocence once you are in prison. Evidence still has to be there at that time, so we also passed an evidence preservation law that said evidence had to be preserved in Nevada. There was no law to preserve evidence after the person was convicted; oftentimes, evidence was destroyed. We have only had one petition since we passed the law in 2009—not the flood expected.

We always intended to create a due process right. We allowed for the petition, but we have found that the right for appeal was not explicit in statute. It is a completely different type of practice. It is not a habeas, or like the typical criminal law where people file motions to try to prove their innocence when they are already convicted. It is a new right that we created because of the Supreme Court ruling issued in 2009.

This bill is very explicit that, if a petition is denied, prisoners can ask for a new look at previously untested or newly discovered evidence. They have a right to appeal to the Supreme Court. That is all this bill does.

**Assemblywoman Cohen:**

Did you say that only one prisoner in Nevada asked to have his DNA tested since 2009?

**Assemblywoman Flores:**

Yes, that is correct. I am aware of only one petition.

**Chairman Frierson:**

The bill is very clear.

**Assemblyman Hansen:**

I have a question for the Chairman. On a simple bill like this that seems straightforward, with the suspension of rules, why do we not vote now and get it over with?

**Chairman Frierson:**

Ms. Flores would like that.

**Assemblyman Hansen:**

Unless there is something in it that everyone is worried about, and this is the time to ask questions—there was only one—I would assume this is a no-brainer.

**Chairman Frierson:**

For consistency's sake, we still need to hear from supporters and the opposition before we do anything. We need to hear from the stakeholders.



**Assemblyman Hansen:**

My thought was premature. I am just trying to speed up the process during these last few days, and it seemed like it made sense.

**Chairman Frierson:**

I suspect there may be some concern. For now, we will invite those who have testimony in support to come forward.

**Assemblywoman Flores:**

If there are concerns, no one has come to me with them. I appreciate the support of the Committee. I purposely saved the easy one for last.

**Kristin Erickson, representing the Nevada District Attorneys' Association:**

The right to appeal is a fundamental part of the checks and balances of our justice system. We are in full support of this bill.

**Chairman Frierson:**

Anyone in support of A.B. 233 please come forward.

**Tonja Brown, Private Citizen, Carson City, Nevada:**

I totally support this bill. We had a concern with the word "retroactive," but after speaking with Ms. Flores, I do not see a problem at all ([Exhibit F](#)).

I know of another case, but this is a female. This is not the one that was mentioned in 2009. I became familiar with her case, and there is DNA available. She may not be aware of the law, or might be too sick to do anything. She has been incarcerated for many, many years, but she is totally innocent.

As some of you know, my brother was wrongfully convicted in 1988. He was charged with armed robbery and sexual assault. He asked to have a DNA test conducted. He was told it was too costly and it could not be done. Shortly after his trial in 1989, he submitted letters of preservation to preserve the evidence. He continued to do so, but they were all denied. Throughout the years, even at his untimely death, he maintained his innocence. What was interesting with this case was that we later learned of another suspect that was hidden from the defense by the prosecution. It turned out that the other suspect also had DNA available. He was selling his blood during that time frame. The police suspected him of the crime my brother went to prison for, and three other crimes. They had access to his DNA through the blood he was selling. That was another avenue that could have been looked at.

In 2011, after 23 years, I was able to locate the prime suspect—two years after my brother's death. He had prior knowledge of the Payless Shoe Store. The suspect said he even went to the police to talk to them about the crime, but was told they already had the person incarcerated. He also stated that he knew of three other crimes that he was suspected of committing; however, my brother was never charged with those crimes because the victims had cleared him.

To have DNA testing is extremely crucial for people who have been in prison for many years and have maintained their innocence. With technology changing, it could lead to their freedom. I strongly support this bill.

**Michele Ravell, Private Citizen, Las Vegas, Nevada:**

I fully support the bill in its entirety. I sent the Committee the legislative history and minutes on the original bill ([Exhibit G](#)), so you could see that it was always intended to be appealable, but somehow it did not get included in the bill. This is really just a cleanup issue.

I would ask that one more thing be put into the bill. I am not sure we can make this happen, but it would be great. The wording would be, "In the instance where the petitioner will bear all costs for genetic profile testing and provide proof to the court that said funds are available, the court shall not deny said petition" ([Exhibit H](#)). It makes sense to me and would to anyone trying to prove his innocence. The court does not deem it to be a good petition. However, if they are going to pay for it themselves, I see no reason they should not be able to try to prove their innocence through DNA testing.

**Chairman Frierson:**

Are there any questions? I see none. I will come back to Carson City and invite those who are here to offer testimony in opposition to come forward. I see no one. Is there anyone in Las Vegas? I see no one. Is there anyone who wishes to offer testimony in the neutral position in Carson City or Las Vegas? I see no one.

We have suspended the rules, and since there is no opposition, I will entertain a motion on A.B. 233.

ASSEMBLYMAN WHEELER MOVED TO DO PASS  
ASSEMBLY BILL 233.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Ms. Flores will handle her floor statement.

We have one more bill on the agenda, but I do not know if we can do it now. While we determine what is going on with the other bill, we will recess for a moment [at 8:51 a.m.].

The Assembly Committee on Judiciary will come back to order [at 8:57 a.m.]. There being no other matters to come before the Committee, this meeting is adjourned [at 8:57 a.m.].

RESPECTFULLY SUBMITTED:

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Karyn Werner  
Committee Secretary

APPROVED BY:

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Assemblyman Jason Frierson, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** April 9, 2013

**Time of Meeting:** 8:16 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
<u>A.B.</u> <u>67</u>	C	Dave Ziegler	Work Session Document
<u>A.B.</u> <u>146</u>	D	Dave Ziegler	Work Session Document
<u>A.B.</u> <u>182</u>	E	Dave Ziegler	Work Session Document
<u>A.B.</u> <u>233</u>	F	Tonja Brown	Proposed Amendment
<u>A.B.</u> <u>233</u>	G	Michele Ravell	Legislative History
<u>A.B.</u> <u>233</u>	H	Michele Ravell	Proposed Amendment