

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

**Seventy-Seventh Session
April 16, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:12 a.m. on Tuesday, April 16, 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. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: 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:

Senator Justin C. Jones, Clark County Senatorial District No. 9



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Robert H. Talley, DDS, Executive Director, Nevada Dental Association
Lawrence P. Matheis, Executive Director, Nevada State Medical Association
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
Chris Ferrari, representing the Nevada Dental Association
Quentin Byrne, Acting Offender Management Administrator, Department of Corrections
Rick Gimlin, Administrative Services Officer III, Division of Parole and Probation, Department of Public Safety

Chairman Frierson:

[Roll was taken. Committee protocol and rules were explained.] We have only two items on the agenda today. We are going to hear these matters out of order so we can accommodate Senator Jones. We will open the hearing on Senate Bill 189 and invite Senator Jones up to introduce the bill.

**Senate Bill 189: Revises provisions governing assault and battery.
(BDR 15-917)**

Senator Justin C. Jones, Clark County Senatorial District No. 9:

On April 25, 2003, Governor Kenny Guinn signed Assembly Bill No. 53 of the 72nd Session. This bill enhanced the criminal penalties for committing assault or battery upon health care providers by amending *Nevada Revised Statutes* (NRS) 200.471 and NRS 200.481. Additionally, NRS 200.471 provides a list of occupations for which enhanced penalties apply if an offender assaults a member of that occupation during his line of work. Assembly Bill No. 53 of the 72nd Session added health care providers to the list of protected occupations covered under NRS 200.471, and defined which professions could be considered health care providers. Since its passage in 2003, the definition of health care provider has been amended by multiple pieces of legislation. These amendments add an assortment of additional professions which qualify as health care providers under the statute, including students of several professions.

If one looks closely at the list of qualifying health care professions, it is easy to see which professions are conspicuously absent. The list does not include dental students, medical students, pharmacy students, or dental hygiene students, yet the list does include nursing students, nursing assistant trainees, marriage and family therapist interns, and clinical professional counselor interns. There is no apparent reason why these students, trainees, and interns are protected under the law, while certain others were left off. Dental, medical, and pharmacy students are exposed to the same possibility of their patients assaulting them as are nursing students, nursing assistant trainees, marriage and family therapist interns, and clinical professional counselor interns. Senate Bill 189 corrects these oversights and provides protections to these additional categories of health care students.

Senate Bill 189 passed the Senate Judiciary Committee unanimously and also passed on the Senate floor unanimously. I urge your support.

Assemblyman Carrillo:

Regarding adding dental and pharmacy students, as well as dental hygienists, et cetera, what would be considered assault and battery on these students?

Senator Jones:

When I was a child, my brother hated to go to the dentist. Once, while getting a cleaning, he bit the dentist's thumb very hard. That is an example. I will let Dr. Talley explain it better and give you better examples of what this bill targets. As with the other providers, it provides a heightened penalty for assault on specific professions.

Robert H. Talley, DDS, Executive Director, Nevada Dental Association:

The best example is in the school process, because most of these schools are in poor neighborhoods. An example of assault and battery would be a student who is on the way to his car when a patient—who got angry earlier during treatment—attacks him out in the parking lot.

Assemblywoman Diaz:

Is this being done as a precautionary measure, or have there been incidents where these students have been attacked?

Senator Jones:

It is more of a concern. This bill came as a result of a dental student looking at the law and raising concerns that there were other professions where the students were being protected, but not his own. Unfortunately, he was not able to be here to testify, which he did in front of the Senate. It is more of a

concern for what could happen. I am not sure of any specific instances where students have been assaulted as a result of their work.

Robert Talley:

Mr. Matheis is in Las Vegas and has some history on the bill, and probably has better examples.

Lawrence P. Matheis, Executive Director, Nevada State Medical Association:

The addition of the providers of health care occurred after a series of violent incidents—including a shooting in an emergency department—mostly in southern Nevada. It was part of a national period of violence in a number of health care settings. That was the rationale for this. The folks who were listed were those who were licensed as health care providers. The specific students who are being added do not need a license while they are students. You will notice there are a few in here, like nursing students and medical residents, who go on rounds in a hospital and have a license category. As the training and cross-training increases, it is likely that some of these students will be placed in situations and settings where there is the potential for violence. The emergency department is usually used as the example, because that is the most critical setting we have in the health care system. There have been violent outbreaks in many different health care settings. We support this bill.

It was not an oversight, but it is a good addition to a law that has been around for a decade. It is important in terms of the confidence that the health care professionals have, and knowing that their work is valued. It has been successful in symbolic, and real, terms.

Assemblyman Hansen:

As I look at this, most of the other categories revolve around people who are in some official capacity when doing their jobs; for example, a jailer, a guard, or a correctional officer. My son is a medical student. If he gets beat up in the parking lot, will there be an enhanced penalty just because he is a medical student? Or does he have to be involved in some type of official capacity prior to giving him this protected status?

Robert Talley:

I believe it would probably be if he was on the property or inside the clinic.

Chairman Frierson:

Mr. Hansen, I will draw your attention to page 3, line 25. Existing law covers all of those individuals who are performing their duty. It is in the course of their duty that it applies, so the addition of students would be the same. Some students are already covered, but this adds a few categories of medical-related students who are performing their duty.

Assemblyman Hansen:

I want to make sure there were no special categories in the law to suggest that if you beat up a medical student, he gets special protection that an ordinary student would not receive. If we are trying to protect them in the process of providing medical services, then I can see it. I do not want some generic protection simply because they are medical students.

Chairman Frierson:

I will also point out that it says, "and the person charged knew or should have known that the victim was" The existing law ties it to the course of their duties and knowledge.

Assemblyman Carrillo:

There is a scenario of a medical student who has a lovers' quarrel and the other person retaliates. She has not used his services or been a patient of his, even in the student environment. Would it be considered taking action on a medical student, or would it just be an individual who has issues in her personal life?

Senator Jones:

As the Chairman pointed out, the goal of this law is to provide heightened penalties when someone is acting in the course and scope of his employment. If you are a jailer or a dental hygiene student and you are doing what is intended as your profession, and someone attacks you as a result of your profession, then he would be subject to those enhanced penalties.

Assemblyman Martin:

If you are enhancing the penalties for attacking these classes of people, are there any plans for any poster campaigns inside the medical offices saying something to the effect to be aware that attacking medical professionals now carries a more serious penalty? I do not see anything like that in the bill. That would serve as a double-edged sword. If you are alerting them to it, maybe you are making them more likely to do it. I do not know, but at the same time, it might serve as a deterrent.

Senator Jones:

With regard to medical professionals, that has already been in law for a long time. It might make sense in the medical and dental school.

Robert Talley:

I think it would make good sense to put up posters at the dental school and the dental hygiene school. We have contacts, so we can do that. It is not in the bill, but it would be a great deterrent.

Larry Matheis:

That does not need to be added to the bill, but they can develop the posters. That was done in the emergency departments in 2003.

Assemblywoman Fiore:

Mr. Matheis, you said there was a shooting a while ago. Was that a prisoner shooting at medical students? What is the law today? What happens if a prisoner hits a medical student or anyone in this bill?

Larry Matheis:

My recollection was that it had nothing to do with prisoners. It was in a hospital emergency department. Someone who was upset came back, and there was a shooting. That is why the original language tried to capture those health professionals who could be in settings where patients or patients' families might—for one reason or another—become violent.

Senator Jones:

I think the answer to your question is that, if a prisoner were to assault a medical student under the current law, there would be no enhanced penalty.

Assemblywoman Fiore:

I understand "enhanced," but what is the penalty as it stands today?

Senator Jones:

It would be the standard penalty for assault, depending on whether it was aggravated assault, simple assault, or battery.

Assemblywoman Fiore:

So, you are not sure of today's law, but you want to enhance it. Is that what this bill is doing?

Senator Jones:

Yes. I am sure there are folks in the audience who could come up and tell you what the exact penalties are for assault. I do not practice criminal law, so I do not know.

Chairman Frierson:

For clarification, simple assault is a misdemeanor. Battery is a misdemeanor, but becomes a felony if there is substantial bodily harm or is on an elderly person or any other enhancement is applicable.

Assemblyman Ohrenschall:

If someone is being treated in a mental health facility or an emergency room for a mental health incident and needs to be restrained, and they assault someone trying to do so, do you anticipate criminal charges being filed against the patient? In many of these cases assault or battery happens, but that is usually because of the mental health issue.

Senator Jones:

Psychologists, social workers, marriage and family therapists, and other professional clinical counselors are already included in the enhanced penalties. Obviously, in certain settings that is part of the job, so I do not think that is contemplated. Mr. Matheis, are you aware of any circumstances in which there has been an attempt to use the enhanced penalties when a mentally ill person has injured a mental health professional?

Larry Matheis:

I am not aware of any during the ten years that we have had this law. It is usually because of the complicating factors of competence and other such things. We did go through that period when the emergency departments in southern Nevada were at critical stage because of the psychiatric holds that went on for some time. There was a number of violent incidents, but I do not recall any of them leading to criminal charges against those patients.

Assemblyman Ohrenschall:

You would not anticipate using this for criminal charges against someone who is being restrained due to a mental health incident?

Larry Matheis:

Not unless the circumstances drove that. It would be up to a court. In my mind, when those incidents get out of hand, that is usually because of the illness, not because of criminal intent.

Chairman Frierson:

Are there any other questions from the Committee? I see none. Please stay if you can for closing remarks, but I understand if you cannot.

I will now invite those wishing to offer testimony in support of S.B. 189 to come forward, both here and in Las Vegas.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:

I am here in support of S.B. 189. I want to answer a couple of the questions that popped up. If this passes, it would be similar to a domestic relationship with a police officer. When a battery occurs on an off-duty police officer, we would not charge the suspect with battery on a police officer or add that enhancement. We would simply charge him with domestic battery, unless the police officer was on duty in an official capacity. Then it would not be a domestic battery, but battery on a police officer himself and not on the domestic partner.

The battery definitions in NRS 200.481 state that, if the battery is committed by a probationer or a prisoner who is in lawful custody or confinement without the use of deadly weapon, it is a category B felony. If they use a weapon, it is a category A felony.

Chris Ferrari, representing the Nevada Dental Association:

We are in support of S.B. 189. I want to point the Committee's attention to the Nevada Electronic Legislative Information System (NELIS). We had several folks on the Senate side who were not able to be here today from the University of Nevada School of Medicine, dental students at University of Nevada, Las Vegas, and others who provided statements of support [([Exhibit C](#)), ([Exhibit D](#)), and ([Exhibit E](#))].

Chairman Frierson:

Are there any questions? I see none. Is there anyone else to offer testimony? I see no one. Is there anyone wishing to offer testimony in opposition to S.B. 189? I see no one. Is there anyone who wishes to testify in the neutral position either here or in Las Vegas? I see no one. There was no opposition, so unless you have closing remarks, Mr. Jones, I believe you made your point in the presentation of the bill. Thank you for bringing a measure that includes new students to ensure we are treating our students equally. With that, I will close the hearing on S.B. 189. We will open the hearing on Senate Bill 32.

Senate Bill 32: Revises various provisions relating to the Department of Corrections and the Division of Parole and Probation of the Department of Public Safety. (BDR 16-317)

Quentin Byrne, Acting Offender Management Administrator, Department of Corrections:

Senate Bill 32 is basically a housekeeping bill for the Department of Corrections (DOC). One of the major points is that it allows the payment of fines and restitution from funds deposited in inmates' accounts. It also allows certain inmates on residential confinement to pay their bills and manage their money without having to go through the DOC; for instance, power bills and grocery bills. Currently, they have to send the money to us, submit the bills, and we cut the checks for them.

It also clears up ambiguity that we may transport safe keeper inmates when we have safe keepers coming in from counties when they are unable to house them for some reason. While we do it now, we want to make sure we put it in law as something we can do.

It clarifies that inmates must reside in Nevada for residential confinement programs. It allows inmates convicted of driving under the influence (DUI) while operating a watercraft to participate in residential confinement. Currently, they are excluded from the DUI programs.

This bill simplifies the disbursement of restitution payments by the Division of Parole and Probation. It also repeals the obsolete prison revolving account, which we have not used for seven years.

Assemblyman Ohrenschall:

If this bill passes as is, and I put money on the books for a relative, would that money be subject to being swept for money he owes?

Quentin Byrne:

We already take a percentage of everything that comes in and is a transaction on an account. I do not have the statute in front of me that allows us to do that.

Assemblyman Ohrenschall:

Would this bill, if it passes, allow a greater percentage to be taken?

Quentin Byrne:

No. Current law specifies that we are able to take it for those kinds of deposits rather than just money they have earned for working in the prison.

Assemblyman Wheeler:

Would you explain section 2, which is on page 3, line 41, through page 4, line 6, of the bill? It does not seem to have anything to do with funds. Can you clear that up for me?

Quentin Byrne:

It does not have anything to do with funds. This refers to the county safe keepers. We do this currently. If we get a safe keeper from the county, most of the time the sheriff or chief will send his staff to do transportation for the safe keeper, whether it is to court or the hospital. Sometimes it is not practical. If we, in Carson City, are housing an inmate from White Pine County for some reason, it makes no sense for them to drive all the way from White Pine County to take him to the hospital. This allows us to do legally what we already do—to transport those inmates.

Assemblywoman Spiegel:

If there are two inmates and one of them receives an inheritance while incarcerated and the other is destitute, the first one must pay back the state for the cost of his incarceration, but the second one would not have an obligation to do so. Do I understand that correctly?

Quentin Byrne:

No. This is specific to fines or restitution ordered by the court.

Assemblywoman Spiegel:

So it is confined to restitution.

Quentin Byrne:

Yes, that is the idea behind this. It allows us to pay restitution.

Assemblywoman Spiegel:

It says somewhere in the bill that it also takes in the cost of incarceration.

Quentin Byrne:

Under certain circumstances. If they are working in a prison industries position, we take some of it as a deduction. If they are earning a fair wage, part of that goes toward their room and board. If they are in the restitution center, those inmates working in the community pay a portion of their wage to help offset the cost of their incarceration.

Chairman Frierson:

I need clarification of section 10. I do not understand why we are doing it the way it is in statute. It seems to be statutory micromanagement. Why would we ever distinguish between restitution to one victim and restitution to more than one victim?

Rick Gimlin, Administrative Services Officer III, Division of Parole and Probation, Department of Public Safety:

That was exactly my point. In looking at this, we tried to maintain equity between payments to victims. That was the reason this language was changed.

Chairman Frierson:

Section 12, subsection 3, the section we are adding, sets out that payments will be made at least once a year. Is that the ordinary practice? I assumed it would be monthly, although that might be an administrative nightmare. How are payments to victims currently made? Are they made annually or monthly?

Rick Gimlin:

Right now, we aim to distribute payments at least every 90 days. In some cases, we can make payments as early as 60 days. Primarily, that is due to us being able to verify information on victims. We have three types of payments: those to single victims, to multiple victims, and those to joint and several victims. Joint and several payments may take time to work out. We try for distribution every 90 days.

Assemblywoman Diaz:

Section 10, subsection 8, mentions that, after three years of a parolee being discharged from parole if they cannot locate the person to whom restitution is ordered, that money is then channeled to the State Treasurer. Does that happen often?

Rick Gimlin:

Right now, what happens is, if we cannot locate the victim, those funds go to the Funds for the Compensation of Victims of Crime. In the past, those payments have been held in the restitution trust fund for as long as three years. We try to distribute them to the victims of crime much sooner. In that way, the funds do not sit in the trust fund doing nothing.

Chairman Frierson:

Are there any other questions? I see none. I will invite those here to provide testimony in support of Senate Bill 32 to come forward, both here and in Las Vegas. I see no one. Is there anyone in opposition? I see no one. Is there anyone wishing to offer neutral testimony here or in Las Vegas? I see no one. Since there is no one, I will close the hearing on Senate Bill 32, and open it up for public comment.

There is no one, so today's meeting is now adjourned [at 9:47 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 16, 2013

Time of Meeting: 9:12 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
<u>S.B.</u> <u>189</u>	C	Chris Ferarri	Written testimony of Melissa Piasecki, MD
<u>S.B.</u> <u>189</u>	D	Chris Ferarri	Written testimony of Kristina Coger
<u>S.B.</u> <u>189</u>	E	Chris Ferarri	Written testimony of Spencer Armuth